

## INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT made and entered into in duplicate this \_\_\_\_ day of \_\_\_\_\_, 2009 by and between the CITY OF MEDFORD, a municipal corporation of the State of Oregon, hereinafter called "CITY" and PHOENIX-TALENT SCHOOL DISTRICT #4, a school district in Jackson County, Oregon, hereinafter called "DISTRICT".

WHEREAS, CITY and DISTRICT are the owners of real property in Jackson County, Oregon, hereinafter termed the "Property", and

WHEREAS, CITY and DISTRICT have worked cooperatively in developing and maintaining recreational facilities since 1982, and

WHEREAS, CITY and DISTRICT desire to consolidate their Agreements with respect to the Property and provide for future uses of Property owned by each other, and

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

This agreement helps provide outstanding recreational and athletic programs for our respective communities by sharing facilities. This Agreement provides for the mutual interest of both Parties with respect to terms and conditions for use of each other's athletic and recreational facilities.

### LENGTH OF AGREEMENT

This agreement is valid for a period of five (5) years, beginning September 1, 2014, and ending June 30, 2019, unless terminated or amended in writing.

### ORCHARD HILL LEASE AGREEMENT

This agreement hereby extends the Orchard Hill Elementary School lease agreement expiration date to June 30, 2019. All other terms and conditions of the lease agreement remain as stated in the original agreement dated Nov. 22, 1982 and as amended on May 21, 2003.

### WITNESSETH

That each Party hereby grants to the other Party the use of the Property as set for the below and as contained in Exhibits A, B, C and D:

- 1) The Party using the Property of the other shall use the respective parcels of the Property as set forth in Exhibit A for the term commencing on the date of this Agreement.

- 2) This agreement may be terminated by either Party by providing at least 180 days written notice of termination to the other Party, or as a result of an uncured default as set forth in paragraph 8, below.
- 3) This agreement may be amended from time to time by the Parties. Such amendments shall be in writing executed by both Parties.
  - (a) Unless both Parties otherwise agree in writing, a Party shall submit proposed amendments to the other within 30 days before the suggested change is proposed to take place to enable both parties to review and make a final decision on the proposed amendments.
- 4) Each Party shall comply with the facility rules and regulations of the other Party governing use of its facilities. These rules, which may be amended during the life of this agreement, are specified in Exhibit D.
- 5) The Parties agree to provide priority use to each other for scheduled, approved programs. Except as scheduled, programs that have preference over this Intergovernmental Agreement are identified as follows:
  - (a) Programs directly provided by either DISTRICT or affiliated with CITY as specified in Exhibit C;
  - (b) Programs that are directly a function of their governing body (e.g., PTOs, school fundraising groups, Board meetings). Outside programs not directly funded and operated by the DISTRICT are not included in this section and do not receive priority over CITY programs.
- 6) Using Party Agrees to:
  - (a) Use the Property for the purposes and in the manner specified with respect to Exhibit A
  - (b) Physically maintain all improvements heretofore or hereafter constructed by the using Party on the property to a standard reasonably acceptable to Party owning said property. Such improvements must be proposed to and approved by the owning Party.
  - (c) Ensure building security during scheduled use as specified in Exhibit B.
  - (d) Provide written notification to owning Party of all injuries or potential safety hazards during facility use by the using Party. Notify owning Party building management of injuries via fax or e-mail within 24 hours of incident using the owning Party's accident reporting form(s).
  - (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) Using Party agrees to defend, indemnify and hold harmless Owing Party, its officers, agents and employees, from and against any and all liability, including but not limited to claims, damages, demands, expenses, fees, fines, penalties, suits, proceedings, actions and costs of actions, including but not limited to attorneys' fees for trial and on appeal, and for preparation of the same arising out of the Using Party's, its officers', agents', employees', students', and participants'

acts or omissions arising out of or related to the use of Owing Party's facilities.

Provided, however, that Using Party shall not be required to indemnify Owing Party against liability for damages arising out of death or bodily injury to persons or damage to property caused solely by the gross negligence or criminal acts of Owing Party, its officers, agents, employees, students or participants.

7) Each Party shall obtain at its own expense and maintain continuously in effect during the term of this Agreement the following minimum insurance:

(a) Commercial general liability insurance on an "occurrence" policy form covering Bodily Injury and Property Damage and blanket contractual liability. Such insurance shall be primary and non-contributory, and provide limits of at least \$1,000,000 per occurrence and a General Aggregate of at least \$2,000,000. Each Party shall name the other Party, its officers, employees and agents as Additional Insured's by endorsement.

(a) The owning Party agrees to have all construction, reconstruction alteration or installation contracts be written to include indemnity and insurance requirements in favor of both the owning Party and using Party during times when one Party is using the other Party's facility(s). Evidence of insurance will be furnished to the using Party prior to their use of the facility(s).

8) Owing Party agrees to:

(a) Provide response to using Party requests for facility use within five (5) business days of request via phone, fax or e-mail or by other reasonable means of communication.

(b) Inform using Party in a timely manner of any circumstances that may negatively impact the user's event such as (but not limited to) parking lot closures or noise issues related to construction projects.

