

## INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by and between the City of St. Helens, a municipal corporation of the State of Oregon, ("City,") and the St. Helens School District No 502, an Oregon school district ("District.") The City and the District are also referred to in this Agreement each as a "Party" and together as the "Parties."

WHEREAS, the Parties each own real property in Columbia County, Oregon, and

WHEREAS, the Parties have worked cooperatively in coordinating programs and sharing athletic and recreational facilities, and

WHEREAS, the Parties desire to provide for the opportunity for one Party to use real property owned by the other Party, and

WHEREAS, the Parties deem it appropriate to enter into an Intergovernmental Agreement for the ownership and use of their respective properties under authority granted to the Parties by ORS 190.010 to 190.030.

### WITNESSETH

That each Party hereby grants to the other party the use and occupancy of the Property(ies) (including facilities on the Property) owned and operated by the other Party for the purposes and on the terms and conditions hereinafter stated:

1. Both Parties agree that a principal objective of this Agreement is the Parties to reasonably share in the cost of providing access and service to each parties Properties. The general agreement is that each Party shall maintain the properties and facilities that it owns and that each Party shall have primary access to its Properties and facilities. However, each Party grants priority use to the other Party for programming of Properties and facilities when not in use by the owning Party. This exchange of service and access is expected to demonstrate equal costs.  
  
Costs are not expected to be a dollar-for-dollar equal match but are expected to be reasonably equal. Access and service may be reviewed at least annually and adjustments to access and service levels may be made to ensure reasonably equal costs between the Parties.
2. The Parties agree to collaborate as public agencies on efforts such as joint development requests, grant applications, and land acquisition.
3. Each Party shall comply with the rules and regulations of the other Party governing use of the facilities. Each Party is allowed to enforce their regulations on the other Party's property, such as those relating to the conduct of participants, for the preservation of public safety and/or protection of physical assets.
4. The Parties agree to provide priority use to each other for scheduled events. Except as scheduled, programs that have preference provided by this Agreement are identified as follows:
  - a) Programs directly provided by either Party or affiliated with District. District has responsibility for designating affiliates through District's established process.

- b) Programs that are directly a function of their governing body (e.g. Board meetings, PTO events, and District advisory committees).
  - c) Outside programs not directly funded and operated by District are not included considered affiliated with the District and do not receive priority over City programs. Outside programs may include, but are not limited to, the YMCA, private users, and local sports groups not affiliated with District.
  - d) District affiliates have priority use for athletic facilities only. District affiliates do not have access under this Agreement for administrative functions including, but not limited to, board meetings, award events, uniform and equipment distribution, and similar activities. District affiliates may request use of City facilities for these activities through the City facility use process.
5. The using Party agrees to:
- a) Ensure building security during and after scheduled use. Provide proper first aid care to participants for whom they are responsible. Notify owning Party with an incident report within three (3) working days of incident.
  - b) Ensure clean up and disposal of refuse by using Party to a standard reasonably acceptable to the owning Party. The Parties shall coordinate with one another when large events are scheduled to review clean up and disposal concerns. If additional custodial and/or dumpster services are determined to be necessary after prior consultation, the owning Party may bill the using Party for those services.
  - c) Comply with all laws, ordinances, rules, and regulations of any public authority, as now or hereafter enacted or amended, as they relate to or affect the Property or the use thereof.
  - d) **Each owning Party provides each Property to the using Party 'AS-IS' with all defects and with no representations or warranties whatsoever, including suitability for a particular purpose.** The using Party shall have access to and be responsible for inspecting the Property and determining whether it is suitable for the using Party's intended use. Except as expressly provided, nothing in this Agreement is intended to waive or limit any immunity or defense of an owning Party, including but not limited to immunity pursuant to ORS 105.682, as amended to the extent available to the owning Party.
  - e) The using Party shall maintain during the term of the Agreement (with a carrier acceptable to the owning Party) commercial General Liability Insurance for the protection of the owning Party (directors, officers, employees, agents and volunteers) insuring owning Party for damages because of personal injury, bodily injury, death or damage to Property, including the loss of use thereof, and occurring on or in any way related to activities on the Property or any condition of the Property with limits (equal to the owning Party's coverage, by) not less than \$2,500,000 combined single limit per occurrence annual aggregate, or not less than the limits of public body liability set forth in the Oregon Tort Claims Act (ORS 30.260 to 30.300) or other applicable law, whichever

is greater. Such insurance shall name both the using and owning Parties as insured and the using Party shall provide copies of the endorsement(s) to the owning Party. The insured party shall provide the additional insured party thirty (30) calendar day written prior notice of cancellation. Using Party agrees to furnish, in compliance with the above, evidence of self-insurance or insurance to the owning Party within sixty (60) calendar days of this Agreement.

6. Furthermore, the owning Party agrees to keep the using Party informed of any planned construction or maintenance of its facilities that will adversely affect the using Party's ability to schedule regular use of said facility.

7. This Agreement applies to the following locations:

Scheduling Expectations	Athletic Fields - Grass	Athletic Fields – Turf
Gymnasiums	Swimming Pools	Tennis Courts
Track and Cross Country	Miscellaneous Services	
Information Distribution	City Parent Reunification Plan	

Titles may be edited, added, or deleted from time to time to respond to issues that arise during the course of the year. Such modifications shall be discussed cooperatively and be adopted by mutual consent of the District General Manager or designee and the City Superintendent or designee.

