

SEP 05 2008

BEFORE THE BOARD OF COMMISSIONERS LANC. COUNTY CLERK OF THE COUNTY OF LANCASTER, NEBRASKA

A RESOLUTION APPROVING THE EXECUTION AND DELIVERY OF A JOINT PUBLIC AGENCY AGREEMENT CREATING THE LANCASTER COUNTY CORRECTIONAL FACILITY JOINT PUBLIC AGENCY; AND RELATED MATTERS

RESOLUTION NO. R-08-0075

BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF LANCASTER, NEBRASKA:

WHEREAS, the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the "Act") permits local government units to make the most efficient use of their taxing authority and other powers by enabling them to cooperate with other governmental units on a basis of mutual advantage and to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities;


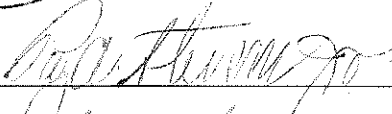
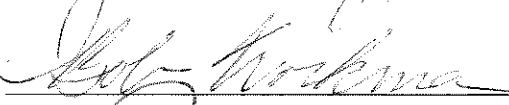
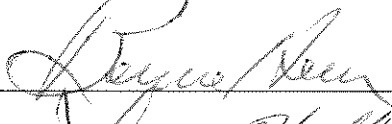
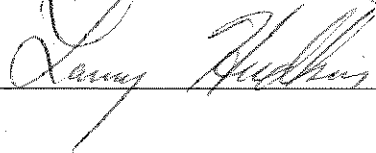
NOW THEREFORE, BE IT RESOLVED that the Board of Commissioners (the "Board") of The County of Lancaster, Nebraska (the "County"), finds and determines that there exists a need for the creation of a joint public agency (the "Agency") pursuant to the Act to facilitate acquiring, constructing, equipping, furnishing and financing correctional facilities for the benefit of residents of the County as provided in the Act. The participants in the Agency will be the County and The City of Lincoln, Nebraska (the "City").

NOW THEREFORE BE IT FURTHER RESOLVED that the form, terms and provisions of the proposed Joint Public Agency Agreement Creating the Lancaster County Correctional Facility Joint Public Agency (the "Agreement") between the County and the City are, in all respects, hereby approved, authorized, ratified and confirmed, and the Chair or Vice Chair and the Clerk are each separately and individually hereby authorized and directed to execute, acknowledge and deliver the Agreement, including counterparts thereof, in the name and on behalf of the County. The Agreement, as executed and delivered, shall be in substantially the form attached hereto as Exhibit A subject to such changes therein as shall be approved by the officer of the County executing the same, such execution thereof to constitute conclusive evidence of the County's approval of any and all changes or revisions therein from the form of the Agreement now set forth in Exhibit A; and from and after the execution and delivery of the Agreement by the County, the officers, agents and employees of the County are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Agreement.

NOW THEREFORE BE IT FURTHER RESOLVED that (a) if any provision of this Resolution shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatsoever; (b) to the extent that the provisions of this Resolution conflict with provisions of prior resolutions, or parts thereof, the provisions of this Resolution shall control, to the extent of such conflicts; and (c) this Resolution shall be in full force and effect immediately upon its passage and approval.

PASSED: September 9, 2008, at Lincoln, Lancaster County, Nebraska.

BY THE BOARD OF COMMISSIONERS OF  
THE COUNTY OF LANCASTER, NEBRASKA

  
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APPROVED AS TO FORM  
this 9 day of September, 2008.

  
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(Deputy) County Attorney

**JOINT PUBLIC AGENCY AGREEMENT  
CREATING THE  
LANCASTER COUNTY CORRECTIONAL FACILITY JOINT PUBLIC AGENCY**

This **JOINT PUBLIC AGENCY AGREEMENT** (the “**Agreement**”), dated September \_\_\_\_, 2008, is between **THE CITY OF LINCOLN, NEBRASKA** (the “**City**”), and **THE COUNTY OF LANCASTER, NEBRASKA** (the “**County**”).

**RECITALS**

1. The County is a duly created and existing political subdivision of the State of Nebraska (the “**State**”) pursuant to Section 22-155, Reissue Revised Statutes of Nebraska, as amended.

