JOINT USE INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is entered into pursuant to ORS Chapter 190 (intergovernmental cooperation), by and between Tigard-Tualatin School District No. 23J ("District"), an Oregon school district, and the City of Tigard ("City"), a municipal corporation of the State of Oregon, (collectively, the "Parties") for the purpose of providing for joint use of various District-owned facilities.

RECITALS

A. The District owns real properties presently developed as school sites. Such schools typically include play field areas that are either underutilized outside of school hours or are not developed to a level that could be used for public parks or athletic field use.

B. The City operates a full service municipal Public Works Department that owns, improves, maintains, and operates the City's public parks and athletic fields.

C. The City and District desire to partner and combine resources to best utilize existing District and City recreational properties. The goal of this partnership is to maximize the development and public usage of such facilities in the most efficient and cost effective manner.

D. The District properties subject to this Agreement ("Properties") are identified in Appendix A.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the Parties hereby agree as follows:

ARTICLE 1
General Provisions

1.1 Grant of Joint Use. The District hereby grants to the City the right to develop, manage, and utilize Properties as described in Appendix A in return for the City's assumption of responsibilities for the Properties as described in Appendix A, and subject to the District's priority right to utilize said Properties for school uses, as described herein.

1.2 Term. The term of this Agreement will commence upon execution of this agreement by both Parties, and end on June 30, 2035, unless earlier terminated as provided in Section 1.3.

1.3 Early Termination. The Agreement may be terminated prior to the end of the term pursuant to Section 1.2, as follows:

1.3.1 Termination for Convenience. This Agreement may be terminated by either Party by providing written notice of such intent to the other Party no later than January 1st for the upcoming year. Such termination shall be effective June 30th.

1.3.2 Termination for Breach. This Agreement may be terminated for cause by either Party in the event of a material breach of this Agreement by the other Party by providing thirty (30) days' written notice of breach of contract to the breaching Party. This Agreement will not be terminated if the breaching Party cures the breach prior to conclusion of the notice period.

1.3.3 Payment on Termination . If this Agreement is terminated by the District pursuant to Section 1.3.1,or by the City pursuant to Section 1.3.2, the District will reimburse the City at a prorated amount for the depreciated cost of any capital improvements constructed and paid for by the City, offset by the depreciated costs of any improvements constructed by the District prior to the effective date of this Agreement or that may be constructed or paid for by the District in whole or in part during the term of this Agreement.

1.4 Renegotiation. If either Party is unable to carry out the obligations of this Agreement as a result of a budget decision made by the Party's governing body, the Party shall notify the other Party of such, in writing. The Parties may then renegotiate the terms of this Agreement at the annual November meeting, or as otherwise mutually agreed.

ARTICLE 2
Obligations

2.1 Cooperation. The Parties will cooperate in good faith to carry out the purpose and intent of this Agreement.

2.2 Communication. The District Superintendent and the City Manager will each appoint a person to serve as liaison and chief contact for the District and the City respectively under this Agreement. The Superintendent and Manager may change their respective designees from time to time by written notice to the other designee.

2.3 Initial Construction. Following planning and design and before the Property is opened as a park, the City and the District will share information about the proposed development at a neighborhood meeting.

2.4 Annual Meeting. The Parties agree to meet at least annually in November to discuss provisions of this Agreement, along with any proposed changes. The Parties further agree that quarterly meetings will be scheduled for the first year of the Agreement and in any subsequent years as deemed necessary by either Party. During the first year, the Parties will meet in November and May, with two more meetings as agreed upon by the Parties. The Parties further agree to discuss any proposed improvements to Properties or maintenance issues that would need to be budgeted for by City at these meetings. The School District will submit all known reservations for non-school hour use at the meetings.

2.5 Scheduling. District shall submit a request to the City to schedule use of the Properties during non-school hours. The District shall make its request at its annual November meeting with the City. The City shall give the District priority for scheduling to the greatest extent possible. If the District wishes to modify the schedule after the City has made the reservations, the District will notify the City of the proposed change at least sixty (60) days prior to the scheduled or requested date.

ARTICLE 3
Insurance

3.1 City Insurance. For the duration of this agreement, the City shall comply with the following requirements:

3.1.1 Workers Compensation. The City shall maintain workers' compensation insurance as required by ORS 656.017.

3.1.2 Commercial General Liability. The City shall maintain general liability insurance coverage on an occurrence basis with a combined single limit of not less than $2,000,000 for bodily/personal injury and property damage, with an annual aggregate of $3,000,000. The City's general liability insurance must include contractual liability insurance.

