

**AGREEMENT REGARDING ENDOWMENT FUNDS BETWEEN
LINCOLN PARKS AND RECREATION DEPARTMENT
AND LINCOLN PARKS AND RECREATION FOUNDATION**

THIS AGREEMENT is entered into by and between the City of Lincoln, Nebraska on behalf of Lincoln Parks and Recreation Department, a municipal corporation and political subdivision of the State of Nebraska (“City”) and the Lincoln Parks and Recreation Foundation, a Nebraska non-profit 501(c)(3) corporation (“Foundation”) as of the date of full execution below for the purpose of setting forth the parties’ respective obligations for management and use of endowment funds.

WHEREAS, Lincoln Parks and Recreation Department is a department of the City of Lincoln that provides and maintains quality parks and green spaces and offers enriching recreation activities and facilities for all people in the City of Lincoln in accordance with Title 12 of the Lincoln Municipal Code and the City Charter.

WHEREAS, Lincoln Parks and Recreation Foundation is a non-profit Nebraska corporation designated as tax exempt under §501(c)(3) of the Internal Revenue Code and organized for the purpose of soliciting and receiving gifts, bequests, grants and devises of property for the use and benefit of Lincoln Parks and Recreation Department consistent with its Articles of Incorporation as amended from time to time.

WHEREAS, City and Foundation desire to preserve and maintain various parks and parks facilities throughout the City of Lincoln into the future by establishing and maintaining endowment funds with the Parks Foundation for capital improvement projects, major repairs, and extraordinary maintenance obligations.

WHEREAS, City desires to transfer certain funds to the Foundation for creation and management of separate endowment funds that shall be restricted for use for the purposes provided herein for certain parks, park facilities, and public spaces (“Endowment Funds”).

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained herein, the Parks and the Foundation do agree as follows:

1. Endowment Fund Contributions. City shall transfer or pay the following amounts to the Foundation for management as Endowment Funds to ensure capital repairs, replacements, and for some projects enhanced maintenance, of the following parks, park facilities, and public spaces:

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| a. Park Trees Endowment (City Project 296004.9220): | \$90,828 |
| b. Hazel Abel Park Endowment (City Project 296001.9220): | \$7,259 |
| c. P Street Enhanced Streetscape Endowment (City Project 413538): up to | \$550,000 |
| d. Airport Entryway Endowment (City Project 409457.9220): | \$100,000 |
| e. Sherman Field Endowment (City Project 09001.9220): | \$250,000 |

2. Administration of Endowments. Foundation agrees to accept the above Endowment Funds and administer and distribute the Endowment Funds in accordance with the

terms and conditions provided herein. All future payments from City to the above Endowment Funds shall also be managed in accordance with the terms and conditions provided herein. Foundation shall appropriately manage the Endowment Funds to make them available for future costs. The Endowment Funds shall be operated at all times in a manner which will make said fund tax-exempt and the donations to it deductible from taxable income to the extent allowed by the provisions of the Internal Revenue Code and other applicable legislation and regulations, as amended. The Endowment Funds shall also be organized so that the Federal Income Tax status of the Foundation as a public charitable organization under Section 501(c)(3) of the Internal Revenue Code, as amended, will not be adversely affected. Foundation may initially assess up to a one percent (1%) annual administrative fee for management of the Endowment Funds. This shall be in addition to any usual and customary investment asset management fees charged by Foundation's investment advisor or investment company. Future adjustments to the annual administrative fee for the Endowment Funds shall be approved by action by the Foundation Board of the Directors and written approval by the Mayor of City. The administrative fee shall be the only fee assessed by the Foundation for the Endowment Funds, and no other fees or charges shall be assessed or setoff by Foundation for administration or any other services related to the holding and management of the Endowment Funds.

Foundation shall create and formally adopt, in consultation with City, a Fund Statement for each of the Endowment Funds. Such Fund Statements shall be provided with accounting records as requested by City in writing as provided below. The Parks and Recreation Director shall approve the Fund Statements, including the purpose and criteria for use. Foundation agrees to only use specified Endowment Funds according to stated purposes and restrictions in the Fund Statements. Foundation shall establish separate subaccounts as restricted funds solely for the purpose in the Fund Statement for any Endowment Funds.

3. Continued Fundraising. Foundation may solicit additional donated funds to be added to the above Endowment Funds projects. Foundation shall also accept all additional funds donated to the Endowment Funds projects. All funds so solicited and received shall be initially accepted in the name of the Foundation, and the solicitations shall be conducted in the name of the Foundation.

