

INTERLOCAL AGREEMENT BASEBALL COMPLEX

This Interlocal Agreement ("Agreement") is made and entered into under the provisions of the Nebraska Interlocal Cooperation Act, NEB. REV. STAT. §§ 13-801 to 13-827 ("Act"), between **Washington County School District 89-0024**, commonly known as **Arlington Public Schools** ("School"), the **Village of Arlington** ("Village"), and the **Washington County Fair Board** ("Fair Board"). The parties are referred to collectively as "Parties."

WHEREAS, the Act provides that two or more public agencies may enter into an agreement for joint or cooperative action, and this Agreement is made and entered into pursuant to the provisions of that Act; and

WHEREAS, the Parties are public agencies and political subdivisions of the State of Nebraska;

WHEREAS, the Parties desire to make the most efficient use of their taxing authority and other powers to enable them to cooperate with each other and other entities as further agreed on the basis of mutual advantage to provide goods, services, and facilities in a manner and pursuant to forms of governmental organization that will accord the best results in terms of geographic, economic, population, and other factors that will influence the needs and development of the Parties;

WHEREAS, the Parties have passed resolutions authorizing each party to approve and enter into this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed by the parties as follows:

1. No Separate Legal Entity. This Agreement does not establish a separate legal or joint entity.

2. Purpose. The purpose of this Agreement is to share certain real property and its improvements owned by the School and Fair Board for recreational purposes, primarily baseball and/or softball (hereinafter "Facility"). The real property is legally described and displayed in **Exhibit A** which is attached hereto and incorporated herein by this reference.

3. Term. This Agreement shall commence on January 1, 2017, and

shall continue through December 31, 2036, unless terminated by the Parties as provided herein. This Agreement shall automatically for an additional 20 year period (January 1, 2037 through December 31, 2056) unless at least one of the Parties gives written notice to the other Parties of nonrenewal at least 60 days before the conclusion of the initial term.

4. Administration. The School's Superintendent, the Village's Chairman of the Board, and the Fair Board's President (collectively "Administrators") shall be jointly responsible for administering the cooperative undertaking described in this Agreement. The Administrators may take any action authorized, either explicitly or implicitly, by the Interlocal Cooperation Act, including any action that may be necessary to perform the duties and functions as provided in this Agreement. Either Party may change their Administrator from time to time upon no less than seven (7) days advance written notice to the other party unless such written notice is waived in writing by the parties.

5. Control and Supervision. During their respective use of the Facility, the Parties shall exercise that degree of control and supervision as is necessary for the effective management and use of the Facility. Such control and supervision will include the enforcement of any rules and regulations adopted by the Parties for the safety of persons engaged in use of the Facility.

6. Operations and Use.

The Village shall have the right and responsibility for the control of the use of the Facility, including any and all activities and/or functions thereon, provided, however, that said use, activities, and/or functions are for the general purpose of promoting baseball and/or softball within the general Arlington Community. The Village's use of the Facility shall be subject to the following:

- A. The right of the School to use the Facility for its baseball and/or other programs, provided that such use is properly coordinated with the Village;
- B. The right of the Fair Board (or such other entity or body duly appointed by the Fair Board) to use the Facility during the days of the annual Washington County Fair, provided that no automobiles, farm machinery, animals, livestock, temporary building(s), or any and all other items of personal or inter-mixed property are placed in, on, or within the fenced boundaries of the ball diamond located on the Facility during the days and time of the annual Washington County Fair;

- C. The right of access of the Fair Board to enter upon the Facility during the days of the annual Washington County Fair, subject to the restrictions in subsection B of this paragraph;
- D. The general right of all parties to access or enter upon the Facility for any reasonable purpose as long as it does not interfere with any use granted by this Agreement to any other Party.

7. Easement. The Fair Board grants and conveys an easement to the Village and the School with regards to the Facility for the ingress, egress, regress and parking associated with the operations of use under paragraph 6, and the Fair Board hereby reserves unto itself a like and similar easement with regard to the Facility.

8. Use of Facility by Other Persons or Organizations. The Parties may allow other individual, entities, or organization not subject to this Agreement to use the Facility, provided that the use by others does not interfere with the rights granted to a Party in this Agreement.

9. General Care. The Parties responsible for the general care of the Facility as follows:

- A. School - from March 1st through the third full week of May each year for the baseball field fenced area and related concession/restroom structures. The School will be responsible for fertilizer and broadleaf control applications, aerating, and seeding each year, provided that the Village shall reimburse the School for 50% of the associated costs within 30 days after receiving an invoice for the same.
- B. Fair Board – mowing and care of grass areas outside of the fenced ball field year round.
- C. Village – care of baseball field fenced area not under the direct care of school as listed in Section 9A.

“General care of the Facility” means mowing, fertilizing, watering, and otherwise maintaining the ball fields (baselines, bases, etc.); weed control; cleaning the concession stand (including its appliances, sinks, grandstands, dugouts, batting cages, and other concession stand equipment); providing maintenance and supplies for the Facility restrooms and press box; and mowing and care of grass areas outside of the fenced ball field.

10. Facility Improvements and Maintenance. The Parties may make such alterations, improvements, and repairs to the Facility as it desires so long as (1) the Administrators of the governing bodies approve improvements under \$5,000 (2) the governing boards of the other Parties

approve improvements over \$5,000 in writing and (2) the alterations, improvements, or repairs that need to be approved by the appropriate regulatory authority are so approved by that authority. The School and Village agree to be responsible for the payment of any and all repairs, alterations, improvements, and replacements it makes to the Facility except as otherwise agreed to by the parties in writing. All improvements made to the Facility shall be and remain the personal property of the Party that owns the real property on which the improvements are located upon the termination of this Agreement, and shall remain with the Facility at the termination of this Agreement for any reason.

