

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF MERCER ISLAND AND
THE MERCER ISLAND SCHOOL DISTRICT
FOR THE USE, MAINTENANCE AND IMPROVEMENT OF
CERTAIN SCHOOL DISTRICT SPORTS FIELDS**

THIS INTERLOCAL AGREEMENT ("Agreement") is made and entered into between the City of Mercer Island ("City"), a Washington municipal corporation, and the Mercer Island School District ("District"), a Washington municipal corporation (together, the "Parties").

- A. The Parties enter into this Agreement pursuant to and as authorized by the Washington State Interlocal Cooperation Act (Chapter 39.34 RCW).
- B. The Parties desire to improve the maintenance and operations of sports fields at 1) Island Park Elementary, 2) Lakeridge Elementary, and 3) West Mercer Elementary School (together, the "Elementary School Sports Fields"), and 4) South Mercer Playfields (the "SMP", together with the Elementary School Sports Fields, herein referred to collectively as the "Subject Fields").
- C. The Parties intend this Agreement to reinstate the partnership documented in the following two expired Interlocal Agreements (together, the "Past Agreements"): 1) the January 8, 2010 Interlocal Agreement for the Improvement, Scheduling, Use and Operations of the Mercer Island High School Stadium and Other Facilities, and 2) the November 13, 2009 Interlocal Agreement for the Maintenance and Improvement of Certain School District Sports Fields as revised August 24, 2013.
- D. The Parties entered into the Past Agreements in the interest of improving the quality and use of the Subject Fields in a manner that was cost effective for both Parties as well as for the greater Mercer Island community.
- E. The following three matters are the subjects of this Agreement:
 - 1. SMP Turf Replacement— See Sections 4 & 5;
 - 2. Subject Fields Maintenance – See Attachment A;
 - 3. Subject Fields Scheduling – See Section 5 & the City of Mercer Island Parks & Recreation Athletic Field Use and Reservation Policy.
- F. Except for field maintenance as detailed in Attachment A, this Agreement does not extend to the District's natural and synthetic fields associated with Northwood Elementary School and the Mercer Island High School (the "North Mercer Complex"). Scheduling of the North Mercer Complex shall be done by the District, for such times that the fields are available. The North Mercer Complex is reserved for the District sports programs in an effort to allow enhanced capacity for City and Mercer Island community use of the Subject Fields after 4:30 pm on days when school is in session.
- G. The Parties will act in good faith to implement the terms of this Agreement.

H. This Agreement is intended to enhance and not interfere with the primary mission of City or District governance.

I. All programming and activities scheduled under this Agreement will comply with the Parties' policies prohibiting discrimination.

NOW, THEREFORE, in consideration of the above recitals, the mutual promises and covenants contained herein, and for other good and valuable consideration, the Parties agree as follows:

1. DEFINITIONS

- a. "The Fields Maintenance Enhancement" element of the Agreement will provide turf rehabilitation and maintenance to ensure "game quality" sports fields.
- b. "Game Quality" means the level of sports field condition that would allow competitive games to be scheduled on a regular basis.
- c. "Premium Field" means a sports field which has a significantly enhanced quality and appearance. Elements that raise a field to a "Premium Field" include but are not limited to outfield "home run" fences, lighting, pitcher bullpen areas, synthetic turf on infield and outfield, and enhanced electronic scoreboard.
- d. "Turf Premium" means a surcharge added to regular fees for the use of a sports field comprised of synthetic turf. This surcharge will be collected over time, held in a separate, designated account, and exclusively utilized for the replacement of the synthetic turf.
- e. "School Use" means District-sanctioned school activities.

2. TERM

This Agreement shall be effective when fully executed by all the Parties and shall last for a term of one year. This Agreement shall automatically renew annually unless one of the parties gives written notice of termination consistent with Section 9 herein. The Parties acknowledge that the City's requirement to maintain the improvements is not intended to permit the perpetual existence of this Agreement. Either Party may request a review of the Agreement for amendment at any time.

