

RESOLUTION NO 05- 35

WHEREAS: It is in the best interests of the City of Lexington to enter into an Interlocal Agreement with Dawson County School District No. 1, to provide utilities service to the Lexington Public School System.

NOW BE IT RESOLVED by the City Council, City of Lexington, Nebraska, that the Interlocal Agreement attached hereto, is hereby approved, and that Ted Cook, as President of the Council, is hereby directed and authorized to sign said Agreement on behalf of the City of Lexington, Nebraska.

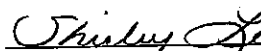
PASSED AND APPROVED December 13, 2005.

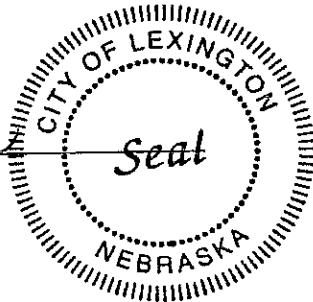
CITY OF LEXINGTON, NEBRASKA



Ted Cook, Mayor

ATTEST:


City Clerk - Deputy



INTERLOCAL AGREEMENT

This Interlocal Agreement which shall become effective upon the Effective Date set forth herein, is made between Lexington Utilities, City of Lexington, a municipal corporation and political subdivision (LU), and the Dawson County School District, No.1, also known as the Lexington Public School System, a Nebraska political subdivision (LPS), jointly referred to as "Parties" and individually as "Party".

RECITALS

WHEREAS, LU provides utility services consisting of electric and water distribution services, along with waste water treatment services, and other energy-related services in Lexington, Nebraska, and

WHEREAS, LPS has the authority to procure and is responsible to ensure adequate utility service for its facilities; and

WHEREAS, LPS desires to enter into this Agreement to provide reliable, cost effective utility service and energy-related services and equipment for LPS facilities; and

WHEREAS, the Parties contemplate the taking of all necessary and appropriate actions to support the Parties' joint objectives to provide reliable, cost effective utility service and energy related services and equipment for the LPS facilities.

Now, therefore, LU and LPS agree as follows:

AUTHORITY

1. **Authority and Purpose.**

- 1.1 Article XV, Section 18 of the Constitution of the State of Nebraska and the Interlocal Cooperation Act of the State of Nebraska, Neb. Rev. Stat. 13-801 et seq., (the "Act"), authorize any two or more public agencies to enter into agreements for joint or cooperative exercise of any power, privilege or authority exercised or capable of exercise individually by such public agencies. LU and LPS are public agencies within the meaning of the Act.
- 1.2 LU has the authority to provide utility and energy-related services and to install, own, operate and maintain utility equipment. LPS has the authority and responsibility to ensure adequate, efficient and cost effective utilities, energy-related services and equipment for its facilities, and to enter into any contracts to effectuate this authority and responsibility.
- 1.3 It is the purpose of this Agreement for LU and LPS to make the most efficient use of their powers by cooperating with each other on the basis of mutual

advantage and timely providing services and facilities as identified in this Agreement and in any addendum to this Agreement that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities.

2. Administration of Agreement.

2.1 LU and LPS each shall designate an administrator responsible for the management of the cooperative undertaking set forth in this Agreement. The administrator may be changed from time to time by any party upon no less than seven (7) days advance written notice to the other Party. Each administrator shall communicate with the other administrator as necessary to effectuate the terms of this Agreement. The administrators shall meet no less often than once every six months to discuss any matters pertinent to this Agreement and in particular shall discuss conservation, supply and rate setting issues concerning utility service. LU further agrees to consult with LPS from time to time to suggest methods of energy conservation and energy efficiencies to reduce the consumption of utilities by LPS.

2.2 Any real and personal property shall be acquired, held and disposed as set forth in this Agreement, or any amendment hereto.

2.3 No separate legal or administrative entity is created under this Interlocal Agreement.

3. Utility Service and Term.

3.1 For a period of four (4) years from and after the Effective Date of this Agreement ("Initial Term"), LU shall be the sole and exclusive provider of utility service, which shall consist of electric and water and sewer service ("Utility Service") for all facilities owned or leased (where the tenant is responsible for utility service) by LPS (the "LPS Facilities"), whether such Facilities exist now or are constructed, acquired or leased after the Effective Date of this Agreement. Upon the expiration of the Initial Term of this Agreement, the term of this Agreement shall extend automatically for successive consecutive terms of one (1) year each (each, a "Renewal Term"), but either Party may terminate the Agreement as to such Party by providing a written notice to the other Party not less than ninety (90) days prior to the end of the Initial Term or a Renewal Term. If such notice is given, the Agreement shall terminate at the end of the then current term. The existing LPS Facilities are listed on Exhibit "A" hereto. LPS shall add to the Facilities listed on such Exhibit any new facilities constructed, owned or leased by LPS and delete from such Exhibits such Facilities that are no longer owned or leased by LPS. It is the intent of the parties that all LPS facilities shall be covered by this

Agreement, regardless of whether they are listed on Exhibit "A", and LPS will update such exhibits on at least an annual basis.

