

**INTERLOCAL AGREEMENT
BETWEEN
BOARD OF EDUCATION OF WEBER SCHOOL DISTRICT
AND
WEST HAVEN CITY
For the
USE AND MAINTENANCE OF NEW AUXILIARY JR. HIGH GYMNASIUM**

This INTERLOCAL COOPERATION AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2022 by and between the Board of Education of Weber School District ("District"), a political subdivision of the State of Utah, and West Haven City ("City"), a municipal corporation under the laws of the State of Utah.

RECITALS

WHEREAS, the parties are "public agencies" and are therefore authorized by the Utah Interlocal Cooperation Act, Section 11-13-101, et seq., Utah Code Annotated, to contract with each other for joint and cooperative action which will enable them to make the most efficient use of their powers on a basis of mutual advantage; and

WHEREAS, the District has obtained financing to build a new junior high school ("School") located at 2100 South 2700 West in West Haven City; and

WHEREAS, the City would like access to the School's gymnasium for City's recreation programs and other City events when District is not using it; and

WHEREAS, the City would also like a larger gymnasium than District would normally build in the School; and

WHEREAS, the City is willing to pay the extra construction, architect and engineering costs of the expanded Gymnasium and for its share of added maintenance, utilities and other operation costs in exchange for the right to access the gymnasium and outdoor playing fields for its programs; and

WHEREAS, the parties desire to set forth their respective rights and duties for the use and maintenance of the Gym,

NOW, THEREFORE, in consideration of the terms, conditions, mutual covenants and the payments herein mentioned to be performed and paid, the parties agree as follows:

1. **Gymnasium**: The use of "Gymnasium" for purposes of this agreement is shown in Exhibit A, and not include City access to or use of locker rooms. The City may use storage accessible on the exterior of the Gymnasium as well as storage inside the Gymnasium as marked on Exhibit A.
2. **Incorporation of Recitals**: The parties incorporate by reference the above recitals as part of this Agreement.
3. **Construction Payment by City**: City will pay to District sum of \$3,189,111.00 to cover the increased costs of construction, architectural and engineering fees related to the expanded

Gymnasium. The City shall pay to the District the total cost of the Gymnasium no later than May 1, 2024.

4. Transfer to City: In exchange for and at the time of the payment described in paragraph 3 above, District will transfer a 5% interest in the land and improvements of the School. This transfer shall be by special warranty deed.
5. Construction of the School: The District shall be responsible for entering into and administering all contracts related to the construction of the School. City shall have access to plans, drawings and other documents related to the construction of the Gymnasium. The City Manager shall be the designated person with whom the District shall confer with regard to construction issues related to the Gymnasium.
6. Management of Operation of the School: The District shall be solely responsible for the management and operation of the School including the Gymnasium except as provided in this Agreement.
7. Scheduling the Gymnasium and Playing Fields: The District shall have exclusive access to the Gymnasium and playing fields during regular school hours. The District shall have priority in scheduling the Gymnasium until 5:30 p.m. on Monday thru Friday. The City shall have priority in scheduling the Gymnasium after 5:30 p.m. on Monday thru Friday and all-day Saturday and Sunday. The City shall have priority in scheduling the Gymnasium during the summer months when school is not in session, with the exception of the time period that the District is providing maintenance to the Gymnasium. Scheduling of the playing fields will be as mutually agreed by the parties with the District having priority for its extracurricular and inter school competitive events. Annually the District and City will meet to schedule the dates and times the Gymnasium and playing fields will be used by each party. District events not anticipated during this annual meeting may be considered by providing thirty (30) days' notice to the City. There shall be no charge for the City's use except as provided in this Agreement. If there are times that the Gymnasium is not scheduled for City use, the District may rent out the Gymnasium pursuant to the District's rental policy. All rental income shall belong to the District. Each party shall follow the District's rules for appropriate attire, foot wear and equipment in their use of the Gymnasium and playing fields.
8. Supervision of Activities: Each party is responsible for providing adequate security and supervision for its activities in the Gymnasium.
9. Security and Access: The District will provide necessary keys/cards and other information to the City to accommodate the City's access to the Gymnasium. The City agrees that the keys/cards and other information will not be released to any third party. If an unauthorized release or disclosure of the keys or information is made by the City, the City agrees to notify the District immediately and to reimburse the District for all expenses related to changing any keys/cards, codes or other information.
10. Maintenance: The District will be responsible for the maintenance of the school including the Gymnasium. The City agrees to reimburse the District for the proportional costs of maintenance of the Gymnasium, including scheduled refinishing of floor surfaces to the extent those costs exceed what the District would normally spend on one of its other junior high gymnasiums. The District and the City will be jointly responsible for roof repair and HVAC systems that relate to the expanded Gymnasium.