2. The City is duly organized and validly existing as a city of the primary class and political subdivision of the State pursuant to Chapter 15, Reissue Revised Statutes of Nebraska, as amended, and its home rule charter (the “**Charter**”).

3. The City and the County have entered into a Correctional Facilities Interlocal Agreement pursuant to which the County has undertaken the responsibility for all adult intake and correctional facilities (the “**Correction Facilities**”) and assumed the safekeeping, care, and sustenance of all City offenders held in the Correctional Facilities.

4. The County has determined that it is necessary, desirable, advisable and in the best interest of the County and its residents (including the City) to construct, equip and furnish new correctional facilities (the “**Project**”) to comply with correctional facilities standards of the State.

5. The County and the City (collectively, the “**Participants**”) desire to make the most efficient use of their taxing authority and other powers and to cooperate with each other and other governmental units on a basis of mutual advantage and to thereby provide services and facilities in a manner and pursuant to a form of governmental organization that will best account with the geographic, economic, population, and other factors influencing the needs and development of both the County and the City.

6. The Participants have determined that to achieve the objectives set forth above, it is necessary, desirable, advisable and in the best interest of the Participants that a joint public agency be formed by the Participants pursuant to the Joint Public Agency Act (Chapter 13, Article 25, Reissue Revised Statutes of Nebraska, as amended, the “**Act**”).

7. The Participants have passed resolutions after published notice as required by the Act determining that it is necessary, desirable, advisable and in the best interest of the Participants that they form a joint public agency pursuant to the Act to finance the Project through bonds issued by such agency.

**NOW THEREFORE**, in consideration of the premises and covenants contained herein, the Participants agree as follows:

**ARTICLE I**

**CREATION OF THE JOINT PUBLIC AGENCY**

Pursuant to the Act, the Participants hereby create a joint public agency which shall be named the Lancaster County Correctional Facilities Joint Public Agency (the “Agency”) and which shall constitute a separate political subdivision and a public body corporate and politic of the State of Nebraska as provided by the Act. The Agency shall be subject to control by the Participants in accordance with the terms hereof. The governing body of each Participant has passed a resolution after published notice of the same as required by the JPA Act determining that a need for the Agency exists. A certified copy of each approving resolution shall be kept on file by the Agency at the County Clerk’s office located at 555 South 10<sup>th</sup> Street, Lincoln, Nebraska, 68508. The governing body of the Agency (the “Board”) shall submit the statement required by Section 13-2510, Reissue Revised Statutes of Nebraska, as amended, to the Secretary of State. The Agency’s existence shall commence upon the issuance of a certificate of creation by the Secretary of State as provided in Section 13-2511, Reissue Revised Statutes of Nebraska, as amended.

## ARTICLE II

### PURPOSES

The purposes of the Agency are as follows:

(a) To make the most efficient use of the taxing authority and other powers of the Participants and to cooperate with each other and other governmental units on a basis of mutual advantage and to thereby provide services and facilities in a manner and pursuant to a form of governmental organization that will best account with the geographic, economic, population, and other factors influencing the needs and development of the Participants.

(b) To exercise any power, privilege or authority for the construction, equipping, furnishing and financing of the Project and any other capital improvements or other projects pertaining to the Correctional Facilities as shall be determined by the Board to be necessary, desirable, advisable or in the best interests of the Participants in the manner and as provided for by the Act.

(c) To acquire land for and acquire and construct capital improvements to the Correctional Facilities, to issue bonds to finance the same, and to levy a tax as provided by the Act and this Agreement to pay the principal or redemption price of and interest on such bonds, when and as the same shall become due.

## ARTICLE III

### ORGANIZATION

**Section 301. Governing Body.** The Board of the Agency shall consist of the following representatives:

1. Mayor of the City
2. Chair of the Board of Commissioners of the County
3. Chair of the Council of the City
4. Vice Chair of the Board of Commissioners

**Section 302. Term of Office.** Unless otherwise disqualified by the provisions of the Act, and except as provided herein or any amendment hereto, each representative shall serve for so long as such representative holds the position set forth in **Section 301**.

**Section 303. Voting.** Unless the Board unanimously adopts different rules relating to voting by representatives, each representative shall have one vote on matters before the Board. Except as may otherwise be provided herein, or in any agreement to which the Agency is a party, all actions of the Agency may be taken with the concurrence of a majority of the representatives entitled to vote.

