

**OUTDOOR MAINTENANCE
INTERGOVERNMENTAL AGREEMENT
City of Lebanon and Lebanon School District**

July 1, 2023 – June 30, 2024

THIS AGREEMENT is entered into between the City of Lebanon (City) and the Lebanon Community School District (District) for the purpose of establishing an Intergovernmental Agreement pursuant to Oregon Revised Statutes Chapter 190 concerning the maintenance of certain District outdoor facilities.

WHEREAS:

- A. Oregon Revised Statutes Chapter 190 authorizes units of local government to enter into written agreements with any other units of local government for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform. The agreement may provide for the performance of a function or activity by means of facility or equipment jointly constructed, owned, leased, or operated, or by one of the parties for any other party, or by a combination of any methods described in ORS 190.010.
- B. In order to improve economy and efficiency, the parties desire to enter into an agreement whereby the City will provide certain maintenance responsibilities for District property.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

A. CITY RESPONSIBILITIES

- 1. The City will provide mowing, weeding and general aesthetic upkeep for the following District properties: Cascade Elementary; Green Acres Elementary; Pioneer Elementary; Riverview Elementary; Hamilton Creek Elementary School; Seven Oak Middle School; and Lebanon High School.
- 2. The City shall provide periodic mowing for District property in Waterloo. Periodic shall mean as necessary for minimal upkeep.
- 3. The City shall make reasonable efforts to maintain the areas identified above on a regular basis as needed in the discretion of the City in consultation with the District.
- 4. Except as otherwise provided in this agreement, the City Maintenance Operations Manager, or his designee, will be solely responsible for the supervision, control and performance of the requirements contained herein. The City Maintenance Operations Manager shall work cooperatively with the District Assistant Superintendent of Operations, or designee, to coordinate the responsibilities contained herein and to address the specific requirements and obligation for each of the District properties identified above.
- 5. It is agreed between the parties that the City employees working on the District maintenance responsibilities are and will remain employees of the City. The City will be responsible for all workers' compensation coverage, payroll, state and federal taxes.

B. DISTRICT RESPONSIBILITIES

1. The District will pay \$155,000 annually for maintenance services provided by the City of Lebanon during the period of July 1, 2023 through June 30, 2024.
2. The annual contract fee will be paid in full to the City no later than July 1, 2023.
3. All materials will be provided by the District at the District's costs, including but not limited to bark, mulch, fertilizer, and chemicals, as needed at the City's discretion.
4. The anticipated goal of this Agreement is for the District to reimburse the City the actual costs of providing the services contained herein. As a result, the City and District shall meet periodically to review the actual costs associated with the work envisioned herein. Any extension or renewals of this Agreement shall be based on negotiations based on the actual costs of providing the services contained herein. In the event the City determines it is not being reimbursed the actual cost of providing the services, and the parties cannot reach a mutually agreed modification to this Agreement, the City can terminate this agreement with thirty (30) days' notice.

C. TERMS OF AGREEMENT

The term of this Agreement will commence on July 1, 2023, and continue through June 30, 2024. Subject to Section B(4) above, this Agreement may be terminated prior to that date by mutual consent of both parties or by one party notifying the other party of their intent to discontinue participation no later than 90 days prior to the end of the City's fiscal year. This Agreement can be terminated without cause by either party with 60 days' notice. At the time this Agreement was entered, both parties have sufficient funding. In the event either party terminated this Agreement, under this section, the annual contract amount will be prorated per month based upon the time remaining on this Agreement for that given school year.

D. PERSONNEL / WORKERS' COMPENSATION

Employees or volunteers of each party shall remain employees / volunteers of that agency, and are subject to the personnel policies, rules, and regulation solely of that party. Each party to this Agreement agrees to provide workers' compensation insurance coverage to its employees and volunteers, and; each party shall supervise their individual employees while working under this Agreement. The intent of this provision is to prevent the creation of any "special employer" relationships under Oregon workers' compensation law, PERS regulations, or other state or federal laws.

E. HOLD HARMLESS / INDEMNITY

Subject to the limitations and conditions of the Oregon Tort Claims Act ORS 30.260 through ORS 30.300, the parties agree to hold the other harmless, to indemnify and to defend the other, its officers, agents and employees from any and all liability, action, claims, losses, damages or other costs including attorney's fees and witness costs that may be asserted by any person or entity arising from, during or in connection with the performance of the work described in this Agreement. Nothing in this hold harmless shall be deemed to create a liability in excess of the Oregon Tort Claims limits for either part.

F. AMENDMENT

The terms of this Agreement may not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written agreement signed by both parties.

G. NON-DISCRIMINATION

The parties agree not to discriminate based on race, religion, sex, sexual orientation, color, age, family status, marital status, source of income, national origin or mental or physical disability in the performance of this Agreement.

H. PUBLIC CONTRACTING

Both parties agree to comply with the Oregon Public Contracting Code, ORS 279A-ORS 279C, as applicable, particularly regarding contracts with third-party vendors entered in the performance of the parties' respective obligation under this Agreement.

I. ATTORNEY'S FEES

If any action is instituted by either party in connection with any claim or controversy arising out of this Agreement, attorney's fees may not be awarded by a court of competent jurisdiction and each party shall bear its own expense of such action.

J. SEVERABILITY

If any part, paragraph, section, or provision of the Agreement is adjudged to be invalid by any court of competent jurisdiction, such adjudication shall not affect the validity of any remaining section, part, paragraph, or provision of the Agreement.

K. WAIVER

The failure of either party to insist upon the strict performance of any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of any right or remedy that either party may have, and shall not be deemed a waiver of either party's rights to require the strict performance of all terms, covenants and conditions thereafter, not a waiver of any remedy for all the subsequent breach of any of the terms, covenants or conditions.

L. ASSIGNMENT

This Agreement may not be assigned to either party without the written consent of the other party.

M. GOVERNING LAW

This Agreement and the parties' rights under it shall be constructed and regulated by the laws of the State of Oregon and venue for any dispute hereunder shall lie in Albany, Linn County, Oregon.

N. WRITTEN NOTICE

All notices regarding this agreement should be sent to:

Jason Williams
Public Works Director
925 S Main Street
Lebanon, OR 97355

Jennifer Meckley
Superintendent
485 S Fifth Street
Lebanon, OR 97355

CITY OF LEBANON:

LEBANON SCHOOL DISTRICT:

Kenneth Jackola, Mayor


Jennifer Meckley, Superintendent


Date: _____

Date: 9-11-23

Approved as to Form:

Approved as to Form:

John Kennedy, City Attorney


Lebanon School District Attorney

Date: _____

Date: 1/27/24