

**Lexington Middle School and High School Project
Construction, Management and Lease Agreement**

This Agreement (“Agreement”) is made and entered into by and between the Lexington Community Facilities Agency (“Agency”), Dawson County School District No. 24-0001, commonly known as Lexington Public Schools (“School District”), and the City of Lexington, Nebraska (“City”).

WHEREAS, the School District is the owner of certain real property that includes the Lexington Middle School and the Lexington High School;

WHEREAS, the School District and City created a separate joint entity called the Agency through the approval of the Interlocal Cooperation Act Agreement Creating the Lexington Community Facilities Agency (“Agency Agreement”) on April 25, 1995.

WHEREAS, the parties desire to share educational and community facilities that may include, but not necessarily be limited to, recreation facilities, classrooms, gymnasiums, kitchen, cafeteria, and auditorium commons area at Lexington Middle School and an addition to the cafeteria and west gymnasium commons area at Lexington High School;

WHEREAS, the parties believe it is in the best interests of School District’s students and the community as a whole to jointly create and use these facilities at the Lexington Middle School and Lexington High School locations;

NOW, THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

1. Term. This Agreement shall become effective upon ratification by a majority vote of the governing bodies of the Agency, City, and School District. This Agreement shall remain in full force and effect beginning on or about February 14, 2012, and shall continue in effect during the duration of the Interlocal Cooperation Agreement Creating the Lexington Community Facilities Agency, unless this Agreement is sooner terminated or modified by mutual agreement of the parties or as provided herein. In no event shall the lease provision of this Agreement extend beyond the period authorized by law.

2. Project

A. Project. The “Project” shall mean the construction of educational and community facilities that may include, but not necessarily be limited to, recreation facilities, classrooms, gymnasium, kitchen, cafeteria, and auditorium commons area at or near the Lexington Middle School located at 1100 N. Washington, Lexington, Nebraska and an addition to the cafeteria and west gymnasium commons area at Lexington High School located at 705 W. 13th, Lexington Nebraska. A preliminary schematic design (site plan/floor plan) of the Lexington Middle School is attached as Exhibit B. A preliminary schematic design (site plan/floor plan) of the Lexington High School is attached as Exhibit C. The preliminary estimated budget for the entire project is \$8.5 million.

B. School District’s Contribution. The School District shall contribute an amount not to exceed \$6,000,000.00. The School District’s contribution shall be used to fund construction costs of the classrooms, gymnasium, kitchen, cafeteria and auditorium commons area at or near Lexington Middle School and the addition to the cafeteria and west gymnasium commons area at Lexington High School. The School District’s contribution may be satisfied in whole or in part in the form of existing facilities transferred to the Agency, subject to approval by the Board.

C. City’s Contribution. The City shall contribute utilities relocation, parking facilities, paving, street and curb work, groundwork and landscaping, and the labor of City employees. The City shall be permitted to make additional contributions, monetary or in-kind upon agreement of both parties.

D. Additional Contributions. Private donations and contributions for facility improvements and enhancements shall be permitted upon approval of the City and the School.

E. Contingencies. Neither party shall be obligated to make such contributions should the Board of Education of the School determine, in an open meeting as prescribed by law, that the Lexington Middle School and High School Project as described in this Agreement is not in the best interest of the School district and its constituents.

F. Excess Payments. Any payments made by the School District, City, or private party to the Agency for the Lexington Middle and High School Project that exceed the cost of construction shall be used by the Agency for future projects that are mutually beneficial to the School District and the City.

3. Construction and Lease. The Agency agrees to build the Project and lease the Project facilities to the School District and the City according to the terms herein. The Agency shall be responsible for preparation and review of architectural plans, bids and bidding, construction contracts, supervision of construction, scheduling of payments, and final approval of construction for all new or remodeled facilities to be provided with funds provided through this Agreement except as otherwise provided herein.