**Section 304. Rules of Governance.** The Board shall adopt rules of governance that will include at a minimum, the following:

(a) **Quorum.** A majority of the representatives shall constitute a quorum for the transaction of any Agency business.

(b) **Officers.** The Board shall elect a chair and vice-chair from among the representatives. The Board shall elect a secretary as provided in Section 13-2516 of the Act and appoint a treasurer who each shall serve at the pleasure of the Board and until their respective successors shall be appointed or elected as the case may be.

**Section 305. Meetings and Notice.** Meetings of the Board may be called by the chair or any two representatives. Written notice of the meeting and agenda shall be provided to each representative, the City Clerk, and the County Clerk at least seven days prior to each such meeting.

The Board shall also give public notice of the meeting pursuant to Section 84-1411, Reissue Revised Statutes of Nebraska, as amended. Public notice shall be given by posting a notice of the meeting on the official bulletin board of the County in the County-City Building, 555 South 10<sup>th</sup> Street, Lincoln, Nebraska, under the heading of "PUBLIC NOTICE OF MEETING," maintaining an agenda in the office of the County Clerk which shall be available for inspection by the public. All meetings shall be conducted in accordance with the Open Meetings Act (Chapter 84, Article 14, Reissue Revised Statutes of Nebraska, as amended).

**Section 306. Treasurer's Bond.** In the event that there is no treasurer's bond that expressly insures the Agency against loss resulting from the fraudulent, illegal, negligent, or otherwise wrongful or unauthorized acts or conduct by or on the part of any person authorized to sign checks, drafts, warrants, or other instruments in writing, there shall be procured and filed with the secretary of the Agency, together with the written authorization filed with the secretary, a surety bond, effective for protection against the loss, in such form and penal amount and with such corporate surety as shall be approved in writing by the signed endorsement thereon of any two officers of the Agency other than the treasurer.

#### ARTICLE IV

##### DURATION

The duration of the Agency shall be perpetual, commencing with the date of issuance of the certificate of creation, and shall continue in effect until terminated as provided in **Article XIII** hereof.

#### ARTICLE V

##### POWERS

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

(a) to incur debts, liabilities, or obligations, including the borrowing of money and the issuance of bonds, secured or unsecured, pursuant to the Act;

(b) to borrow money or accept contributions, grants or other financial assistance from a public agency and to comply with such conditions and enter into such contracts, covenants, mortgages, trust indentures, leases or agreements as may be necessary, convenient or desirable;

(c) subject to any agreements with holders of outstanding bonds, to invest any funds held in reserve or sinking funds, or any funds not required for immediate disbursement, including the proceeds from the sale of any bonds, in such obligations, securities, and other investments as the Board shall deem proper;

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

(e) to levy taxes upon the taxable property in Lancaster County pursuant to Sections 13-2507 and 77-3443, Reissue Revised Statutes of Nebraska, as amended, to the extent that the authority to levy taxes is expressly and specifically assigned and allocated to the Agency by a Participant herein. Such levy authority may be exercised by the Agency only to the extent the assigning Participant restricts the exercise of its own levy authority to the same degree and the levy authority allocated to the Agency is reported to the Property Tax Administrator; and

(f) to exercise any other powers which are deemed necessary and convenient to carry out the provisions of the Act.

## ARTICLE VI

### ISSUANCE OF BONDS

The Agency, by resolution of the Board, may from time to time issue bonds or other evidences of indebtedness payable exclusively from all or a portion of the revenue from one or more projects, from one or more revenue-producing contracts, including securities acquired from any person, or leases made by the Agency with any person, including any Participant, or from its revenue generally which may be additionally secured by a pledge of any grant, subsidy, or contribution from any person or a pledge of any income or revenue, funds, or money of the Agency from any source whatsoever or a mortgage or security interest in any real or personal property, commodity, product, or service or interest therein.

The Agency may from time to time also issue bonds in such principal amounts as the Board shall determine to be necessary to provide sufficient funds to carry out any of the Agency's purposes and powers, including the establishment or increase of reserves, the payment of interest accrued during construction of a project and for such period thereafter as the Board may determine, and the payment of all other costs or expenses of the Agency incident to and necessary or convenient to carry out its purposes and powers.

