

**INTERGOVERNMENTAL AGREEMENT**  
**between**  
**CITY OF PORTLAND**  
**and**  
**SCHOOL DISTRICT NO. 1J, MULTNOMAH COUNTY, OREGON**  
**(PORTLAND PUBLIC SCHOOLS)**

This Intergovernmental Agreement ("Agreement") is between the City of Portland, a municipal corporation ("City"), and School District No. 1J, Multnomah County, Oregon, a special government body ("Portland Public Schools" or "District"), pursuant to authority in ORS Chapter 190.

**RECITALS**

- A. City and District recognize that providing access to suitable athletic fields for East Portland residents is a valuable component of overall neighborhood livability.
- B. District's Board of Education recognized the need for all District high schools to have their athletic fields upgraded to synthetic turf so that students and the surrounding communities could benefit from using the fields at their home school sites throughout the year.
- C. District has been plagued with inadequate playable athletic fields during the rainy seasons.
- D. In an effort to assist District with its 10 Great Athletic Fields initiative, the City Council has set aside \$200,000 in Special Appropriations to benefit District in meeting this goal for its Franklin High School and Madison High School ("Schools") athletic fields.
- E. Children should have access to athletics and other activities regardless of their family's ability to pay to ensure and promote health and wellness for youth.

In consideration of the promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

**1. RECITALS**

The Recitals above are true and are incorporated into and are a part of this Agreement.

## **2. TERM**

This Agreement becomes effective on the day it is signed by the authorized representatives of both parties. Unless earlier terminated as provided below, this Agreement continues through June 30, 2013.

## **3. CITY FUNDING**

Within 30 days of this Agreement's execution, City shall disburse \$200,000 to District for athletic field improvements at the Schools. No invoice is required to make this payment.

## **4. DISTRICT FUNDING**

District agrees to apply City- disbursed funds exclusively to improve athletic field facilities at the Schools by installing synthetic turf. Before June 30, 2013, District shall provide to City written notice confirming the work has been performed as agreed to under this Agreement.

If for any reason District does not spend all disbursed funds as required by this Agreement, District shall immediately refund to the City those unspent funds.

## **5. INDEMNITY**

Subject to the limitations of the Oregon Constitution (Article XI, Section 7) and the Oregon Tort Claims Act (ORS 30.260 through 30.300), District shall hold harmless, indemnify, and defend the City and the City's officers, agents, and employees against and from any claims, demands, actions, and suits (including, attorney fees and costs) to which City or its officers, agents, and employees may be subject relating to any wrongdoing, misconduct, wont of care, skill, negligence, or default by District in the performance of its duties under this Agreement.

## **6. LIABILITY INSURANCE**

1. District shall maintain public liability and property damage insurance that protects District and City, and its officers, agents, and employees from any and all claims, demands, actions, and suits for damage to property or personal injury, including death, arising from District's, its employees or agents work under this Agreement. The insurance shall provide coverage for not less than \$1,000,000 per occurrence. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that it shall not terminate or be

cancelled without 30 days' written notice first being given to the City Auditor. If the insurance is canceled or terminated before completion of the Agreement, District shall provide a new policy with the same terms. District agrees to maintain continuous, uninterrupted coverage for the duration of this Agreement. The insurance shall include coverage for any damages or injuries arising out of the use of automobiles or other motor vehicles by District.

2. District shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required under this subsection. The adequacy of the insurance shall be subject to the approval of the City Attorney. City may immediately terminate this Agreement if District fails to maintain this liability insurance. In lieu of filing the certificate of insurance required herein, the District may furnish a declaration that it is self-insured for public liability and property damage for a minimum of the amounts set forth in ORS 30.270.

## 7. NOTICES

All notices required under this Agreement shall be deemed to be properly served if sent by certified mail, return receipt requested, or delivered by hand to the last address previously furnished by the parties hereto.