- 3.2 LU shall supply and LPS shall receive and pay for Utility Service in accordance with the LU Service Regulations, as the same may be amended from time to time, and in accordance with the LU rate schedule for which each LPS Facility qualifies. During the Initial Term and any Renewal Term, LPS shall be subject to any change in rates charged by LU for Utility Service as to any LPS Facility under an applicable rate schedule. LPS shall not resell any Utility Service supplied by LU under this Agreement. LPS shall comply with any newly adopted version of an LU rate schedule applicable to an LPS Facility and with any amendment to the LU service regulations. LU shall meet annually with LPS to discuss whether there is a different LU rate schedule that will yield lower costs for Utility Service at any of the LPS Facilities. If LU or LPS discovers an available rate schedule which may be more advantageous to LPS than the one under which service is provided, such rate schedule with the agreement of LPS, shall be applied to the Facility's service thereafter.
- 3.3 If, during the Initial Term or any Renewal Term, there is a change in federal or Nebraska law that, despite the agreement in Section 3.1 for LU to be the sole and exclusive supplier of Utility Service to LPS, authorizes LPS to choose a utility supplier other than LU or requires that LPS allow other suppliers the opportunity to provide Utility Service to them, then, during the remainder of such Initial Term or Renewal Term, and subject to the requirements of then applicable law, LPS shall deliver to LU any proposal to supply Utility Service received from a third party supplier for any facility being served under this Agreement by LU ("Alternate Proposal") which LPS reasonably believes is superior in price and term to the Utility Service supplied hereunder. LU shall have a period of thirty (30) days from receipt of the Alternate Proposal ("Response Period") to submit a counter-proposal ("Counter-Proposal") to LPS, and LPS shall not accept any Alternate Proposal during the Response Period. LPS shall have thirty (30) days from receipt of the LU Counter-Proposal to either accept or reject the same in writing, and LPS shall not enter into any Alternate Proposal prior to either accepting or rejecting in writing LU'S Counter-Proposal. If LU's Counter-Proposal is not accepted by LPS, then this Agreement to supply Utility Service will terminate on the date stated in LPS's response to the LU Counter-Proposal (which date shall be no sooner than thirty (30) days from the date thereof and no later than the expiration of the Initial Term or Renewal Term.)
- 3.4 During the term of this Agreement LU shall have the right to interrupt or restrict electric and/or natural gas service to LPS facilities during periods agreeable to LPS, particularly when classes are not in session. LPS may designate the time periods during which facilities may have service interrupted

or reduced. LU shall also have the right to interrupt water service for non-essential water use including but not limited to lawn watering.

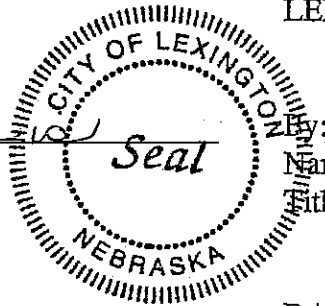
4. **Utility Service.** During the Initial Term and any Renewal Term, to the fullest extent provided by law, LPS shall utilize LU as its sole source supplier for all Electric, Water and Sewer Service at any existing or planned LPS Facilities, except for services that are not offered by HU and/or without the express written consent of LU. In the event of any procurement of energy-related services or equipment from LU by LPS during the term of this Agreement, LU agrees to charge LPS the most favorable rates available to its commercial customers for such services and equipment. LU shall consult at least semi-annually with LPS to identify energy-related services and equipment. LU shall consult at least semi-annually with LPS to identify energy-related services and equipment that may result in energy savings at LPS Facilities. Nothing stated in this Agreement shall be deemed to require LPS to utilize LU for energy financing contracts under the provisions of Section 66-1062, et. Seq. of the Nebraska Revised Statutes.
5. **Indemnification.** LPS shall indemnify and hold harmless LU and its Board of Public Works, LU employees and the Lexington City Council from any claims, expenses (including attorneys' fees and litigation expenses), damages or losses it may suffer as a result of any claims made regarding the validity of this Agreement or the effect of this Agreement on the expenditure or revenue authority of LPS, including not limited to taxpayer or regulatory claims.
6. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their successors or assigns; provided, this Agreement shall not be assigned or otherwise transferred to a third party without the prior written consent of the other Parties hereto.
7. **Notices.** All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by facsimile transmission followed by written confirmation of receipt, sent by overnight commercial air courier (such as Federal Express), or sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at their addresses or facsimile numbers set forth on Exhibit "B" hereto (which exhibit may be changed from time to time by notice of either party.)
8. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the statutory and decisional law of the State of Nebraska, without regard to conflict of laws principles.

9. Entire Agreement. This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof. All prior agreements; representations, statements and negotiations are hereby superseded. This Agreement may be amended only by a writing executed by both parties.
10. Effective Date. This Agreement shall be executed in duplicate originals, and the Effective Date shall be December 13, 2005.

LEXINGTON UTILITIES, CITY OF
LEXINGTON,

ATTEST:

Shirley Jensen



By: *Ted Cook*
Name: Ted Cook
Title: Mayor

DAWSON COUNTY SCHOOL DISTRICT
NO. 1, also known as LEXINGTON PUBLIC
SCHOOLS,

ATTEST:

Kentel G. Jensen

By: *Ann H. Luther*
Name: Ann H. Luther
Title: President of Board