4. Use of Endowment Funds. Endowment Funds shall be used for work or acquisition of improvements associated with City parks, park facilities, and public spaces. All expendable Endowment Funds may be utilized directly by Foundation for those purposes if requested by City or may be transferred to City from time to time as requested by City on an as-needed basis. The funds requested by City shall be used for the specific park, park facility, or public space consistent with the purposes described in the Fund Statements as determined by City in its own discretion. The Endowment Funds listed in section 1 shall be used for those parks, park facilities, and public spaces as described in more detail below.

- a. Park Trees Endowment funds shall be used to plant and replace trees in city park areas.
- b. Hazel Abel Park Endowment funds shall be used for repairs, replacement, and improvements of existing and future new improvements in Hazel Abel Park.
- c. P Street Enhanced Streetscape Endowment funds shall be used for repair and replacement of streetscape improvements including the irrigation system, landscape plantings, benches, lighting, banners, ornamental paving surfaces, and wood decking.

- d. Airport Entryway Endowment funds shall be used for 1) capital repair and replacement of landscape and streetscape features including trees, shrubs, ornamental grasses and perennials, irrigation system, district markers, banners, and public art; and 2) enhanced maintenance, which is defined as expenses and work that is above and beyond the “basic” maintenance level that would normally involve mowing of non-irrigated turf grass and maintenance of non-irrigated street trees. The Airport Entryway corridor includes the public right-of-way, adjacent park property, and adjacent easements on private property beginning at the entrance to the Lincoln Municipal Airport and extending along West Adams Street to NW 12th Street, continuing along Cornhusker Highway from N.W. 12th Street to N. 14th Street, and continuing along I-180 from the north side of the Cornhusker Highway interchange south to N. 9th Street and S Street.
- e. Sherman Field Endowment funds shall be used for Sherman Field and related support facilities for future repairs, replacements, improvements and enhanced maintenance costs.

5. Management/Investment of Endowment Funds. The parties agree that the investment strategy for the Endowment Funds shall be for long term total returns consistent with prudent levels of risk for the purposes identified above. Foundation shall adopt an investment plan with the intent to achieve returns, net of fees, equal to the Consumer Price Index inflation rate plus funds available for distribution and shall share this plan with the City. City may request the expendable Endowment Funds from Foundation in writing when it deems reasonable or necessary. Foundation shall provide such funds within thirty (30) days of the request. Foundation shall not need to receive Board approval for every distribution to City of the Endowment Funds. Funds available for distribution may be used for work consistent with the defined purposes for each Endowment Fund in the Fund Statements or may be retained and reinvested to allow the funds to accumulate for future expenses. As a general rule, the Foundation should not distribute more than five percent (5%) of the prior fiscal year end market values of investments to allow the Endowment Funds to appreciate capital for continued future funding.

6. Variance. In accordance with its “power of variance,” if at any time either party determines that the purposes stated for use or investment of the Endowment Funds cease to exist or cannot be reasonably carried out, a mutually agreed upon alternative use consistent with the charitable intentions shall be found to utilize said Endowment Funds.

7. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns.

8. Reports. Foundation shall provide Parks with its annual audit that shall include the specific accounts established for the Endowment Funds. Foundation shall also provide City with copies of its tax returns and other accounting or investment records when requested in writing. City shall identify in writing the intended uses of requested funds to the Foundation when requesting funds from a subject Endowment Fund.

9. Further Assurances. Each party will use its best and reasonable efforts to successfully carry out and complete each task, covenant, and obligation as stated herein. Each of the parties shall cooperate in good faith with the other and shall do any and all acts and execute,

acknowledge, and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.

10. Relationship of Parties. Neither the method of computation of funding nor any other provisions contained in this Agreement nor any acts of any party shall be deemed or construed by to create the relationship of partnership or of shared venture or of any association between the parties, other than contractual relationships stated in this Agreement.

11. Interpretation of this Agreement. This Agreement shall be governed and interpreted by the laws of the State of Nebraska without reference to the principles of conflicts of law. This Agreement shall also be subject to the general obligations and covenants of the Agreement between the parties approved by Resolution No. A-86521 on October 3, 2011 and as renewed from time to time. Each section of this Agreement is hereby declared to be independent of every other section so far as invalidity of any section shall not invalidate any other section thereof. Any uncertainty or ambiguity existing herein shall not be interpreted against any party because such party prepared any portion of this Agreement, but shall be interpreted according to the application of rules and interpretation of contracts generally.

12. Integration, Amendments, Assignment. This Agreement represents the entire agreement between the parties and all prior negotiations and representations are hereby expressly excluded from this Agreement. This Agreement may be amended only by written agreement of both parties and may not be assigned without the prior written consent of the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the City of Lincoln, Nebraska below.

CITY OF LINCOLN, NEBRASKA

Mayor

Date

LINCOLN PARKS AND RECREATION FOUNDATION

Foundation Board President

Date