3.1.3 Commercial Automobile Liability. The City shall maintain automobile liability insurance with a combined single limit, or the equivalent of not less than $1,000,000 for each occurrence for bodily injury and property damage, including coverage for owned, hired, or non-owned vehicles.

3.1.4 Property Insurance. For the duration of this Agreement, the City shall maintain adequate property insurance to cover the constructed facilities and Property in the Open which the City installs and maintains on the Properties. "Property in the Open" shall have the meaning as in the City's property insurance policy. For example, Property in the Open can refer to outdoor fencing, gates, flag poles, light poles, handicap ramps, generators, park equipment such as, but not limited to, playground equipment, benches, picnic tables, trash receptacles, back stops, bleachers, basketball poles, soccer goals and drinking fountains. The City's insurance excludes grass playing fields, gardens, plants, and irrigation lines.

3.1.5 Certificate(s) of Insurance. Within fifteen (15) business days after execution of this Agreement, the City will provide to District certificate(s) of insurance (emailed from the City's insurance carrier(s) directly to the District), demonstrating the City meets all of the insurance requirements in this section of the Agreement. The City agrees it will not cancel, terminate, materially change, or reduce the limits of the insurance without prior written notice to the District. For all general liability coverage, the certificate shall also provide an endorsement naming the District, its agents, officers, Board of Directors, and employees as additional insureds with respect to the City's use of the Properties under this Agreement.

3.2 District Insurance.

3.2.1 For the duration of this Agreement, the District shall maintain an insurance policy for losses to the Properties as a result of fire or property damage providing the same level and type of coverage as it does for other District facilities. In the event of damage or loss, the District shall restore or rebuild the Property to the extent of its available insurance proceeds. For the purpose of this section, "available insurance proceeds" includes any District-paid deductible.

3.2.2 The District is not required to maintain an earthquake insurance policy for the Properties unless it elects to provide earthquake insurance for District facilities generally. In the latter case, the District shall include the Properties under its earthquake insurance policy under the same terms and conditions applicable to other District facilities. In the event of damage or loss of a facility on a Property as a result of an earthquake event, the District shall restore or rebuild the facility to the extent of its insurance proceeds, unless the total insurance proceeds available to the District are insufficient to restore or rebuild all District facilities damaged by the earthquake event. If insurance proceeds are insufficient to cover repair or replacement of all damage to District facilities, the District may allocate such proceeds to such restoration and rebuilding projects as the District Board of Directors deems is in the best interests of the District.

ARTICLE 4
Indemnification

4.1 Subject to any limits in the Oregon Tort Claims Act, the City will indemnify, defend, and hold harmless the District and its officers, agents, Board of Directors, and employees against all liability, loss, and costs from actions, suits, claims, or demands arising from the acts or omissions of the City and the City's officers, agents, and employees in the performance of this Agreement.

4.2 Subject to any limits in the Oregon Tort Claims Act, the District will indemnify, defend, and hold harmless the City and its officers, agents, elected officials, and employees against all liability, loss, and costs from actions, suits, claims, or demands arising from the acts or omissions of the District and the District's officers, agents, and employees in performance of this Agreement.

4.3 Nothing in Sections 4.1 or 4.2 require either Party to indemnify the other Party against liability for damages caused in whole or in part by the negligence of the other Party.

ARTICLE 5
General Provisions

5.1 Independent Contractors. The City and the District intend their relationship to be that of independent contractors. Each party shall be responsible exclusively with respect to their employees for providing for employment-related benefits and deductions that are required by law, including, but not limited to, federal and state income tax deductions, workers' compensation coverage, and contributions to the Public Employees Retirement System.

5.2 No Third-Party Beneficiary. The City and the District are the only parties to this Agreement and, as such, are the only parties entitled to enforce its terms. Nothing contained in this Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

5.3 Access to Records. Both Parties and their duly authorized representatives shall have access to the books, documents, papers, and records which are directly pertinent to the Agreement for the purpose of making audits, examinations, excerpts, and transcripts.

5.4 Force Majeure. Neither party shall be held responsible to the other for any delay or default caused by fire, riot, civil commotion, war, act of God, or any other like condition or event which is beyond its reasonable control and which by the exercise of reasonable diligence it is unable to prevent.

5.5 Severabilty. If any of the provisions of this Agreement are held to be invalid or unenforceable, the remaining provisions will remain valid and binding upon the Parties.

5.6 Waiver. A waiver by either Party of any provision, condition, or covenant of this Agreement may not be construed by the other Party as a waiver or subsequent breach of the Agreement.

5.7 Interpretation. This Agreement was prepared as a joint effort of the City and the District and must be construed as such.

