

**INTERLOCAL AGREEMENT FOR
COOPER PARK-PARK MIDDLE SCHOOL PROPERTY**

This Interlocal Agreement (“Agreement”) is made and effective as of the date of execution by and between LANCASTER COUNTY SCHOOL DISTRICT 001, a/k/a, Lincoln Public Schools, a Class IV school district under the laws and statutes of the State of Nebraska (“LPS”) whose primary address is 5905 “O” Street, Lincoln, Nebraska 68510, and the CITY OF LINCOLN, NEBRASKA, a municipal corporation, (“City”) whose primary address is 555 South 10th Street, Lincoln, NE 68508.

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. Sections 13-801 *et seq.*, (the “Act”), of the State of Nebraska, provides that two or more public entities may enter into an agreement for shared or cooperative action, and this Agreement is made and entered into pursuant to the provisions of that Act and other Nebraska laws, and no separate legal or administrative entity is created for any of the cooperative undertakings established under this Agreement; and

WHEREAS, City owns property generally located between 6th and 8th Streets and “D” and “F” Streets known as Cooper Park, Lincoln, Lancaster County, Nebraska, legally described as Lincoln Original Addition, Lincoln City Park, Lincoln, Lancaster County, Nebraska (“Cooper Park Property”) and as shown on Exhibit “A”, which is attached hereto and incorporated herein by this reference as though set forth in full; and

WHEREAS, the Cooper Park Property is dedicated parkland and was platted for City park purposes with the initial plat of the City of Lincoln, and the F Street right-of-way between 6th and 8th Streets was vacated and ownership was transferred to LPS when the adjoining former elementary school site was converted to a middle school in the 1990s; and

WHEREAS, LPS owns property generally located north of the Cooper Park Property between 6th and 8th Streets and “F” and “G” Streets known as Park Middle School, a portion of which was platted for public school purposes with the initial plat of the City of Lincoln, and generally described as Lincoln Original Addition, Blocks 163 and 164 and portions of the vacated adjacent streets and alleys, Lincoln, Lancaster County, Nebraska (“Park Middle School Property”) and as shown on Exhibit “A”; and

WHEREAS, LPS and Lincoln Transportation and Utilities commissioned a traffic study to analyze pedestrian safety around Park Middle School, and said study recommended reconfiguring the school access drive to connect to 6th Street rather than 8th Street; and

WHEREAS, LPS desires to reconfigure the parking lot and parking lot access drive (“LPS Parking Improvements”), as well as undertake an indoor air quality (“IAQ”) project that involves installation of a geothermal wellfield (“LPS Wellfield Improvements”) for a ground-coupled heating and cooler system that will be under the redeveloped parking lot and shared playfield, as shown on the site plan on Exhibit “B”; which is attached hereto and incorporated herein by this reference as though set forth in full. The parties also wish to collaborate on development and management of a shared-use playfield that accommodates soccer (“Shared Playfield Improvements”). In addition, the parties desire to replace the tennis courts impacted by the LPS

Parking Improvements with improved tennis/pickleball courts, including one regulation tennis court and two pickleball/junior-sized tennis courts; and

WHEREAS, LPS and City agree to a cooperative agreement for joint uses of the adjacent Cooper Park Property and Park Middle School Property (collectively “the Properties”) under the terms, conditions and contingencies hereinafter set forth.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. EASEMENT CONVEYANCE. City agrees to convey an easement to LPS in substantially the form attached hereto and incorporated herein by this reference as Exhibit “C” in order to allow for certain Infrastructure Improvements to be constructed for the benefit of both parties and the public.

2. LIMITED GOVERNMENTAL APPROVALS. The parties understand and agree that a change of zoning or a declaration or review of a surplus property declaration is not necessary under the law and shall not be a required part of this Agreement or otherwise. The parties agree that approval of their respective boards shall be required to move forward with this cooperative undertaking in this Agreement.

3. PURPOSE AND DURATION. The purpose of this Agreement is to create a cooperative undertaking between LPS and City recognizing that both parties have public facilities that will benefit from development of joint uses on an ongoing basis. City and LPS desire to pursue shared uses on the Properties by both LPS and City so as to fulfill their responsibilities to the public at a lesser cost than if each acted independently. This Agreement shall be in full force and effect for a term of ninety-nine (99) years from and after the execution of this Agreement by the parties and shall continue thereafter from year to year until terminated as provided herein except as amended with the mutual written agreement of the parties.

