

INTERLOCAL COOPERATION  
ACT AGREEMENT  
CREATING THE  
LEXINGTON COMMUNITY FACILITIES AGENCY

THIS AGREEMENT is made this 24th day of April, 1995, by and between the City of Lexington, Nebraska (the "City") and Dawson County School District 001, in the State of Nebraska, (the "School District").

I.

CREATION OF THE AGENCY

Pursuant to Sections 13-801 to 13-827 of R.R.S. Neb. 1943, as amended (the "Interlocal Cooperation Act"), the City and the School District hereby create a joint entity which shall be named the LEXINGTON COMMUNITY FACILITIES AGENCY (the "Agency") and shall constitute a separate body corporate and politic under the provisions of the Interlocal Cooperation Act. The Agency shall be subject to control by the City and the School District in accordance with the terms of this Agreement. The governing body of each of the parties hereto shall have approved this Agreement by resolution, prior to its execution and delivery. The Agency's offices shall be located at the city offices of the City. A certified copy of each approving resolution shall be kept on file at the Agency's office. The Agency's existence shall commence upon the execution and delivery of the duplicate originals of this Agreement on behalf of the parties hereto.

II.

PURPOSES

The purposes of the Agency are as follows:

(a) To make efficient use of the powers of the parties hereto by enabling them to cooperate with each other on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with economic, educational, social, recreational and other needs of the public as served by the City and the School District.

(b) To provide or contract for the acquisition, finance, construction, rehabilitation, ownership and operation of community and recreational buildings and facilities, including but not limited to gymnasiums, auditoriums, social halls and related facilities and structures, including parking facilities, to serve on a shared basis the members of the public served by the City and the School District.

III.

ORGANIZATION

(a) Governing Body. The governing body of the Agency shall be composed of six members consisting of the following:

- (1) two members designated by the Mayor and Council of the City, each of whom shall be a member of the City Council of the City (including, if deemed appropriate, the Mayor of the City);
- (2) one member designated by the Mayor and Council of the City who shall be an employee of the City serving upon the City's administrative staff;
- (3) two members designated by the Board of Education of the School District each of whom shall be a member of the Board of Education of the School District; and
- (4) one member designated by the Board of Education of the School District who shall be an employee of the School District serving upon the School District's administrative staff (including, if deemed appropriate, the superintendent or an assistant superintendent).

Such governing body of the Agency is hereinafter referred to as the "Board". The Board shall have authority to adopt such by-laws for its proceedings as it deems necessary, consistent with the terms of this Agreement.

(c) Voting. Each member of the Board shall have one vote.

(d) Quorum. A majority of all members of the Board shall constitute a quorum for the transaction of any Agency business.

(e) Officers. The Board of the Agency shall appoint one of its members as Chairperson, one as Secretary and one as Treasurer, respectively.

(f) Meetings and Notice. Meetings of the Agency's Board may be called by its Chairperson or by any two members of the Board.

(g) Agency Legal Counsel. The Board may employ legal counsel for the Agency and may set and approve compensation for such counsel.

IV.

DURATION

The Agency shall have a life of thirty-five (35) years, commencing with the date hereof; provided, however, if all bonds issued by the City or by the School District to provide for payment

of the costs of the facilities acquired by the Agency have been retired prior to such termination date, this Agreement and the existence of the Agency may be terminated by the mutual agreement of the City and the School District.

V.

INITIAL CONTRIBUTIONS

The City shall contribute all costs necessary to fund the establishment, organization and initial operating expenses of the Agency. The City shall, subject to voter approval of bonds to provide funding, contribute not to exceed \$2,700,000 for the payment of costs of the initial facilities proposed to be acquired by purchase or construction. The School District shall, subject to voter approval of bonds to provide funding, contribute \$1,350,000 for the payment of costs of the initial facilities proposed to be acquired by purchase or construction. The contribution of the School District may be satisfied in whole or in part in the form of value of existing facilities transferred to the Agency, subject to approval by the Board. Neither the City nor the School District shall be obligated to make such initial contributions unless the voters of the City and the voters of the School District shall have both approved bond issues in amounts sufficient to make such initial contributions within two years from the date of this agreement.

VI.

