

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into by and between the CITY OF SALEM, an Oregon municipal corporation ("City"), and SALEM-KEIZER SCHOOL DISTRICT 24J ("District"). City and District may collectively be referred to hereinafter as "Parties" and individually as "Party." The Parties are authorized to enter into this Agreement under ORS Chapter 190.

RECITALS

- A. Whereas, Columbia Street NE east of Broadway Street NE and south of Highland Elementary School is truncated by athletic fields and BNSF Railroad right of way and primarily serves as a parking and drop off point for Highland Elementary School;
- B. Whereas, the District owns Highland Elementary School and adjacent property, which is identified as 073W14CB10800, 073W14CC10200, and 073W14CB10900 on the Marion County tax map listings; and
- C. Whereas, the Parties wish to execute this Agreement in order to formalize the District's use and maintenance responsibility for the Columbia Street NE right of way adjacent to Highland Elementary School.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Maintenance of Premises.

- A. District Maintenance Responsibilities.
 - 1. District shall be responsible for all routine maintenance within the area depicted on Exhibit A (the "**Property**"), which includes landscape areas, sidewalks, drop-off area, and parking areas.
 - 2. All maintenance activities of District shall comply with the City of Salem Revised Code and applicable administrative standards.
 - 3. District shall keep the Property clean of litter and debris, including placement, emptying, and maintenance of garbage receptacles.
 - 4. District shall also maintain the Property consistent with Title II of the Americans with Disabilities Act, as amended, including, but not limited to compliance with the 2010 ADAAG standards, available at: [http://vvww.ada.Qov/reg\\$2010/2010ADAStandards/2010ADAStandards_prt.pdf](http://vvww.ada.Qov/reg$2010/2010ADAStandards/2010ADAStandards_prt.pdf)
 - 5. District shall be responsible for ensuring proper access for emergency vehicles.

- B. City shall be responsible for all other maintenance of the Property, and the maintenance of Broadway Street NE.

Section 2. Use of City Property.

- A. City reserves the right at any time without notice to enter upon the Property through its designated agents or employees for any purpose necessary, incidental to or connected with the performance of its obligations under this Agreement or in the exercise of its proprietary or governmental functions.
- B. City reserves the right to enter and take possession of the Property in case of national or other emergency for the purpose of preventing sabotage or otherwise protecting the public or the City's property or property interests. During such emergency City shall relieve District from any obligation to comply with any provision of this Agreement.

Section 3. Improvements, Signs, and Notification of Dangers.

- A. District shall comply with all Salem Revised Code requirements and permits with respect to any improvements to the Property.
- B. District shall not erect, install, operate or cause, nor permit to be erected, installed or operated upon the Property any sign or other device without the prior written consent of City, which it may withhold in its sole discretion. The plans and specifications of any sign must have been approved in writing in advance by City, except in the case of an emergency, or the event of a dangerous condition, as noted in Section 3C below. Any sign installed by District shall conform to City's regulations and ordinances regarding the installation or maintenance of such signs. Unless otherwise allowed by City, District agrees at its cost to remove such signs and to restore the property to its pre-sign condition within thirty (30) days after expiration or termination of the Agreement. District shall immediately repair any damage caused by such removal and leave the Property free and clear of all debris.
- C. District shall notify City of any dangers to person or property, or any dangerous conditions, that exist on the Property, which are either known or discovered by District. District shall inform its patrons and the public of any known or discovered dangers, or any dangerous conditions, that are present on the Property, until such time as the condition is remedied.

Section 4. General Provisions.

- A. *Records Maintenance; Access.* City and District shall maintain all records pertinent to this Agreement in such a manner as to clearly document performance. Each party and their duly authorized representatives shall have access to such records and other books, documents, papers, plans and writings of the other party that are pertinent to this Agreement to perform examinations and audits and make excerpts and transcripts upon

not less than two (2) business days' prior written notice. City and District shall retain and keep accessible all such records, books, documents, papers, plans and writings as required by Oregon Public Records Laws, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later.

- B. *No Third-Party Beneficiaries.* There are no intended third-party beneficiaries to this Agreement. City and District are the only parties to this Agreement and are intended to be the only entities entitled to exercise and enforce the rights and obligations created by this Agreement. References in this Agreement to any employee, consultant, subcontractor, or other agent of either party are made for the purpose of the convenience of the two parties in determining their respective rights and obligations hereunder and are not intended to imply that such entities shall have any contractual rights hereunder.
- C. *Compliance with Applicable Laws.* Both Parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement.
- D. *Force Majeure.* Neither Party shall be held responsible for delay nor default caused by fire, riot, acts of God, war, or any other cause beyond the reasonable control of City or District, respectively; provided, however, that in no event shall force majeure affect any party's payment obligation hereunder. Each Party shall, however, make all reasonable efforts to remove or eliminate any cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Agreement. The Parties in the exercise of good faith shall agree upon adjustments to the schedule and compensation for any additional direct and indirect costs resulting from such delays under this Agreement.
- E. *Survival.* All rights and obligations of the Parties shall cease upon termination or expiration of this Agreement, except for the rights and obligations of a party for payment of completed Work, indemnity, dispute resolution, maintenance of insurance, and those provisions, including, but not limited to, provisions concerning property rights and governing laws which, by their nature, must survive termination to accomplish the intent of the Parties as expressed in this Agreement.
- F. *Notice and Communication.* Any communications between the Parties or notices to be given shall be given in writing by personal delivery, by mailing the same, postage prepaid, or by electronically confirmed facsimile transmission to the following:

