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## **INTERGOVERNMENTAL AGREEMENT WITH TUALATIN HILLS PARK AND RECREATION DISTRICT**

### **POLICY ISSUE / SITUATION:**

School Board will be requested to authorize the Superintendent to enter into a new Intergovernmental Agreement (IGA) with Tualatin Hills Park and Recreation District allowing shared use of the two Districts' property at a future date.

### **BACKGROUND INFORMATION:**

The Beaverton School District (BSD) and Tualatin Hills Park and Recreation District (THPRD) have worked cooperatively to share facilities for many years. THPRD has used BSD properties to host THPRD programs and affiliate sports programs. BSD has used THPRD properties for various sporting events. Core principles of this relationship are to serve the community efficiently with publicly owned and maintained facilities, provide recreational opportunities for our community's children, and to share costs of providing facilities and programming equitably. The current IGA was adopted in 2004 and much has changed in services and programs since that time. As a result, the IGA needs to be revised and updated to reflect current needs.

BSD and THPRD staff have been negotiating a new IGA for approximately one year. The core principles of the IGA remain the same. However, the approach for managing our relationship will change. The 2004 IGA contains specific language on how facilities will, among other things, be shared, maintained, and monitored. Any deviation from the terms of the 2004 IGA would require an amendment to the IGA. The 2017 IGA proposes to simplify the agreement between the districts by separating the policy level text from the administrative or implementing text. In many ways, the proposed IGA is akin to the School District's Policies and Administrative Rules.

### **RECOMMENDATION:**

It is recommended that the School Board review and discuss the attached draft IGA with staff. Staff intend to return to the Board at a future meeting requesting Board authorization for the Superintendent or designee to execute the IGA with THPRD.

**District Goal:** WE empower all students to achieve post-high school success.

The Beaverton School District recognizes the diversity and worth of all individuals and groups. It is the policy of the Beaverton School District that there will be no discrimination or harassment of individuals or groups based on race, color, religion, gender, sexual orientation, gender identity, gender expression, national origin, marital status, age, veterans' status, genetic information or disability in any educational programs, activities or employment.

**INTERGOVERNMENTAL AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 by and between the Beaverton School District No. 48J, Washington County, Oregon, a quasi-municipal corporation of the State of Oregon, acting by and through its duly constituted officers, hereafter designated as “BSD,” and the Tualatin Hills Park & Recreation District, a quasi-municipal corporation of the State of Oregon, acting by and through its duly constituted officers, hereafter designated as “THPRD.”

WHEREAS, BSD and THPRD are the owners of real property in Washington County, Oregon, hereinafter termed the “Property”, and

WHEREAS, BSD and THPRD have heretofore entered into Agreements for more than fifty (50) years and have worked cooperatively in coordinating programs and sharing athletic and recreational facilities, and

WHEREAS, the parties desire to consolidate their Agreements with respect to the Property and provide for future uses of other real property owned by each District, and

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

WITNESSETH

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

1. The District using the Property of the other shall use the respective parcels of the Property for the purposes set forth in Implementing Procedures (IP) 1 through XXX for the term commencing on the date of this agreement. This agreement may be terminated by either District by providing at least 180 days written notice of termination to the other District. This agreement may be amended from time to time by the Districts. Such amendments shall be in writing executed by both districts. Unless both Districts agree otherwise, the Districts agree to meet at least annually to review the Agreement and implementing procedures and propose any amendments.
2. Both Districts agree that a principal objective of this Agreement is for both Districts to reasonably share in the cost of providing access and service to both Districts’ facilities. The general agreement is that THPRD will provide playing field maintenance of certain BSD facilities in exchange for primary access for THPRD programming of BSD facilities when not in use by BSD sponsored

programs. BSD is also granted access to certain THPRD facilities. This exchange of service and access is expected to demonstrate equal costs.

IP X outlines the expectations for services including, but not limited to, facility maintenance, custodial service, facility monitoring, and other program costs. The District utilizing the property of the other District agrees to pay within 30 days of invoice receipt all required fees which may include, facility rental, utilities, custodial, and monitors as described in IP X.

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 two districts.

3. Each District shall comply with the rules and regulations of the other District governing use of the facilities. THPRD's Park Patrol services are granted authority to enforce THPRD's facility use permits and regulations on BSD property when a THPRD program or affiliate are on BSD property.
4. The Districts agree to provide priority use to each other for scheduled, approved programs (see IP 1). Except as scheduled, programs that have preference over this Agreement are identified as follows:
  - a) Programs directly provided by either District or affiliated with THPRD. THPRD has responsibility for designating affiliates through THPRD's established process.
  - b) Programs that are directly a function of their governing body (e.g. Board meetings, PTO events, and THPRD advisory committees).
  - c) Outside programs not directly funded and operated by BSD are not included in this section and do not receive priority over THPRD programs. Outside programs may include, but are not limited to, the YMCA, private users, and local sports groups not affiliated with THPRD.
  - d) THPRD affiliates have priority use for athletic facilities only. THPRD 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. THPRD affiliates may request use of BSD facilities for these activities through the BSD facility use process.
5. The using District agrees to:
  - a) Use the Property for the purposes and in the manner specified in IP 1 through XXX and physically maintain all improvements heretofore or

hereafter constructed by the using District on the property to a standard reasonably acceptable to the owning District. Such improvements must be proposed to and approved by the owning District prior to taking any public action on such improvements.