POWERS

The Agency shall have such powers as are allowed by the Interlocal Cooperation Act, any amendments thereto, including, but not limited to, the powers:

- (a) to sue and be sued;
- (b) to have a seal and alter the same at pleasure or to dispense with the necessity thereof;
- (c) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers;
- (d) from time to time, to make, amend, and repeal by-laws, rules and regulations, not inconsistent with the Interlocal Cooperation Act and this Agreement, to carry out and effectuate its powers and purposes;
- (e) to make all necessary rules and regulations governing the use, operation and control of all facilities owned and operated by the Agency;

(f) to establish charges to be paid for the use of the facilities by members of the public and to establish appropriate scheduling of the use of the facilities which shall accord reasonable utilization for educational activities and school related athletic activities as well as reasonable utilization for social, recreational and athletic purposes by the members of the general public, all within the discretion and control of the Board;

(g) to purchase, plan, develop, construct, equip, maintain and improve community, social and recreational facilities to serve the common needs of the City and the School District, their citizens and students, including the lease or acquisition of land in fee by gift, grant, purchase or condemnation, as necessary for the construction and operation of such facilities;

(h) to acquire, hold, use and dispose of the revenues derived from the operation of the facilities owned and operated by the Agency and any other moneys of the Agency;

(i) to acquire, hold, use and dispose of other personal property for the purposes of the Agency;

(j) to make or cause to be made studies and surveys necessary or useful and convenient to carrying out the functions of the Agency;

(k) to contract with and compensate consultants for professional services including, but not limited to, architects, engineers, planners, lawyers, accountants and others found necessary or useful and convenient to the stated purposes of the Agency;

(l) to provide for a system of budgeting, accounting, auditing and reporting of all Agency funds and transactions, for a depository and for the bonding of employees;

(m) to consult with representatives of Federal, State and local agencies, departments and their officers and employees and to contract with such agencies and departments;

(n) to exercise such other powers as are available under the then existing law applicable to each of the parties hereto;

(o) to borrow money, make and issue negotiable bonds, certificates, bond anticipation notes, refunding bonds and note, all in accordance with Sections 13-808 through 13-824 of the Interlocal Cooperation Act, and any amendments thereto, and to secure the payment of such bonds, certificates, refunding bonds and notes or any part thereof by a pledge of any or all of the Agency's revenues and any other funds which the Agency has a right to, or may hereafter have the right to pledge for such purposes, but bonds or notes shall be issued by the Agency only with the approval of both the governing body of the City and the governing body of the School District;

(p) to provide in the proceedings authorizing such obligations for remedies upon default in the payment of principal and interest on any such obligations, including, but not limited to, the appointment of a trustee to represent the holders of such obligations in default and the appointment of a receiver of the Agency's property, such trustee and such receiver to have the powers and duties provided for in the proceedings authorizing such obligations;

(q) to receive funds from each of the parties hereto as contribution for payment of costs of facilities to be owned and operated by the Agency;

(r) to hire employees, fix their compensation, benefits, personnel rules and regulations and terminate their employment; and

(s) to employ a manager which may be one or the other of the parties hereto, to exercise such of the Agency's powers as shall be determined by contract;

(t) to borrow money and accept grants, contributions, property or loans from, and to enter into contracts, leases, or other transactions with either of the parties hereto or the State or the Federal Government; and

(u) to solicit contributions from members of the general public and hold and apply contributed funds for the purposes of the Agency.

## VII.

### BUDGETING

The Board shall prepare a budget based on a fiscal year ending July 31 for the operation of the Agency, the same to be adopted by the Board no later than July 15 of each year. The Board may alter such fiscal year and date for adoption of the budget in the event of any change in the budget and fiscal year of the City.

## VIII.

### NOT FOR PROFIT

It is expressly understood that the Agency is a public body and is to be operated not for profit, and no profit or dividend will inure to the benefit of any individual.

## IX.

### DISSOLUTION

Upon dissolution of the Agency, all assets shall be distributed to the School District, unless otherwise agreed to by the City and the School District at the time of such dissolution.

X.

MANNER OF ACQUIRING AND HOLDING PROPERTY

The Agency may lease, purchase or acquire by any means, from either of the parties hereto or from any other source, such real and personal property as is required for the operation of the Agency and for carrying out of the purposes of this Agreement. The title or other interest in and to all such property, personal or real, shall be held in the name of the Agency.

All conveyances of real property owned or held in the name of the Agency shall be authorized by resolution of the Board and executed by the Chairperson on behalf of the Agency.


XII.

AMENDMENT OF AGREEMENT

This Agreement may be amended upon approving resolutions adopted by the governing body of the City and the School District.

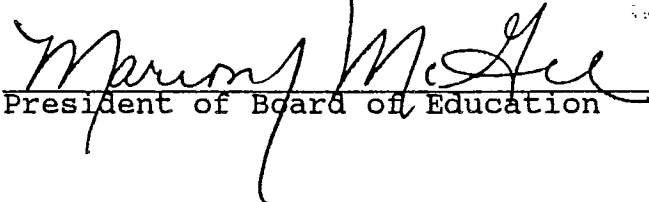
Executed and delivered this 25th day of April, 1995.

