

**INTERGOVERNMENTAL AGREEMENT
GILMORE FIELD WATER LEVEL MONITORING - LIABILITY AND MAINTENANCE**

AGREEMENT between the CITY OF SALEM (Salem), an Oregon municipal corporation, and the SALEM-KEIZER SCHOOL DISTRICT 24J (District), an Oregon municipal corporation.

Recitals:

1. In 1976 the City acquired a detention basin easement (Marion County Deed of Records, Reel 45 Page 1806) for the construction and ongoing maintenance/operations of the flow control gate and berms of the regional detention basin located at Gilmore Field (Field), 1150 Hoyt St. SE.
2. In January 2012, a significant flood event occurred and Gilmore Field was inundated with flood waters from Clark Creek to the point where the detained water left the Field through the overflow structure. This resulted in the flooding of the neighborhood immediately to the north of the Field and east of Clark Creek.
3. After the January 2012 event, the City identified the utility of establishing monitoring equipment at the site to help gain a better understanding of how best to optimize the flow control gate to limit overflow flooding, and to help provide downstream residents advanced warning of an impending flood event.
4. Budgeted funds during FY 2017-18 have been set aside to install a monitoring station at Gilmore Field. Monitoring equipment to be installed includes pressure sensing equipment for stream level monitoring within the channel upstream of the flow control gate, and a pan, tilt, and zoom camera to monitor for debris on the grate of the flow control gate and the water level in the Field.
5. Recent discussion between City representatives and District representatives came to the conclusion that the most optimal location of the monitoring equipment enclosures would be on the southernmost I beam of the Gilmore Field scoreboard (Exhibit A).
6. Both the City and the District recognize that this equipment is an essential component of a larger flood warning system that benefits both parties.

Agreement:

Section 1. Duties of Salem. Salem shall:

1. Install and maintain any and all elements and equipment necessary for monitoring stream levels upstream of the flow control gate and levels of detained waters within the Field itself.
2. Temporarily or permanently move monitoring equipment enclosures from the scoreboard I beams within 72 hours of any request by District.
3. Repair any damages that may occur to District property during installation and ongoing maintenance of equipment.

**INTERGOVERNMENTAL AGREEMENT
GILMORE FIELD WATER LEVEL MONITORING - LIABILITY AND MAINTENANCE**

4. Be solely responsible for the repair or replacement of the monitoring equipment should it become damaged, vandalized, or stolen.
5. Repair any damages that may occur to District property that is a direct result from the installed equipment.
6. Provide and maintain all utilities required for operation of all monitoring equipment.
7. Provide the District with an as-built schematic of all infrastructure installed including all underground conduits for electrical power and sensor instrumentation.

Section 2. Duties of District: District shall:

1. Rely solely on the City for moving the equipment.
2. If extenuating circumstances dictate the need for the District to move the equipment quickly without relying on the City to do so, the District will inform the City of the move as soon as possible.
3. District shall continue to provide timely responses to project-related inquiries from Salem staff or listed contractors.
4. Notify and coordinate with the City, in advance, any long-term maintenance activities at Gilmore Field that may limit access to equipment.

Section 3. Notices:

For District:
Facilities and Planning Department
Salem-Keizer Public Schools
3630 State Street
Salem, OR 97301

For Salem:
Stormwater Services
Salem Public Works Department
1410 20th Street SE / Building #2
Salem, OR 97302-1200

Section 4. Term and Termination: The term of this Agreement shall be from the date of the last signature hereon into perpetuity unless the agreement is terminated by either party. This agreement may be terminated by written mutual consent of the parties. In addition, this agreement may be terminated by either party upon not less than thirty days written notice to the other party specifying the basis for termination and the termination date.

**INTERGOVERNMENTAL AGREEMENT
GILMORE FIELD WATER LEVEL MONITORING - LIABILITY AND MAINTENANCE**

Section 5: Venue; Alternative Dispute Resolution. The Agreement shall be governed by the laws of the State of Oregon. Exclusive venue for litigation of any action arising under the agreement shall be in the Circuit Court of the State of Oregon for Marion County. Salem and District expressly waive any and all rights to maintain an action under the Agreement in any other venue and expressly consent that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate the choice of venue in this Section.

