

Memorandum of Agreement Regarding Funding, Construction, and
Operation of the Children's Play Area at Union Plaza

between

KINDER PORTER SCOTT FAMILY FOUNDATION

1101 University Towers
128 North 13th Street
Lincoln, NE 68508
EIN: 23-7052152

LINCOLN PARKS FOUNDATION

2740 "A" Street
Lincoln, NE 68502
EIN: 36-3859746

and

CITY OF LINCOLN

555 South 10th Street
Lincoln, NE 68502

This Memorandum of Agreement hereinafter referred to as "the Agreement", sets forth the parties' understanding concerning the establishment and implementation of a local project called Union Plaza and the creation of the children's play area, a feature in Union Plaza. The Kinder Porter Scott Family Foundation is hereby designated as "Donor", the Lincoln Parks Foundation is hereby designated as "Grantee" and the City of Lincoln, Nebraska is hereby designated as "City".

This Agreement is in effect for the period stated in paragraph 1. Duration, and is based on a Letter of Intent from Lincoln Parks Foundation, which is incorporated by reference in this Agreement. The Agreement provides for the Donor's funding of up to \$250,000 over five years to construct the children's play area in Union Plaza.

1. Duration:

This Agreement shall become effective upon approval of the parties on or about March 15, 2009. As per Section 2.A., the donation is to be received over a five-year period beginning in 2009. As per section 3.D, the City will provide an annual activity and programming plan for the initial ten-year period that the facility is open to the public. It is anticipated that Union Plaza, including the children's play area, will be dedicated for public use in the second quarter of 2011. This agreement and the associated name of the children's play area will remain in effect in perpetuity, or as long as Union Plaza and the associated children's play area remain dedicated for public use.

2. Donor Obligations:

The Donor agrees to provide funding totaling up to \$250,000 over five years to be utilized to fund the design and construction of the children's play area located within the Union Plaza project, near 21st Street between "Q" and "R" Streets. The play area will be named according to the wishes of the Donor subject to acceptance by the City.

- A. Payment schedule. Following is the payment schedule for the Donor;
- | | |
|-------------------|--|
| March 15, 2009: | \$50,000 |
| January 15, 2010: | \$50,000 |
| January 15, 2011: | \$50,000 |
| January 15, 2012: | \$50,000 |
| January 15, 2013: | \$50,000, or final remaining amount as determined pursuant to Section 3.C. |

Checks shall be made payable to the Lincoln Parks Foundation and sent to: 2740 "A" Street, Box 201, Lincoln, NE, 68502.

- B. The Donor agrees to provide a proposed name for the children's area and recognizes that the name and donor recognition must be approved by the City. The City agrees that said approval shall not be unreasonably withheld and that the name shall not change without Donor's written approval.

3. Grantee and City Obligations:

- A. The Grantee will act as fiscal agent for the donation, and will appropriately manage the donated funds so as to make them available to the City to fund construction costs associated with the children's play area. The parties agree that the Grantee may assess a one-percent (1%) administrative fee on each of the five payments.
- B. The Grantee agrees to secure and manage endowment funds for Union Plaza of at least \$1.5 million for ongoing operational costs above basic park maintenance, and for major repair and replacement of park features including the children's play area.
- C. The City will provide the basic park infrastructure surrounding the children's play area. The City will cause design, construction plans and bid specifications, and a detailed construction estimate of the children's play area to be prepared. These plans and cost estimate will be made available to the Donor for review. The City will cause construction of the children's play area.
- D. The City agrees to retain records regarding expenditure of funds for design and construction of the children's play area for a period of three years after completion of the project, and to provide access to such

records to the Donor for purpose of audit or examination. The amount of the donation will be determined by the actual costs to design and construct the children's play area. The funding commitment of the Donor shall not exceed \$250,000.

- E. The City will work with the Donor regarding finalization of the naming and placement of recognition communicating the name of the children's play area.
 - F. The City will prepare an annual activity and programming plan for the children's play area, and make this plan available to the Donor for the upcoming year for review and input. The activity and programming plan shall be completed in October prior to dedication of Union Plaza and the children's play area, and shall be updated and provided to the Donor in October of each of the following nine years.
4. Legal Restrictions:
Design or programmed activities associated with the children's play area will not involve partisan and non-partisan political activities; or religious instruction, proselytization or any other religious activity.
5. Amendments:
This Memorandum of Agreement may be amended at any time in writing executed by the authorized representatives of the Donor, the Grantee, and City.
6. Contacts for the parties shall be as follows:
- Donor:
Jean Porter Jennings, President
Kinder Porter Scott Family Foundation
1101 University Towers
128 North 13th Street
Lincoln, NE 68508
Phone: (402) 309-5146
- Grantee:
Christie Dionisopoulos, or future President
Lincoln Parks Foundation
2740 "A" Street, Box 201
Lincoln, NE 68502
Phone: (402) 441-8258
- City:
Lynn Johnson, Parks & Recreation Director
Parks & Recreation Department
2740 "A" Street

Lincoln, NE 68502
Phone; (402) 441-8265

7. Severability:
If any provision of this Agreement is construed as illegal or invalid, this will not affect the legality or validity of any of the other provisions contained in this Agreement. The illegal or invalid provision will be deemed stricken and deleted from the Agreement to the same extent and affect as if it never existed, but all other provisions will continue in effect.
8. Public Announcements:
All public announcements or communications regarding the children's play area will be reviewed and approved prior to issuance by the Donor, Grantee and City.
9. Termination:
The Donor, Grantee, or City may terminate or suspend this agreement at any time by giving thirty (30) days notice in writing to the other of its intent.

Approval:

DONOR

By: _____
Jean Porter Jennings, President
Kinder Porter Scott Family Foundation

Date: _____

GRANTEE

By: _____
Christie Dionisopoulos, President
Lincoln Parks Foundation

Date: _____

CITY

By: _____
Chris Beutler, Mayor of Lincoln

Date: _____