4. LPS EASEMENT. The IAQ project LPS Wellfield Improvements involve installation of a geothermal wellfield for a ground-coupled heating and cooling system that will be under both the redeveloped parking lot and the Shared Playfield. City shall convey an easement to LPS for the purpose of the LPS Wellfield Improvements and LPS Parking Improvements, in substantially the same form as Exhibit “C”.

5. DESIGN, CONSTRUCTION, AND INITIAL COST RESPONSIBILITIES FOR SHARED PLAYFIELD IMPROVEMENTS.

A. Shared Playfield Improvements. The Shared Playfield Improvements contemplated as a part of this Agreement shall be constructed and paid for by LPS subject to reimbursement from the City as outlined on attached Exhibit “D”. The parties shall be responsible for future maintenance, repair, and replacement of improvements on the Properties as provided herein.

B. Shared Playfield Use. The Site Plan attached as Exhibit “B” shows a shared playfield (“Shared Playfield”). A current playfield, which is used for Park Middle School physical education programs during the school day and by the community during non-school hours, is

located in part on both Properties. A new Shared Playfield shall be constructed by LPS with artificial turf. The City shall review and approve plans for initial construction. The Shared Playfield shall be located on both the Park Middle School Property and the Cooper Park Property, and the construction costs shall be shared as allocated and shown on Exhibit "D". Once the playfield is constructed, LPS shall be solely responsible for future maintenance, repair, and replacement of the playfield, until termination or expiration of this Agreement. Replacement plans for the Shared Playfield shall be reviewed and approved by the Program Administrators prior to construction.

The Shared Playfield shall be available for public use during non-school hours and non-school days, or when otherwise not being used by LPS for school purposes. LPS shall not unreasonably restrict the public's access to the Shared Playfield when not used for school purposes.

The Shared Playfield will be signed in English and Spanish with hours that the Shared Playfield is available for public use and with the rules and regulations for use of the Shared Playfield. The parties agree to coordinate on the development of the rules and regulations so they are generally consistent with the rules and regulations for public use of parks and school grounds. The Program Administrators will coordinate with neighborhood residents to determine whether this signage needs to be translated to additional languages.

The parties anticipate constructing partial fencing along the south and west sides of the Shared Playfield at LPS's expense in order to contain sports balls. The parties do not anticipate that any additional fencing will be needed. The Program Administrators will coordinate regarding future fencing needs, but such fencing shall not be constructed in such a manner as to restrict the public's access to the Shared Playfield.

LPS will provide movable soccer goals for the Shared Playfield.

C. LPS Parking Improvements. The LPS Parking Improvements include reconfiguring the access drive to the existing parking lot at Park Middle School to allow access to and from 6th Street rather than 8th Street ("Parking Access Drive"). LPS shall continue to allow the public to utilize the existing Park Middle School parking lot during non-school hours. A more pedestrian-friendly connection across the access drive between the park and Shared Playfield will be developed and constructed at LPS's expense, which may include a crosswalk platform between the two areas. If needed, additional traffic calming measures will be considered between the park and the Shared Playfield on the Parking Access Drive.

D. Tennis Courts. The new Parking Access Drive shall displace two existing tennis courts. Such courts will be replaced with one standard size tennis court and two pickleball/junior size tennis courts all to be designed and constructed by LPS at its cost and expense subject to reimbursement as described on Exhibit "D".

City will be responsible for routine maintenance of the replacement tennis courts, including painted striping, and for future capital repair and replacement of the replacement tennis courts.

E. Infrastructure Improvements and Allocated Costs. City and LPS acknowledge and agree that the cooperative use of facilities on both the Park Middle School Property and the Cooper Park Property on a collaborative basis will serve both parties' best interests. As such, City and LPS agree (i) to the Site Plan shown on Exhibit "B", as may be amended by mutual agreement; (ii) to implement and construct the infrastructure improvements described herein, as may be amended by mutual agreement, shown on Exhibit "D"; and (iii) each pay the actual costs of

constructing the improvements described herein as such costs are incurred pursuant to the cost allocation under Exhibit “D”. City and LPS understand and acknowledge that the infrastructure improvements costs on Exhibit “D” are merely estimates and that infrastructure improvements costs will be determined at the time of construction. City and LPS also understand and agree that the actual plan for infrastructure improvements may need to be amended, adjusted, or revised as circumstances require and that when necessary the parties shall work together in good faith to amend, adjust, and revise the plan for infrastructure improvements. The parties shall work together in good faith to address any construction and/or payment of any other development and infrastructure concept costs not provided on Exhibit “D”.