3. GENERAL AGREEMENTS

The Parties agree as follows:

- a. The subject of this Agreement is maintenance services contributed by the City towards the Subject Fields and the collection of field use fees as described herein along with the District's commitment to provide access to the Subject Fields to

the Mercer Island community through the agreed scheduling procedures set forth in Section 5.

- b. The City will collect and transfer fees from user groups as described in Section 5.

4. SMP TURF REPLACEMENT & FIELD MAINTENANCE

- a. SCOPE OF WORK

The Parties agree that the Subject Fields element of this Agreement is intended to ensure that such fields are Game Quality. To this end, in addition to any maintenance it is currently performing on the Subject Fields, the City will provide enhanced maintenance rehabilitation activities as described in Attachment A to this Agreement. The District will provide the level of maintenance it is currently providing these fields.

- b. IMPROVEMENT ELEMENT: SMP

The District will contract for and oversee replacement of the SMP synthetic turf. Such replacement turf must meet the specifications of the Mercer Island Parks & Recreation Department. The City will provide funding for that replacement from a designated City account wherein Turf Premiums collected from renters of Subject Fields have been deposited consistent with Section 5.D of this Agreement. The City will provide a designated park professional to assist the District in the SMP field replacement process.

5. SCHEDULING & FEE COLLECTION

- a. PRIORITIZATION – SCHEDULING

- i. Use of the Subject Fields authorized by this Agreement must have both an educational and municipal purpose with the District being given priority to schedule educational programs on the Subject Fields as described below.
- ii. With respect to using the Subject Fields, subject to Sections 5.a.iv, v, and vi below: (i) the District shall be entitled to exclusive use for any School Use from 7:00 a.m. to 4:30 p.m. on days when school is in session; and (ii) at all other times, usage shall be determined consistent with the policies and procedures established in the City of Mercer Island Parks & Recreation Athletic Field Use and Reservation Policy ("Park and Rec Reservation Policy"), most current edition.
- iii. With respect to scheduling use of the Subject Fields: (1) the District shall schedule School Uses from 7:00 a.m. to 4:30 p.m. during days when school is in session; (2) at all other times, scheduling shall be done by the City consistent with the policies and procedures established in the Park and Rec Reservation Policy; (3) The District is responsible for scheduling the fields on the North

Mercer Complex at all times. For the purposes of scheduling the Subject Fields, the Parties shall use the current scheduling software system being utilized by the City.

- iv. Notwithstanding the provisions of the Park and Rec Reservation Policy, the City shall give the District's Girls Softball program first priority with respect to the use and scheduling of the SMP at all times, and the City shall give the District's High School Boys Baseball program first priority with respect to use and scheduling of Island Crest Park ball fields at all times.
- v. If there are times during regular school hours, currently 7:00 a.m. to 4:30 p.m., during days when school is in session that the District does not require use of one or more of the Subject Fields for School Use, the City may request the use of such fields during that period in accordance with the Park and Rec Reservation Policy, which request shall not be unreasonably denied by the District.
- vi. For purposes of this Section, any activity that is funded in whole or in part by the District or the City shall have priority under the Park and Rec Reservation Policy.

b. ANNUAL SCHEDULING CONFIRMATION PROCESS

During each year of this Agreement, the Parties agree to conduct joint scheduling conferences with other field users as needed in:

- 1. January (for the period April to June);
- 2. April (for the period July to September);
- 3. July (for the period October to December); and
- 4. October (for the period January to March).

Additional meetings will occur as needed to coordinate time requirements of the various user groups. Blocks of time will be allocated throughout the day, week and year for use by the District, City and other field user groups, in accordance with the priorities established and consistent with this Section 5.

c. SCHEDULING/AVAILABILITY CONFLICTS

The Parties agree to the following principles and procedures for resolving field space availability conflicts:

- i. It is the Parties' mutual goal to maintain program continuity, give adequate notification of scheduling changes, and to relocate programming when necessary. When reasonably possible, each Party will assist the other in locating alternative field space.