Notwithstanding any other terms hereof to the contrary, the Agency shall not issue any bonds or other form of indebtedness without the question of such bonds or indebtedness being first presented to, and approved by, the Mayor and Council of the City.

## ARTICLE VII

### LEVY AUTHORITY

Pursuant to the provisions of Section 13-2507:

(a) the County hereby irrevocably allocates and assigns to the Agency, for the period beginning September 15, 2008 and ending on the date upon which all of the Agency Bonds (hereinafter defined) are no longer deemed to be outstanding and unpaid pursuant to the resolution or resolutions pursuant to which they are issued, its authority to cause the levy of taxes within the taxing district of the County, beginning in the year 2008 for collection in 2009, for the purpose of paying the costs of Correctional Facilities pursuant to Section 23-120(2), Reissue Revised Statutes of Nebraska, as amended, an amount equal to \$2,000,000 (the "**County Levy**") to be levied solely for the purpose of paying the principal or redemption price of and interest on such bonds of the Agency as may be issued for the purpose of acquiring land for, and constructing, equipping and furnishing Correctional Facilities (the "**Agency Bonds**").

(b) the City hereby irrevocably allocates and assigns to the Agency, for the period beginning September 15, 2008 and ending on the date upon which all of the Agency Bonds are no longer deemed to be outstanding and unpaid pursuant to the resolution or resolutions pursuant to which they are issued, its authority to cause the levy of taxes within the taxing district of the City, beginning in the year 2008 for collection in 2009, for the purpose of paying the costs of Correctional Facilities pursuant to Section 15-202, Reissue Revised Statutes of Nebraska, as amended, in an amount which, when added to the County Levy, will be sufficient to pay the principal or redemption price of and interest on the Agency Bonds when and as the same become due (the "**City Levy**"), solely for the purpose of paying the principal or redemption price of and interest on the Agency Bonds.

The County hereby covenants and agrees that it shall not, for any year so long as the Agency Bonds remain outstanding, cause a tax to be levied pursuant to Section 23-120 unless and until (a) the County Levy is sufficient to generate tax revenues sufficient to pay the principal or redemption price of and interest on the Agency Bonds as the same become due the following year based upon the then-current and applicable certified valuation of property to be taxed; (b) the Agency has certified the County Levy to the County Board; (c) there remains unused for that tax year a portion of the County Levy authority under Section 23-120, Reissue Revised Statutes of Nebraska, as amended.

The County shall implement the Agency Bond Levy as requested by the Agency as may be required to pay the principal or redemption price of and interest on the Agency Bonds as the same become due, and shall not levy less than the Agency's lawful requested or certified levy, as long as any Agency Bonds remain outstanding.

The County shall collect and disburse to the trustee named by the Agency, all taxes collected under the Agency Bond Levy.

## ARTICLE VIII

### EXPENSES

All expenses of the Agency not payable from the proceeds of the Agency Bonds, including without limitation, travel expenses, administrative costs, insurance and professional fees, shall be paid by the County.

## **ARTICLE IX**

### **BUDGETING**

The Board shall prepare a budget based on a fiscal year coinciding with the fiscal year of the County for the operation of the Agency. The budget of the Agency shall be established as provided in the Nebraska Budget Act (Chapter 13, Article 5, Reissue Revised Statutes of Nebraska, as amended) and presented to the County Board prior to the Agency's levy certification. The Agency shall cause to be conducted annually an audit conducted by a private qualified auditing business. The resulting audit report shall be delivered to the Agency and the governing body of each Participant.

## **ARTICLE X**

### **BIENNIAL REPORT**

Commencing in 2009, and each odd-numbered year thereafter, the Agency shall deliver to the Secretary of State a biennial report on a form prescribed and furnished by the Secretary of State, such fee and any other information or requirements as may be specified in Section 13-2525, Reissue Revised Statutes of Nebraska, as amended.

## **ARTICLE XI**

### **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, dividend or Agency asset shall inure to the benefit of any individual.