CITY OF LEXINGTON, NEBRASKA

  
\_\_\_\_\_  
Mayor

Executed and delivered this 24th day of April, 1995.

DAWSON COUNTY SCHOOL DISTRICT 001

  
\_\_\_\_\_  
President of Board of Education

## Management Agreement

This Agreement entered into on the 14<sup>th</sup> day of November, 1995, by and between the Lexington Community Facilities Agency (hereinafter "Agency"), the City of Lexington, Nebraska (hereinafter "City"), and Dawson County School District 001 (hereinafter "School").

Whereas SCHOOL has on August 8, 1995 approved an \$8,995,000 bond issue for construction of new and remodeled educational facilities, and CITY has on August 8, 1995 approved a \$2,900,000 bond issue for community facilities including indoor athletic facilities, public auditorium and related parking facilities to be constructed on SCHOOL property, and it is necessary to provide both for the joint expenditure of funds and the management of joint use facilities; and

Whereas the parties find that sharing of facilities provides for the most efficient and economical use of those facilities; and the parties find that the availability of quality facilities for the Lexington Public schools for recreational, cultural and athletic activities will benefit the entire community; and

Whereas the parties will jointly use facilities, including City tennis courts, City swimming pool, Elbert Smith Field, City parks and softball diamonds, City Library, School basketball and volleyball courts, together with facilities to be constructed or remodeled including the Middle School auditorium, Middle School P.E. Complex, High School Gymnasium, High School cafeteria, and Middle School cafeteria, together with associated locker rooms, and rest rooms;

THEREFORE, in consideration of the mutual covenants of the parties, it is agreed as follows:

1. Bond Proceeds: CITY agrees that at least \$2,700,000 of proceeds from the CITY authorized bond issue shall be applied, after expenses of the bond issue, as follows:
  - a. Approximately \$2,200,000 to be received in December, 1995, to be paid to AGENCY and applied as further provided in this Agreement;

b. The balance, of at least \$500,000 to be received in April of 1996, to be paid to AGENCY and applied as further provided.

2. Application of Funds: The parties agree that the total cost of construction and remodeling of facilities is in excess of the total contribution of CITY, and that CITY's contribution shall be allocated proportionally to the expenses as follows:

a. The parties agree that money from CITY bond issue shall be divided 62% or at least \$1,850,000 to facilities located at the Lexington Middle School as follows:

|                           |               |
|---------------------------|---------------|
| -Remodeling of auditorium | \$ 895,000.00 |
| -Purchase of P.E. Complex | 1,000,000.00  |
| -Cafeteria                | 300,000.00    |

The parties further agree that \$200,000.00 of such amount shall be applied to auditorium amenities funded by pledges from the Lexington Foundation.

b. The parties agree that money from CITY bond issue shall be further divided 38% or at least \$1,050,000.00 to facilities located at the Senior High School as follows:

|                |               |
|----------------|---------------|
| -New gymnasium | \$ 945,000.00 |
| -Cafeteria     | 663,000.00    |
| -Parking lot   | 185,000.00    |

c. The parties further agree that CITY and AGENCY hereby delegate to SCHOOL all responsibility 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 completed with funds provided through this Agreement.

3. Conveyances: In consideration of the payment of funds by CITY, SCHOOL shall convey to AGENCY an undivided interest in the following facilities, but not the underlying real estate, such title to revert to SCHOOL upon dissolution or other termination of AGENCY:

- a. Middle School P.E. Complex
- b. Middle School Auditorium/ theatre



- c. Senior High School new gymnasium
- d. Middle School and Senior High Cafeterias.

4. Scheduling Use of Facilities:

Agency Board will meet at least annually, in the month of April, to establish a calendar reserving use of joint use facilities. Priority during the school year, including practice for fall sports, shall be given first to SCHOOL educational and other activities, next to CITY recreation program, and last to other uses. Priority during the remainder of the year shall be given first to CITY recreation programs, then SCHOOL educational and other activities, and then other community activities. After an initial calendar is established, the office of the SCHOOL Activities Director shall administer said calendar, administer requests for additional facility time, control keys, and collect fees.

5. Maintenance, Repair, Insurance, Utilities:

SCHOOL shall be responsible for all utilities, maintenance, repair, replacement and insurance costs of facilities identified in Paragraph 2. above. Regardless of ownership of the facility or ownership of insurance, SCHOOL agrees to pay the cost of maintaining casualty insurance for the reasonable replacement value of each facility.