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for the Use, Maintenance and Improvement of Certain School District Sports Fields**

- ii. In the event of scheduling conflicts, facility-based representatives will first attempt to reach resolution of field space availability issues. When the conflict involves more than one City and District program, both Parties will be informed and involved in resolving the conflict. The central scheduling offices of both Parties will, whenever possible, identify options or ways to accommodate the interests of the Parties consistent with this Agreement. If a resolution cannot be reached on a scheduling request, the issue will be referred to the Director of Maintenance and Operations or the Mercer Island High School Athletic Director or designee for the District and the Parks and Recreation Director or designee for the City. If the conflict remains unresolved after such referral, the District's Superintendent or designee shall resolve the matter with the City Manager or designee.

d. FEES AND CHARGES

- i. Consistent with the terms of this Agreement, including Section 5.d.iii, the City will use best efforts to collect fees (rental and administrative) from field user groups and such fees will be deposited in a separately-designated account with the City of Mercer Island Parks & Recreation Department. Except as provided in 5.d.iii below, neither Party shall be charged a rental or administrative fee for the use of Subject Fields without mutual agreement.
- ii. The City may charge users for extra material, labor and appropriate overhead costs that either Party may incur because of their use of the Subject Fields, including but not limited to property damage, unsecured gates and locks, security response, removal of leftover trash and garbage, etc.
- iii. The City and third party renters of the Subject Fields will be charged a Turf Premium to use the improved synthetic turf fields. The District will also be charged the turf premium for any School Use which takes place outside of regular school hours (currently 7:00 a.m. to 4:30 p.m.).
- iv. The City will be responsible for collecting the Turf Premium from field renters. The Turf Premium will be based on engineer's estimates to be used for synthetic turf replacements. Revenues generated from the Turf Premium fees will be accumulated by the City in a specially-designated fund for the purpose of the eventual replacement of the synthetic turf at the end of its useful life, at which time the City will transfer funds to the District to cover the cost of turf replacement. If either Party requests enhanced features to be included in the turf replacement, the requesting Party shall fully fund the cost of the enhancement unless the other Party accepts the enhanced features and agrees to equally share the associated costs. If the designated funds accumulated by the City are not sufficient to pay the base level field replacement costs, the Parties will equally share the costs in excess of the available funds.
- v. The Parties agree to meet at least annually to review/approve fees and charges for the use of the Subject Fields to ensure equity, fairness, parity with the

regional market and to account for funds collected relative to future field replacement costs to determine whether field rental fees/charges should be adjusted.

6. LIABILITY AND INSURANCE

- a. The Parties agree to provide each other with evidence of insurance coverage, in the form of a certificate of insurance from a solvent insurance provider and/or a letter confirming coverage from a solvent insurance pool, which is sufficient to address the insurance and indemnification obligations set forth in this Agreement.
- b. The Parties shall obtain and maintain throughout the term of this Agreement coverage in minimum liability limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for its liability exposures, including comprehensive general liability, errors and omissions, auto liability and police professional liability. The insurance policy shall provide coverage on an occurrence basis.

7. HOLD HARMLESS/INDEMNIFICATION

- a. The District shall indemnify and hold harmless the City and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent act or omission of the District, its officers, agents, and employees, or any of them, in the performance of this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the City, the District shall defend the same at its sole cost and expense; provided that the City retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the City and its officers, agents, and employees, or any of them, or jointly against the City and the District and their respective officers, agents, and employees, or any of them, the District shall satisfy the same to the extent judgment is apportioned to such negligent act or omission by the District.
- b. The City shall indemnify and hold harmless the District and its officers, agents, and employees, or any of them, from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by reason of or arising out of any negligent act or omission of the City, its officers, agents, and employees, or any of them in the performance of this Agreement. In the event that any suit based upon such a claim, action, loss, or damage is brought against the District, the City shall defend the same at its sole cost and expense; provided that the District retains the right to participate in said suit if any principle of governmental or public law is involved; and if final judgment be rendered against the District, and its officers, agents, and employees, or any of them, or jointly against the District and the City and their respective officers, agents, and employees, or any of them, the City shall satisfy the same to the extent judgment is apportioned to such negligent act or omission by the City.