F. Payments. The compensation to be paid by City to LPS shall equal the City’s share of the actual shared costs of construction of the Shared Playfield, the Tennis Courts, and the improvements at the pedestrian entrance on the west side of Cooper Park minus the value of the Cooper Park Property that is to be utilized for the LPS Parking Improvements, which value is agreed by the parties to be Twenty-two Thousand Eight Hundred Eighty-eight and No/100 Dollars (\$22,888.00). (“Payment”). The Payment may be made utilizing a combination of City’s CIP funds and the CITY-LPS asset bank ledger as determined by the Program Administrators. The Payment shall be delivered and/or adjustments to the asset bank ledger shall be made upon invoice. The basis for the Payment is set forth as Exhibit “E”. Final payment shall be based on actual costs. Additional consideration for this Agreement shall be the construction of the Infrastructure Improvements described in Paragraph 30 below and in Exhibit “D”

G. Design of Infrastructure Improvements Plan. Design of the infrastructure improvements, identified on Exhibit “D”, shall conform to Lincoln Municipal Code and any City of Lincoln Transportation and Utilities design standards.

H. Construction of Infrastructure Improvements. LPS and City shall cause their respective implementation and construction of infrastructure improvements, as may be amended or modified from time to time, shown on Exhibit “D”. The parties understand and agree that the City has provided to LPS a temporary easement to enable LPS to cause the implementation and construction of those elements of the infrastructure improvements located on the Cooper Park Property.

6. PROGRAM ADMINISTRATORS. Except as otherwise provided herein, the cooperative undertaking shall be administered by a program administrator from LPS and a program administrator from City (the “Program Administrator(s)”). City hereby designates the Director of the Parks and Recreation Department of the City of Lincoln as its Program Administrator. LPS hereby designates the Director of Facilities and Maintenance as its Program Administrator. The Program Administrators shall be directly responsible for making decisions and for administering and managing this cooperative, to include but not limited to its ongoing day to day use, repair and upkeep, and other administrative items and details of this cooperative undertaking, unless otherwise prescribed by the terms herein. The Program Administrators may mutually administer this Agreement and agree on the rules, regulations, practices, procedures and parameters of utilization and programming as provided herein. A Program Administrator may be changed from time to time by any party appointing a successor Program Administrator upon no less than seven (7) days advance written notice to the other party.

7. ONGOING MAINTENANCE, REPAIR AND COST RESPONSIBILITY. LPS shall be solely responsible for ongoing and long-term maintenance, snow removal, repair, replacement, or improvements related to the Shared Playfield, walkway along the south side of the parking lot, geothermal wellfield, and parking access drive. City shall be solely responsible for ongoing and long-term maintenance, repair, replacement, or improvements related to the replacement tennis courts and the retaining wall, trees and landscaping, and the new west park entrance, and other improvements to the Cooper Park Property. The parties agree that the responsibility for ongoing and long-term maintenance, repair, or improvements of future infrastructure improvements shall be determined by the Program Administrators.

8. MUTUAL INDEMNIFICATION. The parties agree, to the extent allowed by law, to mutually indemnify, defend and hold harmless each other, including any officers, representatives, employees, officials, or agents, for any claims, losses, or damages arising out of the course of this Agreement. Neither party waives any governmental immunity by entering into this Agreement and retains all defenses and immunities as provided by law. This provision survives any termination of the Agreement.

9. AMENDMENTS. This Agreement may only be amended or modified in writing signed by all parties to this Agreement.

10. ASSIGNMENT. This Agreement may not be assigned to another party without the LPS's and City's consent. Any such assignment shall not terminate the liability of the assignor to perform, unless a specific release in writing is given and signed by the other party to this Agreement.

11. SEVERABILITY. If any non-economic mutual term or provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

12. FURTHER ASSURANCES. Each undersigned party will, except as otherwise provided herein, whenever it shall be necessary to do so by the other, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, documents as may be necessary or proper to effectuate the covenants and agreements herein provided. Each of the undersigned parties shall cooperate in good faith with the other.