- b) Ensure building security during and after scheduled use. Provide proper first aid care to participants for whom they are responsible. Notify owning District with an incident report within three (3) working days of incident.
  - c) Ensure clean up and disposal of refuse by using District on the property to a standard reasonably acceptable to the owning District. The Districts 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 District may bill the using District for those services.
  - d) Comply with the scheduling expectations outlined in IP 1.
  - e) 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.
  - f) Indemnify and defend the owning District from any claim, loss or liability arising out of or related to any activity of the District using the Property.
  - g) The using District shall maintain during the term of the Agreement (with a carrier acceptable to the owning District) commercial General Liability Insurance for the protection of the owning District (directors, officers, employees, and volunteers) insuring owning District 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 District's coverage, by) not less than \$1,000,000 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 provide that the owning District shall be given thirty (30) calendar day written prior notice of cancellation. Using District agrees to furnish, in compliance with the above, evidence of self-insurance or insurance to the owning District within sixty (60) calendar days of this Agreement.
6. The owning District agrees to comply with the scheduling expectations outlined in IP 1.
7. In the event of conflicting requirements between this Agreement and the implementing procedures to this Agreement, the requirements contained in the

implementing procedures shall take priority due to the specific nature of the facility use within the implementing procedures.

8. Implementing procedures for this Agreement include the following titles:

- Scheduling Expectations    Athletic Fields - Grass    Athletic Fields - Turf
- Gymnasiums    Swimming Pools    Tennis Courts
- Track and Cross Country    Miscellaneous Services    Information Distribution
- Turf Field Legal Specifications    BSD 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 to the implementing procedures shall be discussed cooperatively and be adopted by mutual consent of the THPRD General Manager or designee and the BSD Superintendent or designee.

9. Failure of the using District to follow the terms or conditions or fulfill any obligations of this Agreement including implementing procedures may constitute a default of this Agreement. The owning District will verbally notify those in charge of said facility and provide written notice to the using District of those violations. The using District will have thirty (30) calendar days to remedy the violation. During the said thirty (30) day period, the BSD liaison to THPRD and the Park District Superintendent of Sports and Recreation will cooperate to remedy the situation. If the violation cannot be remedied at that time, the Superintendent of BSD, or their designee, and the General Manager of THPRD, or their designee, will review the violation in order to reach a compromise. If the violation is not remedied within a 30-day period after written notice from the owning District, the using District may be deemed to have lost their use of said facility(ies). If the using District 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 owning District. A third-party mediator (as appointed by the presiding judge of the Washington County Circuit Court) will first attempt to remedy the decision before the Agreement will be terminated.

10. If 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 District 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 District 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 District for that portion of the award attributable to improvements placed upon the ground by the using District, 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 purposed of this section as a taking by condemnation.

11. 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.
12. The Districts will work cooperatively in coordinating programs and activities conducted on the properties so as to avoid conflicting or competing uses. Coordination meetings between District staff shall occur no less than once a month. The Districts 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 District's designated representative. The Districts will communicate with their boards, committees, and their patrons they serve about the implications of this Agreement in regards to their own facilities.
13. While using facilities, each District agrees to repair or reimburse for repair, at the option of the owning District, as to except ordinary wear and tear. Each District is responsible for reporting any damage immediately (next business day) to facility staff.
14. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, BSD will indemnify THPRD, its officers, officials, employees, agents, and insurers (collectively THPRD) against any and all liability for personal injury or damage to life or property arising out of or related to the use of the THPRD improvements by BSD, its officers, employees, or agents, under this Agreement provided, however, that BSD will not be required to indemnify THPRD for any such liability arising out of the wrongful acts of THPRD, its officers, employees, or agents or affiliates.
15. Subject to the limitations of the Oregon Constitution and the Oregon Tort Claims Act, THPRD will indemnify BSD, 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 the THPRD or BSD improvements by THPRD, its officers, employees, or agents, under this Agreement provided, however, that THPRD will not be required to indemnify BSD for any such liability arising out of the wrongful acts of BSD, its officers, employees, or agents.
16. This Agreement may be terminated, amended or otherwise modified only by a written instrument executed by both Districts referring to this Agreement specifically and declaring it terminated, amended, or otherwise modified. This Agreement expires by its own terms and without further action of wither BSD or THPRD on December 31, 2042 unless the governing bodies of both BSD and THPRD (or their assigns or successors-in-interest) extend, amend, or modify the terms of this Agreement before that time. It is the expectation that both Districts 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.



- 17. BSD and THPRD 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.
- 18. 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 BSD: Beaverton School District #48  
Facilities Department  
16550 SW Merlo Road  
Beaverton, OR 97006-5152
  - To THPRD: Tualatin Hills Park & Recreation District  
15707 SW Walker Road  
Beaverton, OR 97006
- 19. The owning District agrees to have all construction, reconstruction, alteration, or installation contracts be written to include indemnity and insurance requirements in favor of both owning District and using District during times when one District is using the other District's facility(ies). Evidence of insurance will be furnished to the using District prior to their use of the facility(ies).
- 20. 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 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.
- 21. 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 Beaverton School District pursuant to resolution of its School Board adopted \_\_\_\_\_, and by Tualatin Hills Park & Recreation District pursuant to resolution of its Park District Board adopted \_\_\_\_\_.

Signature Block - BSD Superintendent & THPRD General Manager