9) The Parties will communicate with their boards, committees and the patrons they serve about the implications of this Agreement in regard to their own facilities.

10) Failure of using Party to follow the terms or conditions or fulfill any obligation of this Agreement and/or Exhibits A-D may constitute a default of this Agreement.

(a) The owning Party will verbally notify those in charge of said facility and provide written notice to the using Party of those violations. The using Party will have thirty (30) days to remedy the violation. During the said thirty (30) day period, DISTRICT liaison to CITY and the CITY's Recreation Superintendent will cooperate to remedy the situation.

- (b) If the violation is not remedied to the satisfaction of the Owning Party, the Owning Party may declare the Using Party to be in default and immediately terminate the Agreement by sending written notice of such termination to the Using Party by certified mail, return receipt requested. The notice shall be effective 30 days after receipt of the notice of termination.
- (c) Notwithstanding subsection 10(b), either Party may terminate the Agreement for its convenience upon giving the other Party 60 days written notice by certified mail, return receipt requested.

11) 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 using Party was then making of such parcel, this Agreement shall terminate with respect to such parcel as of the date title vests in the condemning authority.

- (a) 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.

12) 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 attorneys fees.

13) Using Party agrees to repair or reimburse for repair, at the option of the owning Party, any damages to Property except ordinary wear and tear. Each Party is responsible for reporting any damage immediately to facility staff.

14) Official notices required or permitted under this Agreement shall be addressed as follows:

To SCHOOL DISTRICT:            Phoenix-Talent School District #4  
   401 W. 4<sup>th</sup> St.  
   Phoenix, OR 97535

To CITY:                                City of Medford  
   Parks and Recreation Department  
   701 N. Columbus Ave.  
   Medford, OR 97501

By \_\_\_\_\_  
Brian Sjothun  
Director

By \_\_\_\_\_  
Teresa Sayre  
Superintendent

## EXHIBIT A

The following are the uses specific to this Agreement.

### U.S. CELLULAR COMMUNITY PARK

The CITY agrees to provide the DISTRICT priority usage of U.S. Cellular Community Park sports fields for high school practices and games. The two Parties agree to the following:

- 1) **Priority Use:** The DISTRICT has priority use of U.S. Cellular Community Park for the following programs:
  - A) **Soccer:** One multi-sport field for practices or games Monday through Friday, 3:30-6 p.m., and on Saturday until 2 p.m. (as needed for games) during the OSAA-sanctioned season. Field assignment is determined by CITY.
  - B) **Annual High School Soccer Jamboree:** Usage of up to five soccer fields for the Phoenix High soccer jamboree each August.
  - C) **Softball:** One field for practices and games Monday through Friday, 3:30-5:45 p.m. during the OSAA-sanctioned season. Field assignment is determined by CITY.
  - D) **Baseball:** One baseball field for practices and games Monday through Friday during the OSAA-sanctioned season. Practice and game start times will be coordinated between DISTRICT athletic department staff and CITY personnel by Feb. 1 of each year.
- 2) **Fall Schedules:** The SCHOOL DISTRICT will provide the CITY fall program schedules no later than August 1.
- 3) **Spring Schedules:** The SCHOOL DISTRICT will provide the CITY spring program schedules no later than Feb. 1.
- 4) **Exclusions:**
  - A) Harry & David Field (unless coordinated through Medford Rogues).
  - B) Concessions and storage buildings.
  - C) Concessions operations and park admission fees are prohibited without prior CITY consent.

### DISTRICT FACILITIES

- 1) **Priority Use:** With the noted exclusions specified below, the DISTRICT agrees to allow the CITY priority use of the following DISTRICT facilities to provide

recreational or educational programs. CITY use is superseded only by DISTRICT programs. The two Parties agree to the following:

- A) **Phoenix High School Athletic Fields:** When not used by DISTRICT programs, the CITY may utilize athletic fields during the school year and as needed when school is not in session. Approved use of fields includes use of restrooms.
  - B) **Phoenix High School Gyms:** When not used by DISTRICT programs, the CITY may utilize gymnasium space during the school year and as needed when school is not in session.
  - C) **Orchard Hill Elementary School:** The DISTRICT agrees to allow the CITY to use gymnasium, classrooms, multi-purpose rooms, cafeterias and restrooms for summer day camp programming.
- 2) **Exclusions:**
- A) Facilities are not available when closed for maintenance, repairs or resurfacing.

### **PROGRAM GUIDE/INFORMATION DISTRIBUTION**

The CITY will be allowed to provide and distribute its monthly program guide and/or other recreation informational materials to each school. Informational materials will be bundled and delivered directly to schools by CITY staff for ease of distribution by DISTRICT staff.

Prior to distribution, all informational materials must be submitted to the DISTRICT by the first week of the month for review and approval. Once approved, distribution may occur as noted above.

## **EXHIBIT B**

### **SUPERVISION**

The CITY and DISTRICT will assure that the people participating in their respective activities follow rules, regulations and expectations of the host entity.