- c. The Parties hereby waive, as to each other only, their immunity from suit under industrial insurance, Title 51 RCW. This waiver of immunity was mutually negotiated by the Parties.
- d. The provisions of Section 7 shall survive any termination or expiration of this Agreement.

8. GENERAL PROVISIONS

- a. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement. No provision of this Agreement may be amended or modified except by written agreement signed by the Parties.
- b. Any provision that is declared invalid or illegal shall in no way affect or invalidate any other provision.
- c. In the event any Party defaults on the performance of any term of this Agreement or any Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, the prevailing Party shall be entitled to an award of all its reasonable attorney fees, costs, and expenses.
- d. Failure of either Party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not constitute a waiver of such breach or default.
- e. Any action, suit, or judicial proceeding for the enforcement of this Agreement shall be brought and tried in the Superior Court of the State of Washington in King County.
- f. The laws of the State of Washington shall govern this Agreement.
- g. The Parties agree that this Agreement is consistent with RCW 43.09.210, the "Accountancy Act." The City is receiving adequate consideration from the District in exchange for its payment. The District consideration consists of its transfer of control of the scheduling of the Subject Fields to the City and allowing additional public use of the Subject Fields.
- h. This Agreement shall be filed/posted in accordance with RCW 39.34.040.

9. TERMINATION

- a. Each Party shall have the right to terminate this Agreement in the event the other Party is in default of any material term or condition of this Agreement, including without limitation the failure to strictly comply with the obligations set forth in Attachment A hereto, by providing thirty (30) days' advance written notice specifying the basis for such determination. If the other Party thereafter fails to commence reasonable steps within the thirty-day period to correct fully and to remedy the default

within ninety (90) days from the date of the notice, then the Agreement shall be deemed terminated; provided that, if the nature of the default is such that it cannot be remedied within ninety (90) days, then the Agreement shall not terminate so long as the Party in default is proceeding promptly to remedy the default and does so within such additional period as may be agreed by the Parties.

- b. This Agreement may be terminated in whole or in part at any time by either Party prior to its expiration for good cause upon ninety (90) days written notice. Good cause shall include the following items: (1) financial hardship as demonstrated by a resolution of the City Council or District Board of Directors; and (2) the District's need to recapture school grounds as demonstrated by a resolution of the District Board of Directors. In the event such termination affects only part of the Agreement (e.g., applicability to the SMP only or the Elementary Schools Sports Fields only), then such termination will not impact the requirements of this Agreement for the remaining, non-affected fields.
- c. This Agreement may be terminated in whole or in part by either Party for any reason with ninety (90) days prior written notice.

This Agreement has been executed in duplicate by the parties hereto and made effective when all parties have fully executed this Agreement.

CITY OF MERCER ISLAND


Julie Underwood
City Manager

Dated: 5/16/17

APPROVED AS TO FORM:


Kari Sand
City Attorney

MERCER ISLAND SCHOOL DISTRICT


Gary Plano
Superintendent

Dated: 5/17/17

APPROVED AS TO FORM:


Erin Battersby
Senior Director, Compliance & Legal Affairs

ATTACHMENT A

BETWEEN THE CITY OF MERCER ISLAND AND THE MERCER ISLAND SCHOOL DISTRICT CONCERNING MAINTENANCE, OPERATION AND REPAIR OF FIELDS AT ISLAND PARK, LAKERIDGE, NORTHWOOD AND WEST MERCER ELEMENTARY SCHOOLS, SOUTH MERCER PLAYFIELDS, AND THE MERCER ISLAND HIGH SCHOOL

This attachment defines the division of labors between City of Mercer Island Parks Maintenance staff and Mercer Island School District Grounds Maintenance staff at the District's four elementary schools, the South Mercer Playfields, and the Mercer Island High School athletic fields.