11. Operating Expenses: The City shall reimburse the District for the additional costs of lighting, utilities, custodial services, equipment and other operating expenses related to the City's use of the Gymnasium. These costs will be billed by the District to the City annually and paid within sixty (60) days. The City shall have the right upon reasonable notice to audit the District's costs related to the Gymnasium.
12. Damage: Each party shall be responsible for damage that occurs to the interior of the Gymnasium during the time that they are in possession of the Gymnasium. If it cannot be determined which party was in possession of the Gymnasium at the time the interior damage occurred, the cost of repairs for damage will be shared equally. Each party will provide adequate supervision to prevent damage, to the extent reasonably possible. The District shall be responsible for any damage to the exterior of the school including the exterior of the Gymnasium regardless of when it occurs.
13. Governmental Immunity. Both parties are governmental entities under the "Utah Governmental Immunity Act." Title 63G, Chapter 7, Utah Code Annotated. Consistent with this Act, it is mutually agreed that each party is responsible and liable for its own wrongful or negligent acts which it commits or which may be committed by its agents, officials, or employees. Both parties maintain all privileges, immunities, and other rights granted by the Act and all other applicable law and neither party waives any defenses or limits of liability otherwise available under the Governmental Immunity Act or other applicable law.
14. Alterations and Improvement: Either party may suggest that alterations, additions and improvements to the Gymnasium may be made at the party's own expense provided written consent is obtained from the other party. If alterations or additions are to be made, they shall be made by or under the direction of the District, regardless of which party is paying for the alterations. Neither party shall make any alterations that will eliminate or in any way interfere with the use of the Gymnasium by the other party. The party initiating any improvements will be responsible for the payment of those improvements in their entirety unless a separate agreement is entered into between the parties.
15. Liability and Indemnification. Each party shall be responsible for its own activities. Each party agrees to maintain appropriate insurance during their ownership of the School. Each party shall arrange to have the other named as an additional named insured under all relevant policies. The parties further agree to indemnify each other against any and all expenses, liabilities and claims of every kind, including attorney's fees, that result from a party's use of the Gymnasium.
16. Default: In the event of a default by either party, the party shall have thirty (30) days to cure that default upon receiving written notice from the other party. The parties agree to negotiate in good faith to resolve any and all conflicts. This agreement shall not be terminated for default unless it can be shown that the defaulting party acted in bad faith, or with malice, in causing the default.
17. Notice: Any notices to the respective parties shall be as follows:

For the City: West Haven City Manager
 4150 South 3900 West
 West Haven, UT 84401

For the District: Superintendent of Schools
Weber School District
5320 South Adams Avenue Parkway
Ogden, UT 84403

18. Dispute Resolution: If a dispute arises under this Agreement that cannot be resolved by good faith negotiations, the parties shall first have a meeting between the City Manager and the District Superintendent. If they cannot resolve the dispute the matter shall be submitted to non-binding mediation. The mediator shall be mutually agreed to by the Parties. If the Parties cannot agree on a mediator, they shall petition the presiding judge of the Second District Court for the State of Utah to select a mediator from a list of names submitted by the parties. If the dispute is not resolved in mediation, it shall be submitted to binding arbitration. Within thirty (30) days of either party serving a written demand for arbitration to the other party, each party shall nominate an arbitrator. Once selected, the two arbitrators shall within thirty (30) days select a third arbitrator. The arbitration hearing shall commence within sixty (60) days of the selection of the third arbitrator.
19. Modification in Writing: The parties anticipate that there may be amendments and modifications to this Agreement. However, any such modifications or amendments shall be binding only if it is in writing, signed by both Parties and approved by the Board of Education of Weber School District and by the West Haven City Council.
20. Interlocal Cooperation Act Requirements: The parties shall comply with the following requirements:
 - a. This Agreement shall be authorized by resolution of the governing body of each party pursuant to Section 11-13-202.5 of the Interlocal Cooperation Act, Utah Code Title 11, Chapter 13, as amended (the "Act");
 - b. This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each party, pursuant to Section 11-13-202.5 of the Act;
 - c. A duly executed original counterpart of this Agreement shall be filed with keeper of records of each party, pursuant to Section 11-13-209 of the Act;
 - d. Except as otherwise specifically provided herein, each party shall be responsible for its own costs and expenses hereunder, and for any financing of such costs; and
 - e. No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the District Superintendent and the City Manager.
21. Miscellaneous:
 - a. Both parties agree to take such further action and to execute such documents as may be necessary to effectuate the terms of the Agreement.
 - b. No covenant or condition of this Agreement may be waived by either party, unless done so in writing by such party. Forbearance of indulgence by a party in any regard

- b. No covenant or condition of this Agreement may be waived by either party, unless done so in writing by such party. Forbearance of indulgence by a party in any regard whatsoever shall not constitute a waiver of other covenants or conditions to be performed by the other party and shall not be deemed to be a waiver of any rights such party may have with respect to this Agreement.
 - c. This Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance. It shall be enforced only in the State district courts located in Weber County, Utah.
 - d. There are no intended third-party beneficiaries to this Agreement. It is expressly understood that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the parties, and nothing contained in the Agreement shall give or allow any claim or right of action by any third person under this Agreement. It is the express intention of the parties that any person other than the party who received benefits under this Agreement shall be deemed an incidental beneficiary only. This Agreement may not be assigned by either party hereto.
 - e. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and no statements, promises, or inducements made by either party or agents of either party that are not contained in this Agreement shall be binding or valid, and this Agreement may not be enlarged, modified or altered except through a written instrument which is signed by both parties. To the extent of any conflict between the provisions of this Agreement and the provisions of any later agreements, the later agreements shall be controlling.
22. Term: Unless amended, revised or otherwise terminated, this agreement shall terminate 50 years from the date it is fully executed by all parties. At the expiration of this Agreement, City shall execute and deliver to District a quit claim deed for its 5% interest in the School.

Dated this _____ day of _____, 20____.

WEST HAVEN CITY

By: _____

Its: _____

ATTEST

By: _____

Approved as to form and legality:

By: _____

West Haven City Attorney

BOARD OF EDUCATION OF WEBER SCHOOL DISTRICT

By: Don S. Tzou
Board President

ATTEST

By: _____
Business Administrator

Approved as to form and legality:

By: _____
Attorney for Board of Education

EXHIBIT A

Yellow and blue shaded areas represent District space accessible to City.