13. INTERPRETATIONS. Any uncertainty or ambiguity existing herein shall not be interpreted against either party because such party prepared any portion of this Agreement but shall be interpreted according to the application of rules of interpretation of contracts generally.

14. CONSTRUCTION. Whenever used herein including acknowledgments, the singular shall be construed to include the plural, the plural the singular, and the use of any gender shall be construed to include and be applicable to all genders as the context shall warrant.

15. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties relating to the transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, are merged herein. This Agreement cannot be modified or altered unless reduced to writing and consented to by all the undersigned parties.

16. NOTICE AND DEMANDS. Notice, demand, or other communication mandated by this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally at the address stated above.

17. EXECUTION IN COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

18. GOVERNING LAW. All aspects of this Agreement shall be governed by the laws of the State of Nebraska.

19. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legatees, devisees, personal representatives, successors, and assigns.

20. 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 the City, or by any third person 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.

[SIGNATURE PAGES FOLLOW]

Exhibit “A”: Map of Cooper Park Property and Park Middle School Property
(finalizing Exhibit)

Exhibit "B": Site Plan

Cooper Park / Park Middle School Site Plan



Exhibit "C": Easement from City to LPS

Return filed document to:
City Attorney's Office
555 South 10th Street, Suite 300
Lincoln, NE 68508

EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That CITY OF LINCOLN, NEBRASKA, a municipal corporation, herein called "Grantor", record owner of the real property hereinafter described, for and in consideration of the sum of One Dollar (\$1.00), duly paid, the receipt whereof is hereby acknowledged, and the further consideration of the performance of the covenants and agreements by Grantee as hereinafter set out and expressed, does hereby grant, remise and relinquish unto LANCASTER COUNTY SCHOOL DISTRICT NO. 001, a/k/a LINCOLN PUBLIC SCHOOLS, a Nebraska public school district, , its successors and assigns, herein called "Grantee", the right, privilege and easement to construct, reconstruct, maintain, operate, and replace a geothermal wellfield and access drive and related appurtenances and facilities thereto belonging, over, under and through the following described real property, to-wit:

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF A PORTION OF COOPER PARK, A PARCEL OF LAND LYING BETWEEN F AND D STREETS AND 6TH AND 8TH STREETS, ORIGINAL LINCOLN, LOCATED IN THE SOUTH HALF OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF COOPER PARK, ORIGINAL LINCOLN, SAID POINT BEING THE INTERSECTION OF THE EAST RIGHT OF WAY LINE OF SOUTH 6TH STREET WITH THE SOUTH RIGHT OF WAY LINE OF VACATED F STREET, AS VACATED BY ORDINANCE NO. 15217, RECORDS OF LANCASTER COUNTY, NEBRASKA; THENCE ALONG THE NORTH LINE OF SAID COOPER PARK, SAID LINE BEING THE SOUTH RIGHT OF WAY LINE OF VACATED F STREET, ON AN ASSUMED BEARING OF SOUTH 89 DEGREES 42 MINUTES 59 SECONDS EAST, A DISTANCE OF 720.04 FEET TO THE NORTHEAST CORNER OF SAID COOPER PARK, ORIGINAL LINCOLN, SAID POINT BEING THE INTERSECTION OF THE WEST RIGHT OF WAY LINE OF SOUTH 8TH STREET WITH THE SOUTH RIGHT OF WAY LINE OF VACATED F STREET, AS VACATED BY ORDINANCE NO. 15217; THENCE SOUTH 00 DEGREES 14 MINUTES 19 SECONDS WEST, ALONG THE EAST LINE OF SAID COOPER PARK, SAID LINE BEING THE WEST RIGHT OF WAY LINE OF SOUTH 8TH STREET, A DISTANCE OF 12.97 FEET TO A POINT; THENCE NORTH 89 DEGREES 44 MINUTES 28 SECONDS WEST, A DISTANCE OF 439.64 FEET TO A POINT; THENCE SOUTH 45 DEGREES 07 MINUTES 49 SECONDS WEST, A DISTANCE OF 14.11 FEET TO A POINT; THENCE SOUTH 00 DEGREES 00 MINUTES 06 SECONDS WEST, A DISTANCE OF 94.07 FEET TO A POINT OF NON TANGENT