6. Lease Payments or Fees:

The parties agree that the cost of maintenance and repair of facilities on SCHOOL property constitutes sufficient contribution by SCHOOL to cover the cost of use of such facilities by SCHOOL, and also amortization of the contribution by CITY toward the cost of such facilities. The parties further agree that the original contribution toward purchase or construction of facilities by City constitutes sufficient consideration to cover the use for City sponsored recreation programs. SCHOOL shall establish a schedule of fees for use of said facilities for any purpose which is not sponsored by either of the parties. An additional charge may be assessed for use of food preparation facilities even if associated with CITY activities. All fees and charges shall be administered by SCHOOL.

7. Employment of Manager:

The SCHOOL Activities Director shall be responsible for administration of the facilities, whose compensation shall be paid by SCHOOL.

8. Access to Adjoining Facilities:

Use of a facility for CITY recreation programs shall include use of restrooms and shower and dressing rooms necessary for use of each facility. Access to kitchen facilities shall not be permitted unless a SCHOOL employee is present at all times to supervise use of kitchen, and the cost of such employee shall be reimbursed by the user. User will provide supervision as necessary to physically prevent access to adjoining facilities owned by SCHOOL.

9. Duration of Agreement, and Provision for Amendment:

This Agreement shall be effective upon ratification by a majority vote of the governing body of both CITY and SCHOOL. Amendments may be adopted by the AGENCY Board at any meeting, but shall not be effective until ratified by a majority vote of the governing body of both CITY and SCHOOL. Upon adoption, this Agreement shall continue in effect during the duration of the Interlocal Cooperation Agreement Creating the Lexington Community Facilities Agency, unless earlier terminated by mutual agreement of the parties.

10. Damage or Destruction of Facility:

The parties agree that in the event of damage or destruction of said facilities covered by casualty insurance, that said facilities shall be restored to the same use to the extent possible with insurance proceeds, and neither party shall be obligated to restore such facility beyond what can be provided with insurance proceeds. In the event such restoration is not possible, CITY may in its absolute discretion elect to abandon said facility, and may thereafter transfer any interest in said facility to SCHOOL.

11. Adding of New Facilities:

The parties may agree to add other joint use facilities to be managed pursuant to the terms of this Agreement.

12. Private Parking and Traffic Areas:

The parties agree that any parking lots and driveways adjacent to joint use facilities, regardless of AGENCY ownership or control, shall be not be considered as public streets or parking, but shall be considered as private roadways and parking areas, for the exclusive use of those using the SCHOOL facilities or joint use facilities. All maintenance and repair of such areas shall be the responsibility of SCHOOL. SCHOOL may establish reasonable traffic control and parking control regulations, post appropriate signs, and make request to the CITY Police Department for enforcement pursuant to Section 16-82 of the Lexington City Code.

13. Charitable Support, Solicitation of Funds or Grants:

In the event AGENCY receives any grant or contribution of money or property from the public or any other governmental or charitable agency, the AGENCY Board shall have authority to enter into agreements regarding terms or conditions applied to such gifts or grants, to expend or use such funds or property for improvement or expansion of the joint use facilities, or to invest or accumulate said funds for future use.

Approved and executed this 14<sup>th</sup> day of November, 1995.

CITY OF LEXINGTON, NEBRASKA

By: Robert L. Hawks  
Mayor

Approved and executed this 20 day of November, 1995.

DAWSON COUNTY SCHOOL DISTRICT NO. 001

By: Marion McFar  
President of Board of Education

JOINT RESOLUTION NO. 05-34

WHEREAS, the City of Lexington, Nebraska (City), and Dawson County School District 001, (School) have previously entered into an Interlocal Agreement dated April 24, 1995, creating the Lexington Community Facilities Agency, together with a Management Agreement dated November 14, 1995; and

WHEREAS, said agreements provide for the adding of other joint use facilities; and

WHEREAS, the parties intend that the former library property, to-wit:

Lots 7, 8 and 9, Block J, MacColl and Leflang's Addition to the City of Lexington, Dawson County, Nebraska;

shall be jointly used by the parties for education, recreational, cultural and other activities which will benefit the entire community;

It is therefore jointly resolved by the School Board of Dawson County School District 1, and the City Council of the City of Lexington, Nebraska, (City) as follows:

1. That School shall convey to the Lexington Community Facilities Agency, its undivided interest in and to its right of ownership as a lease/purchaser, of the building and other facilities located on the following described real estate, to-wit:

Lots 7, 8 and 9, Block J, MacColl and Leflang's Addition to the City of Lexington, Dawson County, Nebraska;

2. That the above described property shall be subject to the terms of the Management Agreement dated November 14, 1995, and managed as a joint facility subject to the interlocal agreement of the parties.

Passed and approved November 21, 2005.

DAWSON COUNTY SCHOOL DISTRICT, 001,

By: Arnold G. Guther

Passed and approved December 13, 2005.

CITY OF LEXINGTON, NEBRASKA

By: 

Attest:

  
City Clerk ~~Deputy~~