5.8 Amendments. The City and the District may amend this Agreement from time to time by mutual written agreement. The City Council and District Board authorize the City Manager and Superintendent, respectively, to add or subtract Properties in Appendix A without necessitating approval by the Parties' governing bodies.

5.9 Compliance with Law. The City and the District agree to abide by all laws and regulations applicable to the work under this Agreement.

5.10 Integration. This Agreement constitutes the entire agreement between the Parties on the subject matter and supersedes all prior or contemporaneous written or oral understandings, representations, or communications of every kind on the subject.

5.11 Choice of Law and Venue. This Agreement and all rights, obligations, and disputes arising out of the Agreement will be governed by Oregon law. All disputes and litigation arising out of this agreement will be decided by the state courts in Oregon. Venue for all disputes and litigation will be in the Circuit Court for Washington County, Oregon.

5.12 Execution. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original, and such counterparts will constitute one and the same instrument. For the convenience of the Parties, the execution pages of any executed counterpart may be detached and reattached to any other executed counterpart to form one or more documents that are fully executed. This Agreement will not be effective until all Parties have executed this Agreement or a counterpart of this Agreement. Execution of this Agreement may be accomplished by electronic means.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement this _____ day of _____, 2014.

DISTRICT	**CITY**
Tigard-Tualatin School District No. 23J	City of Tigard
By: Ernest L Brum	By: _____
Its: Superintendent	Its: _____
Date: 4-9-15	Date: _____

Appendix A

This Appendix contains site-specific provisions related to the intergovernmental Agreement between City and District.

1. Metzger Elementary School Sports Fields

1.1 Location and Description.

1.1.1 Survey. The City and District will agree on the boundaries of the Metzger Field area to be used as a park. The City will pay to mark and record the legal boundaries of the area subject to this Agreement. The Parties will agree on such boundary in writing.

1.2 Operation. The City will operate Metzger Field as a City park in substantially the same method and manner as it operates other developed City parks. The City will be responsible for management, oversight, security, enforcement, scheduling, and promotion of Metzger Field.

1.3 Park Rules. The City may adopt and enforce its general park and recreation rules and regulations with regard to use of Metzger Field. The City will also comply and will ensure park users comply with the District's rules with regard to use of District property.

1.4 Scheduling. The City will be responsible for scheduling the usage of the Metzger Field, subject to the following terms and conditions:

1.4.1 Metzger Field will be reserved for the exclusive use of the District during school hours. For the purposes of this section, school hours means the hours when school is in session and children are normally present before and after school.

1.4.2 The District will have first priority for scheduling school use of Metzger Field during non-school hours. The District will make every attempt to schedule the use of Metzger Field for non-school hours in accordance with Section 2.5.

1.4.3 Scheduling School Use During Non-School Hours. For the purposes of Section 1.4.2, the District will submit any additional emergency requests to schedule school use of Metzger Field during non-school hours no less than sixty (60) days prior to the proposed school use. If the District fails to do so, it loses its priority right.

1.5 Fees. The City may charge and retain revenue from fees charged to third parties for the use of Metzger Field in the same manner and under the same terms as it does for use of other City parks, except that the District will not be required to pay such fees. In support of a current District partnership, Tigard Little League (TLL) will also not be required to pay such fees during their season (April 1 – July 10) and will instead maintain and make routine improvements to the baseball infield area at TLL's expense. TLL will maintain the baseball infield at a playable level during their season in order to receive the field reservations at no cost during that time. The City reserves the right to collect payment from TLL for use of the Metzger Field outside the scope of this Agreement.

1.6 Maintenance. Except as provided in Section 1.5 above, the City will maintain Metzger Field, including, without limitation, providing for trash and litter pickup, mowing, irrigation repairs, the cleaning of tables and other improvements and fixtures on the property, and all consumable supplies.

1.7 Utilities. The City will be responsible for payment of all charges for services and utilities in connection with Metzger Field, including, without limitation, electricity, gas, water, sewer, storm water, and garbage disposal/recycling.

1.8 Repairs. The City will repair any damage to or destruction of Metzger Field arising from its use as a City park. The District will be responsible to repair any damage to or destruction of Metzger Field arising from District use.

1.9 Signage. The City will be entitled to place City park signage at Metzger Field and have it listed as a City park on the City website for use outside of school hours.

1.10 Capital Improvements. The City shall have the authority to make capital improvements to Metzger Field, subject to the following terms and conditions.