If to the City of Salem:

Peter Fernandez,
P.E. Public Works Director
City of Salem Public Works Department
555 Liberty Street SE, Room 325
Salem, OR 97301-3503

If to Salem-Keizer School District:

David Hughes
Salem-Keizer School District
Facilities and Planning
3630 State Street
Salem, OR 97301

Any communication or notice so addressed and mailed shall be deemed to be given five (5) calendar days after mailing. Any communication or notice delivered by facsimile shall be deemed to be given when receipt of the transmission is generated by the transmitting machine. To be effective against either Party, such facsimile transmission must be confirmed by telephone notice. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

- G. *Independent Contracting Parties.* The Parties intend that the relationship created by this Agreement is that of independent contracting parties. Neither Party hereto shall be deemed an agent, partner, joint venturer, or related entity of the other by reason of this Agreement. Each Party agrees that its employees and contractor(s) are not the employees of the other Party and are not eligible for any benefits from the other Party, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation, and retirement benefits.
- H. *Successors and Assigns.* No assignment by a party hereto of any rights under or interests in the Agreement will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, monies that may become due and monies that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Agreement. City and District each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Agreement.
- I. *Severability.* The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.
- J. *Legal Review and Rules of Construction.* Each Party has had the opportunity to have an attorney of their choosing review this Agreement and advise the Party of the benefits and consequences of signing this Agreement. This

Agreement shall not be construed against either Party regardless of which Party drafted it. Other than as modified by this Agreement, the applicable rules of contract construction and evidence shall apply.

- K. *Governing Law; Venue; Consent to Jurisdiction.* This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding (collectively, "Claim") between City and District that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Marion County.
- L. *Merger Clause; Waiver.* This Agreement, including all attachments and law, rules and regulations incorporated herein or to which the Agreement is subject, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification, or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by such Party of that or any other provision. All existing previous Agreements between the Parties involving this same parcel shall remain unchanged by this Agreement, unless otherwise specified herein.
- M. *Indemnification.*
1. District agrees to defend, indemnify, save, and hold harmless City from and against any and all claims resulting from or arising out of the acts or omissions of the District or any of its officers, employees, or agents.
 2. City agrees to defend, indemnify, save, and hold harmless District from and against any and all claims resulting from or arising out of the acts or omissions of the City or any of its officers, employees, or agents.
- N. *Insurance; Notification of Claims.*
1. District is self-insured and shall maintain self-insurance coverage consistent with Oregon law.
 2. City is self-insured and shall maintain self-insurance coverage consistent with Oregon law.
 3. Each Party shall notify the other party, within thirty (30) days, if a claim is made pertaining to matters covered by or related to this Agreement.

O. *Execution of Agreement.*

This Agreement may be executed in two or more counterparts each signed by their respective parties, each of which shall constitute an original, and all of which together shall constitute one and the same Agreement.

Section 5. Remedies and Disputes.

A. *Remedies.* If City or District should default in the obligations under this Agreement, then, subject to any limitation of remedies contained elsewhere in this Agreement, the non-defaulting party shall have the right to any remedy available at law or equity, including specific performance.

B. *Dispute Resolution.* The Parties shall exercise good faith and due diligence to resolve any disputes that may arise between them pertaining to timeliness, performance, cost, schedule, scope, quality or other terms and conditions of this Agreement. The Parties will work amicably to resolve disputes. If a dispute cannot be resolved, the Parties shall submit the matter to mediation. The mediator shall be chosen by mutual agreement. If a mediator cannot be agreed upon, the Parties agree to present the dispute to a mediator selected by the Presiding Judge of Marion County Circuit Court. The mediation fee shall be borne equally by the Parties. If the dispute cannot be resolved through discussion, negotiation, or mediation, either Party may pursue resolution by filing a complaint in the Marion County Circuit Court.

C. *Attorney Fees.* If any suit, action, arbitration or other proceeding is instituted to enforce rights or otherwise pursue, defend, or litigate issues related to this Agreement, or any other controversy arises from this Agreement, each party shall bear their own attorneys' fees. The award of costs and expenses after appeal from a judgment entered after trial shall be to the prevailing party designated as such by the appeals court.

Section 6. Termination

A. Any party may terminate this Agreement without cause by giving one hundred eighty (180) days advance written notice to the other Party. A shorter notice may be accepted if all Parties agree.

Section 7. Automatic Extension

A. This agreement shall be automatically extended from year-to-year on the same terms and conditions unless it is terminated by unanimous agreement of all Parties.

Section 8. Effective Date of Agreement

This agreement shall become effective on April ____, 2019, or upon the approval of the governing bodies of both Parties, whichever is later.

The representatives of the Parties, by their signatures below, acknowledge that they have read this Agreement, understand it, and agree that they have the legal authority to enter into this Agreement and to bind their respective jurisdictions to the terms and conditions herein.

IN WITNESS WHEREOF the Parties have executed this instrument in their respective names by their duly authorized representatives as of the date above written.

SALEM-KEIZER SCHOOL DISTRICT 24J

CITY OF SALEM

By:_____

By:_____

Michael D. Wolfe, COO

Steven D. Powers, City Manager

Date:_____

Date:_____

Exhibit A