#### A) CITY Supervision:

- 1) The CITY will include in its staffing formula one gym, classroom, program or field supervisor at each DISTRICT facility utilized. The supervisor(s) will be present during the entire time of use.
- 2) The facility supervisor is responsible for locking and unlocking doors, enabling or disabling security systems and monitoring facility security.
- 3) The CITY is responsible for leaving participant areas in the same condition as found upon arrival.
- 4) The CITY will be responsible for supervising the behavior of participants controlling access where necessary and for communicating any facility problems to the appropriate representatives.
- 5) The CITY is responsible for damage that may occur as a result of CITY use.
- 6) CITY staff will have cell phones to facilitate communications.

#### B) DISTRICT Supervision:

- 1) The DISTRICT will include in its staffing formula one supervisor at each of the U.S. Cellular Community Park fields it may utilize. DISTRICT supervisors will be present during the entire time of use.
- 2) The DISTRICT is responsible for leaving fields, team areas and restrooms in the same condition as found upon arrival.
- 3) The DISTRICT will be responsible for supervising the behavior of participants, controlling access where necessary and for communicating any problems to the CITY and DISTRICT representatives.
- 4) The DISTRICT is responsible for damage that may occur as a result of DISTRICT use.
- 5) DISTRICT staff will have cell phones to facilitate communications.

## **EXHIBIT C**

### **CITY-AFFILIATED PROGRAMS**

Youth basketball leagues and clinics

Adult basketball leagues

Youth and adult soccer leagues

Youth and adult flag football

Youth enrichment programs

Ultimate Frisbee

### **DISTRICT-AFFILIATED PROGRAMS**

## EXHIBIT D

### Applicable U.S. Cellular Community Park Operational Policies

#### **3. Prohibited Items**

The following items are prohibited at U.S. Cellular Community Park facilities:

- a. Any item or substance that may damage, stain or permanently alter facilities, structures or playing surfaces
- b. Sunflower seeds
- c. Chewing gum
- d. Coolers and ice chests
- e. Soda cans and glass bottles
- f. Animals and pets (except service animals)
- g. Fireworks
- h. Skateboarding and rollerblading
- i. Balloons
- j. Artificial noisemakers, including (but not limited to) megaphones, air horns, bells, whistles, clickers or other items as determined by Parks and Recreation staff
- k. Tobacco products of any kind except in the northeast corner of the softball/baseball complex

#### **7. Code of Conduct**

For the safety and health of participants, spectators and visitors, unsportsmanlike conduct will not be tolerated and may result in disciplinary action or ejection from the facility. City of Medford employees have the right to ask anyone to leave the park if behavior, language or clothing is deemed unacceptable. Inappropriate behavior includes:

- a. Physically or verbally threatening the well-being of an umpire, competitor, spectator or City of Medford employee
- b. Fighting and/or aggressive behavior
- c. Addressing an umpire, competitor, spectator or City of Medford employee in a disrespectful manner
- d. Use of vulgar language
- e. Endangering actions (e.g. throwing bats or other equipment)
- f. Inappropriate gestures
- g. Intoxication
- h. Vandalism

#### **9. Concessions**

Aloha Grill is the sole authorized operator of USCCP concession stands. Additional food and beverage sales are prohibited without express written consent of the Recreation Superintendent.

#### **10. Award/Souvenir Content Stipulations**

The City of Medford reserves the right to require the U.S. Cellular Community Park logo to be placed on clothing or other items distributed by softball/baseball complex renters.

Image color, quality, design and content must be approved prior to production by the Recreation Superintendent in order to ensure items meet specifications required by the Parks and Recreation Department.

### **11. Equipment/Souvenir Sales and Vending Permits**

All vending and commercial sales require pre-approval from the Recreation Superintendent. If approved, a vending permit requires a City of Medford business license.

The City of Medford will retain 15 percent of the gross revenue of any vending operations unless other arrangements are negotiated. Fees may be waived if the renter is affiliated with a non-profit or school organization.

### **12. Accident Reporting**

In the event of an accident or injury, the Tournament or League Director is required to fill out an Accident Report Form and submit it to the City of Medford Parks and Recreation Department as soon as possible.

### **13. Public Admission Charge**

Proposed gate fees must be approved by the Recreation Superintendent.

### **17. Banners and Signs**

Any signage intended to be affixed to fencing, structures or staked in the ground must be pre-approved by the Recreation Superintendent. Signs with inappropriate content are subject to removal at the discretion of the Facility Supervisor.

Signs may not block the view of the public, cause a distraction or obscure any facility sponsor signage. All signs must be taken down upon conclusion of the rental.

### **19. Alcohol**

Alcohol is prohibited at any City of Medford park or facility.

### **20. Parking**

Parking is allowed in designated parking areas only. Overnight parking is prohibited.

### **21. Amplification**

Amplification systems are prohibited.

### **22. Temporary Structures**

Tents, canopies or other temporary structures are permitted in designated areas only. These areas may vary based on the type of event or activity. Check with the Facility Supervisor for specifics prior to setting up these structures.

### **23. Footwear/Metal Spikes**

Metal spikes are expressly prohibited.