1.10.1 Such capital improvements are solely for public park and recreation purposes and related or supporting facilities;

1.10.2 Prior to construction, the City will submit a proposed capital improvement for District review and approval, which will not be unreasonably withheld;

1.10.3 The City will pay 100% of the costs of any capital improvement, except as otherwise may be agreed by the Parties;

1.10.4 The City will obtain and pay for all necessary permits and government approvals required for construction of any capital improvement; and

1.10.5 The City shall provide to the District the estimated cost of a capital improvement before construction and documented actual costs after completion.

1.11 Work on District Property. When the City is performing maintenance or construction work on Metzger Field, it shall comply or, if such work is performed by a contractor, it shall require its contractor and any subcontractors to comply with the following requirements.

1.11.1 Work on the subject property by the City shall be coordinated and scheduled with the District. Workers will check in at the school office prior to beginning work and will be on site only during agreed upon hours.

1.11.2 Workers will carry photo identification and will present such upon request. Contractors that do not have specific uniforms for employees shall wear identification issued by the contractor.

1.11.3 No weapons or firearms will be permitted on District property, except as allowed by law.

1.11.4 Drug, alcohol or tobacco use of any kind is strictly prohibited on all District property.

1.12 Hazardous Chemicals. The City shall notify the District prior to using products containing hazardous chemical(s) to which District staff or students may be exposed. Products containing hazardous chemicals are those products defined by ORS Chapter 465. Contractor shall supply Material Safety Data Sheets ("MSDS") as required by Oregon Administrative Rules.

2. Metzger Elementary School Community Gardens

2.1 Location and Description.

2.1.1 Survey. The City will pay to mark and record the legal boundaries of the area subject to this Agreement. The Parties will agree on such boundary in writing.

2.2 Operation. The City will operate Metzger Community Gardens as a City park in substantially the same method and manner as it operates other developed City community gardens. The City will be responsible for management, oversight, security, enforcement, scheduling, and promotion of the gardens.

2.3 Park Rules. The City may adopt and enforce its general park and recreation rules and regulations with regard to use of Metzger Community Gardens. The City will also comply and will ensure park users comply with the District's rules with regard to use of District property.

2.4 Scheduling. The City will be responsible for scheduling the usage of the Metzger Community Gardens, subject to the following terms and conditions:

2.4.1 Metzger Community Gardens will be reserved for the exclusive use of the District during school hours. For the purposes of this section, school hours means the hours when school is in session and children are present.

2.4.2 The District will identify the areas of Metzger Community Gardens needed for school use for the upcoming year. The District will make every attempt to identify the areas needed during a meeting (s) between City and District to be held in November.

2.4.3 The City agrees to work cooperatively with District partner Oregon Human Development Corporation ("OHDC") to develop gardens for both the non-profit and local citizens.

2.5 Fees. The City may charge and retain revenue from fees charged for the use of Metzger Community Gardens in the same manner and under the same terms as it does for use of other City community gardens, except that the District and District partners (including OHDC) will not be required to pay such fees.

2.6 Maintenance. The City will maintain Metzger Community Gardens, in cooperation with OHDC. The City will provide for trash and litter pickup, irrigation repairs, and fixtures on the property. The City shall not be responsible for maintenance of garden areas used by District and OHDC. The City and OHDC will collaboratively provide for other improvements and consumable supplies needed for the operation of the gardens.

2.7 Utilities. The City will be responsible for payment of all charges for services and utilities in connection with Metzger Community Gardens, including electricity, gas, water, sewer, storm water, and garbage disposal/recycling.

2.8 Repairs. The City will repair any damage to or destruction of Metzger Community Gardens arising from its use as a City park. The District will be responsible to repair any damage to or destruction of Metzger Gardens arising from District use.

2.9 Signage. The City will be entitled to place City park signage at Metzger Community Garden and have it listed as a City park on the City website for use outside of school hours.

2.10 Capital Improvements. The City shall have the authority to make capital improvements to Metzger Community Garden, subject to the following terms and conditions.

2.10.1 Such capital improvements are solely for public park and recreation purposes and related or supporting facilities;

2.10.2 Prior to construction, the City will submit a proposed capital improvement for District review and approval, which will not be unreasonably withheld;

2.10.3 The City will pay 100% of the costs of any capital improvement, except as otherwise may be agreed by the Parties;

2.10.4 The City will obtain and pay for all necessary permits and government approvals required for construction of any capital improvement; and

2.10.5 The City shall provide to the District the estimated cost of a capital improvement before construction and documented actual costs after completion.

2.11 Work on District Property. When the City is performing maintenance or construction work on Metzger Community Garden, it shall comply or, if such work are performed by a contractor, it shall require its contractor and any subcontractors to comply with the following requirements.