Until hereafter changed by the parties by notice in writing, notices shall be sent as follows:

To the City at:	City of Portland Office of Commissioner Nick Fish 1221 SW Fourth Avenue Portland, OR 97204 Attn: Jim Blackwood
To District at:	Randy Miller – Director of FAM Project Management Portland Public Schools P.O. Box 3107  Portland, OR 97208-3107

The date of service of such notice by mail is agreed to be three calendar days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail, or if delivered by hand, then the actual date of hand delivery. Notice may also be given by facsimile. The burden of proof concerning receipt of the facsimile will be on the sender who may satisfy the burden by presenting a receipt of the transmission showing the date the transmission successfully occurred, or the facsimile number that the transmission was sent to, or the name of the party to whom the facsimile was sent, and a description of the document sent.

## **8. SUBCONTRACTS; ASSIGNMENTS**

Neither party shall subcontract or assign any part of this Contract without the written consent of the other party. Any contractor or subcontractor used to improve the athletic fields at the Schools will be required to comply with all terms of this agreement, including providing the indemnification and insurance specified in Sections 5 and 6.

## **9. RECORDS MAINTENANCE; ACCESS TO RECORDS**

Both parties shall retain and keep accessible all financial records, books, documents, papers, plans, records of shipments and payments and writings (collectively, "Documents") for a minimum of six years, or any longer period that may be required by applicable law, following final payment and termination of this Agreement, or until the conclusion of any audit, controversy or litigation arising out of or related to this Agreement, whichever date is later. Each party shall have access to the Documents whether in paper, electronic, or other form of the other party, which are related to this Agreement for the purpose of examination, copying, and audit, unless otherwise limited by law.

## **10. COMPLIANCE WITH APPLICABLE LAW**

Each party shall comply with all federal, state, and local laws applicable to public contracts, licensures, business registrations, and to the work done under this Agreement, and all regulations and administrative rules established pursuant to those laws.

## **11. AMENDMENTS; RENEWAL**

Any amendments, consents to, or waivers of the provisions of this Agreement shall be in writing and signed by both parties. The parties may renew this Agreement by their signed, written instrument.

## **12. WAIVER; SEVERABILITY**

Waiver of any default or breach under this Agreement by either party does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held invalid.

## **13. GOVERNING LAW**

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Oregon. Jurisdiction shall be with Multnomah County Courts or the Federal Court located in Portland, Oregon. The parties agree that Oregon law will govern any dispute under or

related to this Agreement, and any litigation arising out of this Agreement will be conducted in courts located in Multnomah County, Oregon.

#### 14. ENTIRE AGREEMENT

When signed by the authorized representatives of both parties, this Agreement is their final and entire agreement. As their final expression, this Agreement supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives. All oral agreements, if any, are void and expressly waived by the City. There are no representations, promises, terms, conditions, or obligations other than those contained herein. No claim for liability may be asserted based on any claimed breach of any representations or promises not expressly set forth in this Agreement. This Agreement has been negotiated between the parties; therefore, in the event of ambiguity, there shall be no presumption that such ambiguity should be construed against the drafter.

**I HAVE READ THIS AGREEMENT AND CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS AGREEMENT ON BEHALF OF THE PARTY I REPRESENT AND AGREE TO BE BOUND BY ITS TERMS.**

#### THE CITY OF PORTLAND

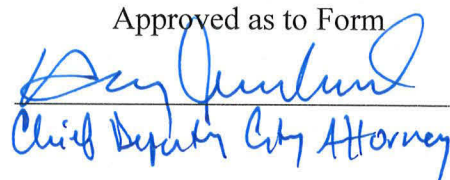
By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

As Its: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form

  
Chief Deputy City Attorney

#### SCHOOL DISTRICT No 1J

By: \_\_\_\_\_

Printed Name: Gregory C. MacCrone, Deputy Clerk

Date: \_\_\_\_\_

Approved as to Form

\_\_\_\_\_