8. Failure of the using Party to follow the terms or conditions or fulfill any obligations of this Agreement constitutes a default of this Agreement. The Party will verbally notify those in charge of said facility and provide written notice to the other Party of those defaults. The Party will have thirty (30) calendar days to remedy the default. During the said thirty (30) day period, the City liaison to District and the District Superintendent of Sports will cooperate to remedy the situation. If the default cannot be remedied at that time, the Superintendent of City, or their designee, and the General Manager of District, or their designee, will review the default to reach a compromise. If the violation is not remedied within a 30-day period after written notice, the Party may be deemed to have lost its use of the other Party's Property(ies) facility(ies). If the Party proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable, then the thirty (30) day limit may be extended by the other Party. A third party mediator (as appointed by the presiding judge of the Columbia County Circuit Court) will first attempt to remedy the decision before the Agreement will be terminated. Notwithstanding the foregoing, the owning party may immediately suspend use of a Property if immediate action is necessary to protect the health or safety of persons using the Property. The parties shall cooperate to remedy the situation promptly to the extent practicable. In no event shall either Party be liable to the other for damages, except as provided for indemnification.

9. If a condemning authority takes any parcel of the Property or a portion sufficient to render the remainder reasonably unsuitable for the use to which the using Party was then making of such parcel, this Agreement shall terminate with respect to such parcels as of the date title vests in the condemning authority. The owning Party shall be entitled to all the proceeds of the condemnation resulting from a taking of any parcel of the property or any portion thereof, but shall reimburse the using Party for that portion of the award attributable to improvements

placed upon the ground by the using Party, less depreciation costs. Sale of all or part of any parcel of the Property to purchaser with the owner of eminent domain in the face of a threat or probability of the exercise of the power shall be treated for the purposes of this section as a taking by condemnation.

10. If suit, action, or arbitration is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the court may adjudge reasonable as attorney fees.
11. The Parties will work cooperatively in coordinating programs and activities conducted on the properties so as to avoid conflicting or competing uses. Coordination meetings between the Parties' staff shall occur no less than once a month. The Parties may exchange days and times of use on a mutually agreed upon basis to accommodate the needs of the respective parties. Any change will be reviewed and acted upon by each Party's designated representative. The Parties will communicate with their boards, committees, and their patrons they serve about the implications of this Agreement in regards to their own facilities.
12. While using facilities, each Party agrees to repair or reimburse for repair, damage to the Property at the option of the owning Party, as to except ordinary wear and tear. Each Party is responsible for reporting any damage immediately (next business day) to the other party's facility staff.
13. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, City will indemnify District, its officers, officials, employees, agents, and insurers (collectively District) against any and all liability for personal injury or damage to life or property arising out of or related to the use of the District Property by City including but not limited to program participants, under this Agreement provided, however, that City will not be required to indemnify District for any such liability arising out of the negligent or wrongful acts of District, its officers, employees, or agents.
14. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, District will indemnify City, its officers, officials, employees, and agents against any and all liability for personal injury or damage to life or property arising out of or related to the use of City Property by District, including but not limited to program participants, under this Agreement provided, however, that District will not be required to indemnify City for any such liability arising out of the negligent or wrongful acts of City, its officers, employees, or agents.
15. This Agreement may be terminated by either Party and may be amended or otherwise modified only by a written instrument executed by both Parties referring to this Agreement specifically and declaring it amended, or otherwise modified. This agreement may be terminated by either Party by providing at least 180 days' written notice of termination to the other Party. This Agreement expires by its own terms and without further action of either City or District on December 31, 2025 unless the governing bodies of both City and District (or their assigns or successors-in-interest) extend, amend, or modify the terms of this Agreement before that time in writing. If the agreement is terminated, all events scheduled with either Party at the time of termination will be preserved and allowed to take place as scheduled. It is the expectation that both Parties will review the Agreement annually to determine if the Agreement is working as

intended. Identified amendments and modifications to this Agreement will be reviewed collaboratively and be acted upon by the governing bodies by July 1 of each year.

16. City and District shall in good faith cooperate with each other in connection with their respective rights and obligations of this Agreement, including but not limited to, performing any acts and executing any further documents that may be reasonably necessary to effectuate the purposes of or rights conferred under this Agreement.
17. Any notice required or permitted under this Agreement shall be given when actually delivered or when deposited in the United States mail as certified mail addressed as follows:  

To City:           City of St. Helens  
                      265 Strand Street  
                      St. Helens, OR 97051

To District:       St. Helens School District  
                      474 North 16th Street  
                      St. Helens, OR 97051
18. This Agreement shall be construed in accordance with and governed by the laws of the State of Oregon. If any provision of this Agreement or application thereof to any person or circumstances shall to any extent be deemed invalid, the remainder of this Agreement shall not be affected and each provision of this Agreement shall be valid and enforced to the fullest extent by law.
19. This Agreement may be executed and acknowledged in counterpart originals and all such counterparts shall constitute one (1) Agreement. Signature pages may be detached from the counterpart originals and attached to a single copy of this Agreement to physically form one (1) document.

THIS INTERGOVERNMENTAL AGREEMENT is entered into by the City of St. Helens pursuant to approval of its City Council on May 17, 2023, and by St. Helens School District pursuant to resolution of its School Board adopted \_\_\_\_\_.

\_\_\_\_\_  
Superintendent  
St. Helens School District

Date \_\_\_\_\_

\_\_\_\_\_  
Mayor  
City of St. Helens

Date \_\_\_\_\_