## **ARTICLE XII**

### **WITHDRAWAL**

If the governing body of a Participant adopts a resolution setting forth the determination that the need for the Agency no longer exists, the Participant shall be permitted to withdraw from participation in the Agency, but withdrawal shall not affect the obligations of the withdrawing Participant pursuant hereto or any other agreements with the Agency. Withdrawal shall not impair or adversely affect the levy of the City Levy or the County Levy or receipt of revenues for, or the payment of, any outstanding bonds or indebtedness or the interest thereon.

## **ARTICLE XIII**

### **DISSOLUTION**

The Agency shall not be dissolved so long as any Agency Bonds are outstanding under the instrument pursuant to which they were issued. Upon dissolution of the Agency, provided the County continues to have the responsibility for the Correction Facilities and the safekeeping, care, and sustenance of all City offenders held in the Correctional Facilities, all interest in the land, capital improvements,



personal property and all other assets of the Agency used in the operation of the Correctional Facilities financed by the Agency Bonds remaining in the Agency shall be transferred to the County.

**ARTICLE XIV**

**MANNER OF ACQUIRING AND HOLDING PROPERTY**

The Board may lease, purchase or acquire by any means, from a Participant or from any other source, such real and personal property as is required for the operation of the Agency and for carrying out the purposes hereof. The title to all such property, personal or real, shall be held in the name of the County. The Agency shall comply with the applicable bidding procedures of the County Purchasing Act (Chapter 23, Article 31, Reissue Revised Statutes of Nebraska, as amended). The County shall perform the functions of the purchasing agent designated therein.

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 Chair.

**ARTICLE XV**

**AMENDMENT**

This Agreement may be amended in writing, signed by all the Participants; provided, however, no amendment may be made limiting the duty of the Agency or the Participants to levy and collect taxes for the payment of any Agency Bonds. Any amendment hereto must first be approved by resolution of the governing body of each Participant. The amended and restated Agreement shall be filed with the Nebraska Secretary of State.

**ARTICLE XVI**

In exercising its authority and carrying out its duties and functions the Agency shall not discriminate against any employee, applicant for employment, contractor, potential contractor, or any individual or entity on the basis of race, religion, color, sex, national origin, disability, age, marital status, or any other basis prohibited by law.

**CITY OF LINCOLN, NEBRASKA**

By: \_\_\_\_\_  
Mayor

**THE COUNTY OF LANCASTER, NEBRASKA**

By: \_\_\_\_\_  
Chair

**STATEMENT OF CREATION  
OF  
LANCASTER COUNTY CORRECTIONAL FACILITY JOINT PUBLIC AGENCY**

The undersigned, being all of the representatives duly appointed pursuant to Section 13-2509(2), Reissue Revised Statutes of Nebraska, as amended, to represent the proposed participating public agencies hereby submit to the Secretary of State pursuant to Section 13-2510, Reissue Revised Statutes of Nebraska, as amended, the following statement of creation of a Joint Public Agency.

1. The names of the proposed participating public agencies are:

- (a) The County of Lancaster, Nebraska; and
- (b) The City of Lincoln, Nebraska.

2. Attached hereto and incorporated herein by reference are certified copies of the resolutions of necessity of each proposed participating public agency.

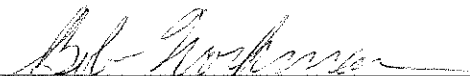
3. Notice of the Resolution was published in three issues not less than seven days between issues of a legal newspaper having general circulation in the area served by each of the proposed participating public agencies. The resolution was passed by the governing bodies of the public agencies more than five days after the last such publication. The proof of publication is attached hereto and incorporated herein by reference.

4. The general nature of the joint public agency's activities will be to issue bonds to pay the costs of constructing, equipping, and furnishing new correctional facilities and to acquire related equipment and furnishings.

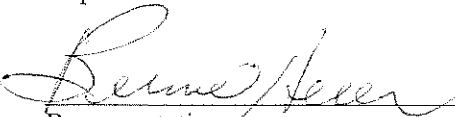
5. The name of the joint public agency shall be Lancaster County Correctional Facility Joint Public Agency.

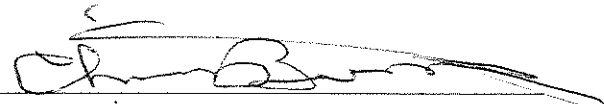
**THE COUNTY OF LANCASTER, NEBRASKA**

**THE CITY OF LINCOLN, NEBRASKA**

  
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