Section 6: Compliance with Applicable Law. The parties shall comply with all federal, state, and local laws, ordinances, and regulations applicable to this agreement, including, but not limited to federal and state civil rights law and public contracting laws.

Section 7: Modification. This Agreement may not be altered, modified, supplemented, or amended in any manner whatsoever except by mutual agreement of the parties in writing. Any such alteration, modification, supplementation, or amendment, if made, shall be effective only in the specific instance and for the specific purpose given, and shall be valid and binding only if signed by the parties.

Section 8: Merger. This agreement sets forth the entire understanding of the parties with respect to its subject matter, supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter, and may not be altered, modified, supplemented, or amended in any manner whatsoever, except by mutual agreement of the parties in writing. Any such modification, supplementation, or amendment, if made, shall be effective only in the specific instance and for the specific purpose given, and shall be valid and binding only if signed by the parties. The failure of either party to enforce any provision of this contract shall not constitute a waiver by either party of that or any other provision.

Section 9: Severability. If any provision of this agreement shall be invalid or unenforceable in any respect for any reason, the validity and enforceability of any such provision in any other respect and of the remaining provisions of this agreement shall not be in any way impaired.

Section 10: Waiver. No provision of this Agreement may be waived except in writing by the party waiving compliance. No waiver of any provision of this Agreement shall constitute waiver of any other provision, whether similar or not, nor shall any one waiver constitute a continuing waiver. Failure to enforce any provision of this Agreement shall not operate as a waiver of such provision or of any other provision.

Section 11: Entire Agreement. This Agreement sets forth the entire understanding between the parties with respect to the subject matter of this Agreement, and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.

Section 12: No Construction Against Drafter. Both parties acknowledge and affirm they are each represented by or have sought the advice of legal counsel in connection with this Agreement and the work contemplated hereby, and have read and understood and are fully informed of the contents of the Agreement and the legal consequences thereof, and that by the parties' signatures hereon, acknowledge and affirm that the terms of this Agreement shall not be construed against either party as a drafter hereof.

**INTERGOVERNMENTAL AGREEMENT
GILMORE FIELD WATER LEVEL MONITORING - LIABILITY AND MAINTENANCE**

Section 13: Effective Date. This Agreement shall become effective upon the date of the last signature hereon.

Section 14: Execution in Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute an original hereof.

Section 15: Authority. The persons signing the Agreement on behalf of Salem and District represent and warrant that each such person has the requisite power and authority to enter into, execute, and deliver the Agreement, and that the Agreement is a valid and legally binding obligation of District and Salem.

Section 16: Indemnification. Subject to the limitations and conditions set forth in the Oregon Constitution and the Oregon Tort Claims Act, the CITY shall indemnify, defend, save, and hold harmless the District in the event that Salem's activities on District property results in injury to persons or property.

IN WITNESS WHEREOF, the parties have, by approval of their respective governing bodies, caused this Agreement to be executed:

District. Salem-Keizer School District 24J

By: 
Michael D. Wolfe, Chief Operations Officer
Salem-Keizer School District 24J

Date 4/28/18

Salem: City of Salem

By: _____
Steve Powers, City Manager
City of Salem

Date _____

APPROVED AS TO FORM

By: _____
Dan Atchison, City Attorney, City of Salem

Exhibit A



City and District approved installation design:

- A breaker panel/meter will be mounted on the furthest south I beam (not shown in picture).
- Equipment enclosures and camera will be mounted using non penetrating I beam brackets. This will allow for easy removal of the equipment if the scoreboard was to be replace or removed.
- The City will be contracting with an electrician to bring power from the transformer located on the far northwest side of Gilmore Field along Hoyt St. The power will be placed in a buried conduit from the transformer pole to concrete pad that supports the furthest south I beam. The power source will continue in ridged conduit up to the breaker panel.
- Stream sensor cable will be buried from the toe of the stream bank to the concrete pad and will continue in ridged conduit to the enclosure. See page following page for aerial view.

Exhibit A Continued