4. Architect. The Project Architect shall be Bahr Vermeer Haecker Architects (BVH), 440 North 8th Street, Suite 100, Lincoln, NE 68516, (402) 475-4551.

5. Construction Manager at Risk. The Project shall be completed by the Agency using the construction manager at risk method of construction in accordance with policies adopted by the Agency.

6. Construction Manager. The Agency shall provide the identity of the construction manager it has selected for the project to the School District and the City. If School District or the City has a reasonable objection to the proposed construction manager, it shall notify the Agency in writing within 5 days. Failure to timely object shall constitute acceptance. If the School District or City reasonably and promptly objects, the Agency shall not contract with the proposed construction manager, and the Agency shall propose another acceptable construction manager to the School District and City.

7. Construction Manager Contract. The Agency shall provide a copy of any proposed contract with the construction manager to the School District and City. If the School District or City has a reasonable objection to the proposed contract, it shall notify the Agency in writing within 5 days. Failure to timely object shall constitute acceptance. If the School District or City reasonably and promptly objects, the Agency shall submit a revised contract to the construction manager that incorporates any changes requested by the School District or City.

8. Granting of Leasehold. The Agency shall lease the Project to the School District and City for a term beginning on or about January 16, 2012 and ending on April 25, 2030. In no event shall the lease provision of this Agreement extend beyond the period authorized by law.

9. Rent.

A. The first payment of basic rent shall be made by the School District on or before March 30, 2012, in the sum of \$2,000,000. The School District shall also pay as basic rent a sum equal to the total periodic construction progress payments for construction of the classrooms, gymnasium, kitchen, cafeteria and auditorium commons area at or near Lexington Middle School and the addition to the cafeteria and west gymnasium commons area at Lexington High School, as approved and recommended by the Project Architect. The final payment shall be due no later than August 31, 2015. In no event shall the School District's total payment of basic rent exceed \$6,000,000.00.

B. The parties agree that neither the School District nor the City contemplate issuing bonds or borrowing any funds to pay the rental payments hereunder.

C. Any rental payments made by the School District to the Agency that exceed the cost of construction shall be maintained and used by the Agency for future projects that are mutually beneficial to the School District and the City.

10. Scheduling Use of Facilities. School District representatives, City representatives, and the Agency Board shall meet in the month of August, or more often as the parties agree, to establish a preliminary calendar reserving use of the Project facilities. Priority regarding use of the Project facilities shall be as follows: (1) School District curricular, extracurricular, and other school-related activities, (2) City recreation programs, (3) other School District or City requests with the request first in time receiving priority, and (4) other community activities. After an initial calendar is established, the School District Activities Director's Office shall administer the calendar, administer requests for additional Project facility time, control keys, and collect fees. The City and the Agency agree that they will not exercise the rights granted to them by this paragraph in such a way as to interfere with or adversely affect (1) any other property of School District or (2) the operation and control of any of the programs of School District. The City and the Agency will not permit Project facilities to be used in any manner contrary to the legitimate educational interests of the School District. The City and the Agency will prohibit the possession, use, or distribution of illicit drugs, alcohol and weapons on Project facilities.

11. Use of Project Facilities by Other Persons or Organizations. The parties agree that other parties not subject to this Agreement shall only be allowed to use the Project facilities according to the terms of this Agreement, School District policies, and any Rules and Regulations applicable to the Project facilities adopted by the parties. This provision shall not apply to a third party, provided that the use of Project facilities by the third party shall be subject to a separate written agreement between the Agency, the School District and the third party. The Agency, the School District, and the City agree and understand that a separate written agreement with a third party for use of the project facilities shall change the priority regarding use of the Project facilities outlined in Section 10 of this Agreement to the following: (1) School District curricular, extracurricular, and other school-related activities, (2) third party programs, (3) City programs, (4) other School District, City, or third party requests with the request first in time receiving priority, and (5) other community activities.