1. The City shall undertake and continually employ scheduled turf rehabilitation that will provide the community with improved athletic fields at four (4) public elementary schools and one (1) public high school on Mercer Island. Turf rehab will be executed by City Park Maintenance staff using City equipment. The annual cycle of rehabilitation:
 - a) Fertilize three (3) times a year with a seasonally-adjusted fertilizer blend
 - b) Aerification two (2) times a year, core extraction or deep tine as needed
 - c) Top Dress two (2) times a year
 - d) Re-seed two (2) times a year

The City shall undertake annual spring seasonal preparation of skinned infields at Lakeridge and Island Park and inspect and repair damaged turf at all fields each year prior to, and in preparation for, scheduled March field use. The City will drag skinned infields regularly (at least once weekly) March through August.

2. The City shall incorporate District Integrated Pest Management policy (Board Policy 1415) in any and all fertilizer and/or pesticide applications on all District-owned properties.
3. The District shall continue to provide mowing, irrigation services, and leaf and debris removal, as follows:
 - a) Weekly mowing mid-February to mid-November and more frequently as needed; the District shall provide a mowing schedule annually, including frequencies and scheduled times for mowing each field, to the City's Parks Operations Superintendent.
 - b) Irrigation seasonal startup and shutdown, and repairs as needed
 - c) Leaf and debris removal as warranted seasonally and as storm response
4. The City, acknowledging that increased fertilization rates and turf rehabilitation work consistent with Paragraph 1 above, will likely increase the frequency and importance of some regular maintenance tasks undertaken by the District consistent with Paragraph 3 above, agrees to cooperate and assist the District with these tasks on an "as needed" basis subject to staff and equipment availability.
5. The City reserves the right to limit the use of the fields for purposes of maintenance and for safety of the playing surfaces. The City will obtain District approval prior to limiting the use of the facilities during the school day, except in emergency situations. District approval will not be unreasonably withheld. Turf rehabilitation closure dates for each field will be scheduled during school closures and summer break as much as possible. Dates will be set annually at a January meeting involving the Parks Operations Superintendent for the City and the Director of Maintenance and Operations for the District, or their respective designees. The approved schedule shall be distributed annually to all relevant parties in each agency and to the field renters of record by February 15.
6. Communication between City and District field staff shall be open, cooperative and frequent. Contact lists will be exchanged and updated as needed, and 'after hours' contact protocols will be exchanged.

Attachment A

7. District and City maintenance staff will work together to immediately address any safety issues brought to their attention by City or District personnel or facility users. District staff will refer all maintenance inquiries, including scheduling requests, citizen concerns and any other items that are affected by or affect the maintenance of elementary fields, to the City's Parks Operations Superintendent in a timely manner, in writing. The City's Parks Operations Superintendent will respond, in writing, within three business days.
8. A "Fields Working Group", consisting of the Parks Operations Superintendent and the Facility Scheduler for the City and the Director of Maintenance and Operations for the District, will meet not less than once annually, and as needed, to address issues and exchange information.
9. The City will schedule activities on all school district sports fields (excluding those fields on the North Mercer Complex) during non-school hours, defined as between 4:30 p.m. and 10:00 p.m. weekdays, weekends, and all days during school breaks. District activities occurring during these times shall be booked through the City. MISD booking requests for these non-school hours shall receive priority per the City of Mercer Island Parks and Recreation Athletic Field Use and Reservation Policy, most current edition.

Attachment A