11. Utilities. The Village shall pay for all electricity, gas, water, sewer, water and sewer connections, light, heat, and power used, rendered, or supplied upon or in connection with the Facility and shall indemnify the Fair Board and School against any liability on such account. The School will reimburse the Village for the cost of any electricity and water that is consumed in association with the baseball field and concessions during the months of March, April, and May.

12. Manner of Acquiring, Holding, and Disposing of Real and Personal Property. The Parties' respective governing boards shall determine the manner of acquiring, holding, or disposing of real property in the event that such a need arises. In no event shall the Administrators have the authority to acquire real property on behalf of the Parties. The Administrators shall have the authority to acquire and hold any personal property that is needed or required for the implementation of any purpose of this Agreement. The title to all such personal property shall be held in the name of the acquiring party for the benefit of all Parties. The Parties shall have the authority to dispose of such personal property, provided that (a) any such disposal shall comply with state law, and (b) any funds raised from such sale shall be shared by the parties in proportion to their contribution made to obtain the property.

13. Financing and Budgeting. Each party will budget separately to pay the costs and expenses that it will reasonably and necessarily incur to fulfill its obligations under this agreement.

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

15. Taxes. This Agreement does not grant the Parties any authority to levy, collect, or account for any tax authorized under sections 13-318 through 13-326 or 13-2813 through 2816. The Party owning the Property will be liable for any real estate tax or assessment on such Property.

16. Nondiscrimination. The Parties shall not discriminate against any employee or applicant who is to be employed for performance of this Agreement with respect to his or her hire, tenure, terms, conditions, or privileges of employment, because of his race, color, religion, sex, disability, or national origin.

17. Employment Eligibility Verification. The Parties shall use a federal immigration verification system to determine the work eligibility status of employees hired on or after October 1, 2009 and who are physically performing services within the State of Nebraska. If a party employs or contracts with any subcontractor in connection with this Agreement, the contracting party shall include a provision in the contract requiring the subcontractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

18. Termination. The Parties may terminate this Agreement prior to its scheduled termination date only if each of the Parties' governing boards pass a resolution and submit a copy of it to the other Parties. Any funds or property in possession of the Parties as a result of this Agreement shall be divided and distributed to the party that contributed it or funded its purchases. Termination shall not relieve a Party of any obligation for its share of any outstanding indebtedness or expense incurred under this Agreement.

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. Insurance. Each Party shall obtain and maintain liability insurance coverage for any personal injuries to any person or person on or

about the Facility during the terms of this Agreement in the amounts of \$1,000,000 for one accident and \$5,000,000 in the aggregate. The insurance required in this paragraph, through a policy or endorsement, shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days prior written notice to the other Parties. Each Party's liability policy shall name the other parties as additional insureds. Each Party shall furnish a certificate of insurance to the undersigned representatives of every other Party prior to commencement of this Agreement. The parties shall otherwise obtain and pay for such other insurance it deems necessary and appropriate or as otherwise required by law.

21. Indemnification. To the extent permitted by applicable law, but without waiving any rights under any applicable state governmental immunity act, the Parties hereto agree to indemnify each other from any and all liabilities, claims, expenses, losses or damages, including attorneys' fees, which may arise in connection with the purposes herein specified and which are caused, in whole or in part, by the negligent act or omission of the indemnifying party.

22. New Members. The Parties may add additional parties to this Agreement by the unanimous consent of the then current member Parties. The Administrators shall establish the fees, costs, charges, assessments, and other conditions required for participation by the new member.

23. Notice. Each Party giving any Notice ("Notice") under this Agreement must give written Notice by personal delivery, registered or certified Mail (in each case, return receipt requested and postage prepaid), or electronic mail (to the School's Superintendent, Village's Mayor, and the Fair Board's President with receipt confirmed). Notice shall be sent to the following addressees at the following addresses:

School: Arlington Public Schools
 Attn: Superintendent
 705 N. 9th Street; PO Box 580
 Arlington, NE 68002-0580

Village: Arlington Village Board of Trustees
 Attn: Paul Krause, Chairman
 245 N. 2nd; PO Box 370
 Arlington, NE 68002

Fair Board: Washington County Fair Board
Attn: Gary Lambrecht
4604 County Road P25
Kennard, NE 68034

Notice is effective only if the party giving the Notice has complied with this section.

24. Amendments and Modifications. The Parties may amend or modify this Agreement only by a signed, written unanimous agreement that identifies itself as an amendment or modification to this Agreement. No other alterations in the terms of this agreement shall be valid or binding.

25. Severability. If any provision of this Agreement is determined to be unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain enforceable.

26. Counterparts. The Parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering this Agreement in the presence of the other Parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other party. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

27. Assignment. The Parties shall not assign or otherwise dispose of this Agreement or any duty, right, or responsibility contemplated in this Agreement to any other person or entity without the previous written consent of the other Parties.

28. Entire Agreement. The Agreement is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

**WASHINGTON COUNTY SCHOOL
DISTRICT NO. 89-0024, A/K/A
ARLINGTON PUBLIC SCHOOLS**

By: _____

Name: _____

Title: _____

Date: _____

VILLAGE OF ARLINGTON

By: _____

Name: _____

Title: _____

Date: _____

WASHINGTON COUNTY FAIR BOARD

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Tax Lot 110-111, and Tax Lot 112-113, and Tax Lot 106 North of Tax Lot 111, lying in the Southeast Quarter of the Southwest Quarter (SE1/4 SW1/4) of Section Twelve (12), Township Seventeen (17) North, Range Nine (9), East of the 6th P.M., Washington County, Nebraska. In the event that these legal descriptions are modified for any reason and this Agreement is not amended to reflect such change, the legal description modification shall automatically be made a part of this Agreement.