12. Project Facilities and Fees. Use of the Project facilities by any party not subject to this Agreement shall be subject to School District's Facility Use Policy or any other policies applicable to the Project facilities adopted by the parties, provided that the parties agree that the third party's use of the Project facilities shall be subject to a separate written agreement between the Agency, the School District and the third party. The parties acknowledge that the School District policy may be amended at any time by the School District's Board of Education with or without notice.

13. Maintenance, Repair, Insurance, and Utilities. The School District shall be responsible for the provision and cost of any maintenance, repair, liability and casualty insurance, and utilities for the Project facilities upon the completion of the Project. The parties agree and understand that the School District's responsibilities under this paragraph may be assigned in whole or in part to a third party, provided that such assignment shall be subject to a separate written agreement between the Agency, the School District and the third party.

14. Control and Supervision. The School District shall be responsible for the control and supervision of the Project facilities. The parties agree and understand that the School District's responsibilities under this paragraph may be assigned in whole or in part to a third party, provided that such assignment shall be subject to a separate written agreement between the Agency, the School District and the third party.

15. Damage or Destruction. The parties agree that in the event of the damage or destruction of the Project facilities covered by casualty insurance, they shall be restored to the same use to the extent possible with insurance proceeds. No party shall be obligated to restore the Project facilities beyond what can be provided with insurance proceeds. In the event that insurance proceeds are insufficient to repair or replace the Project facilities, this Agreement shall terminate.

16. Indemnification. The parties agree to indemnify, defend, and hold each other and their directors, officers, agents, employees, and designees (collectively, the “Indemnitees”) harmless from all losses, claims, liabilities, injuries, damages, and expenses, including attorneys’ fees, that the Indemnitees may incur by reason of any injury or damage sustained to any person or property including, but not limited to, any one or more of the Indemnitees arising out of or occurring in connection with the performance or lack of performance by a party of its duties and obligations under or pursuant to this Agreement.

17. Real Property Rights. All real property on which the Project is constructed shall at all times be and remain the sole and exclusive property of School District. Nothing in this Agreement shall be construed to convey any right, title or interest therein or thereto to the City or Agency.

18. No Third-Party Rights. This Agreement shall not provide third parties with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

19. Default. A party shall be in default under this Agreement if it breaches, defaults on or otherwise fails to perform or satisfy any agreement, obligation, term, covenant, condition or provision set forth herein or arising hereunder, and such breach, default or failure to perform continues for a period of thirty (30) days after the party receives written notice of such breach or failure to perform from the other party; or, if such breach cannot reasonably be cured within such 30-day period, and the breaching party fails to commence to cure such breach within such thirty (30) days after notice from the non-breaching party or fails to proceed diligently to cure such breach within a reasonable time thereafter. Upon default by a party, the remaining parties may pursue any remedy provided by law.

20. Assignment. No party shall assign any rights in this Agreement without the express written consent of all other parties.

21. Notices. Notices required under this Agreement shall be sufficient if in writing and if personally delivered or sent by certified mail at the addresses listed below:

School District: Lexington Public Schools
Attn: Superintendent
300 S. Washington Street
P.O. Box 890
Lexington, NE 68850

City: City of Lexington
Attn: Mayor
406 E. 7th Street
P.O. Box 70

Agency: Lexington Community Facilities Agency
Attn: Chairperson
300 S. Washington Street
P.O. Box 890
Lexington, NE 68850

22. Applicable Law. This Agreement shall be governed by the laws of the State of Nebraska.

23. Amendments. Any amendments to this Agreement must be written and approved by all parties.

Executed and delivered this ____ day of _____, 2012.

CITY OF LEXINGTON, NEBRASKA

Mayor

Executed and delivered this ____ day of _____, 2012.

**DAWSON COUNTY SCHOOL
DISTRICT NO. 24-0001**

President, Board of Education

Executed and delivered this ____ day of _____, 2012.

**LEXINGTON COMMUNITY
FACILITIES AGENCY**

Chairperson, Agency Board

EXHIBIT B

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