CURVATURE, THENCE ALONG A NON TANGENT CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 106.00 FEET, A DELTA ANGLE OF 53 DEGREES 53 MINUTES 32 SECONDS, AN ARC LENGTH OF 99.70 FEET, A CHORD BEARING OF SOUTH 26 DEGREES 56 MINUTES 46 SECONDS WEST, AND A CHORD DISTANCE OF 96.07 FEET TO A POINT; THENCE SOUTH 53 DEGREES 53 MINUTES 32 SECONDS WEST, A DISTANCE OF 47.10 FEET TO A POINT OF CURVATURE; THENCE ALONG A CURVE IN A CLOCKWISE DIRECTION, HAVING A RADIUS OF 106.00 FEET, A DELTA ANGLE OF 36 DEGREES 06 MINUTES 28 SECONDS, AN ARC LENGTH OF 66.80 FEET, A CHORD BEARING OF SOUTH 71 DEGREES 56 MINUTES 46 SECONDS WEST, AND A CHORD DISTANCE OF 65.70 FEET TO A POINT; THENCE NORTH 90 DEGREES 00 MINUTES 00 SECONDS WEST, A DISTANCE OF 127.43 FEET TO A POINT ON THE WEST LINE OF SAID COOPER PARK, SAID LINE BEING THE EAST RIGHT OF WAY LINE OF SOUTH 6TH STREET; THENCE NORTH 00 DEGREES 15 MINUTES 33 SECONDS EAST, ALONG SAID LINE, A DISTANCE OF 252.34 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS A CALCULATED AREA OF 69,184.15 SQUARE FEET OR 1.59 ACRES, MORE OR LESS.

TO HAVE AND TO HOLD UNTO THE GRANTEE, its successors, and assigns, so long as such geothermal wellfield and/or access drive shall be used and maintained, together with the right of ingress and egress to said property, for the purpose of constructing, reconstructing, inspecting, repairing, maintaining, operating, and replacing said geothermal wellfield, access drive and related appurtenances and facilities thereto, located therein, in whole or in part, at the will of Grantee. Grantor is hereby granting the uses herein specified without divesting Grantor of title and ownership of the rights to use and enjoy the surface of the above-described property.

THIS INSTRUMENT, and the covenants and agreements herein contained, shall inure to the benefit of and be binding and obligatory upon the successors and assigns of the respective parties.

EXECUTED this _____ day of _____, 20__.

<p>ATTEST:</p> <p>_____</p> <p>City Clerk</p>	<p>CITY OF LINCOLN, NEBRASKA, A municipal corporation</p> <p>_____</p> <p>Leirion Gaylor Baird, Mayor</p>
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STATE OF NEBRASKA)
) ss.
 COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me on the _____ day of _____, 2021, by Leirion Gaylor Baird, Mayor of the City of Lincoln, Nebraska.

 Notary Public

My Commission Expires: _____

Exhibit “D”: Infrastructure Improvements, Costs, and Obligations

#	Improvement	Estimated/Actual Total Cost	Cost Share	LPS Cost	City Cost	Notes
A	North slope retaining wall removal; grading	TBD	100% LPS	TBD	\$0	Retaining wall work completed as part of Phase 1 improvements
B	Water main relocation (F Street vacated ROW)	TBD	100% LPS	TBD	\$0	Completed as part of Phase 1 improvements
C	Roadway improvements	TBD	100% LPS	TBD	\$0	Phase 2
D	Parking lot improvements	TBD	100% LPS	TBD	\$0	Phase 1
E.1	Tennis courts removal; design & construction of standard size tennis court; design of junior size tennis courts	TBD	100% LPS	TBD	\$0	Phase 2
E.2	Construction of two pickleball/junior size tennis courts	TBD	100% City	\$0	TBD	Phase 2
F	Shared use playfield	\$361,120	2/3 LPS; 1/3 City	\$240,747	\$120,373	Phase 3
G	Park pedestrian entrance on the west side and associated Park modifications	\$21,000	100% City	\$0	\$21,000	City shall coordinate work with LPS’s contractor and reimburse LPS; Phase 2

*Note: The Actual Total Cost to be considered for purposes of Cost Share determinations above shall include construction costs only. LPS agrees to pay all design costs associated with the improvements described in the Agreement.

Exhibit “E”: Calculation of Payment Due from City to LPS

PAYMENT = (Actual Costs of Constructing Two Pickleball/Junior Size Tennis Courts) + (City Share of Shared Playfield) + (Actual Costs of Constructing Pedestrian Entrance on West side of Cooper Park) - \$22,888.00