2.11.1 Work on the subject property by the City shall be coordinated and scheduled with the District. Workers will check in at the school office prior to beginning work and will be on site only during agreed upon hours.

2.11.2 Workers will carry photo identification and will present such upon request. Contractors that do not have specific uniforms for employees shall wear identification issued by the contractor.

2.11.3 No weapons or firearms will be permitted on District property, except as allowed by law.

2.11.4 Drug, alcohol or tobacco use of any kind is strictly prohibited on all District property.

2.12 Hazardous Chemicals. The City will not use herbicides or other pesticides in the Metzger Community Garden. The City shall notify the District prior to using products containing

hazardous chemical(s) to which District staff or students may be exposed. Products containing hazardous chemicals are those products defined by ORS Chapter 465. Contractor shall supply Material Safety Data Sheets ("MSDS") as required by Oregon Administrative Rules.

3. Alberta Ryder Elementary School – Community Garden

3.1 Location and Description.

3.1.1 Survey. The City will conduct and pay for a survey to determine the boundaries of the area subject to this Agreement. The Parties will agree on such boundary in writing.

3.2 Operation. The City will operate Alberta Ryder Community Gardens as a City park in substantially the same method and manner as it operates other developed City community gardens. The City will be responsible for management, oversight, security, enforcement, scheduling, and promotion of the gardens.

3.3 Park Rules. The City may adopt and enforce its general park and recreation rules and regulations with regard to use of Alberta Ryder Community Gardens. The City will also comply and will ensure park users comply with the District's rules with regard to use of District property.

3.4 Scheduling. The City will be responsible for scheduling the usage of the Alberta Ryder Community Gardens, subject to the following terms and conditions:

3.4.1 Alberta Ryder Community Gardens will be reserved for the exclusive use of the District during school hours, unless the public portion of the garden is physically separated from the school use area by a locked fence, approved by the District. For the purposes of this section, school hours means the hours when school is in session and children are present.

3.4.2 The District will identify the areas of Alberta Ryder Community Gardens needed for school use for the upcoming year. The District will make every attempt to identify the areas needed during a meeting (s) between City and District to be held in November.

3.5 Fees. The City may charge and retain revenue from fees charged to third parties for the use of Alberta Ryder Community Gardens in the same manner and under the same terms as it does for use of other City community gardens, except that the District will not be required to pay such fees.

3.6 Maintenance. The City will maintain Alberta Ryder Community Gardens, including providing for trash and litter pickup, irrigation repairs, and other improvements and fixtures on the property, and all consumable supplies. The City will not be responsible for maintenance of the gardens used by the District, but agrees to work collaboratively with the District for maintenance of the entire garden area.

3.7 Utilities. The City will be responsible for payment of all charges for services and utilities in connection with the publically accessible Alberta Ryder Community Gardens, including electricity, gas, water, sewer, storm water, and garbage disposal/recycling.

3.8 Repairs. The City will repair any damage to or destruction of Alberta Ryder Community Gardens arising from its use as a City park. The District will repair any damage or destruction arising from District use.

3.9 Signage. The City will be entitled to place City park signage at Alberta Ryder Community Garden and have it listed as a City park on the City website for use outside of school hours.

3.10 Capital Improvements. The City shall have the authority to make capital improvements to Alberta Ryder Community Garden, subject to the following terms and conditions.

3.10.1 Such capital improvements are solely for public park and recreation purposes and related or supporting facilities;

3.10.2 Prior to construction, the City will submit a proposed capital improvement for District review and approval, which will not be unreasonably withheld;

3.10.3 The City will pay 100% of the costs of any capital improvement, except as otherwise may be agreed by the Parties;

3.10.4 The City will obtain and pay for all necessary permits and government approvals required for construction of any capital improvement; and

3.10.5 The City shall provide to the District the estimated cost of a capital improvement before construction and documented actual costs after completion.

3.11 Work on District Property. When the City is performing maintenance or construction work on Alberta Ryder Community Garden, it shall comply or, if such work is performed by a contractor, it shall require its contractor and any subcontractors to comply with the following requirements.

3.11.1 Work on the subject property by the City shall be coordinated and scheduled with the District. Workers will check in at the school office prior to beginning work and will be on site only during agreed upon hours.

3.11.2 Workers will carry photo identification and will present such upon request. Contractors that do not have specific uniforms for employees shall wear identification issued by the contractor.

3.11.3 No weapons or firearms will be permitted on District property, except as allowed by law.

3.11.4 Drug, alcohol or tobacco use of any kind is strictly prohibited on all District property.

3.12 Hazardous Chemicals. The City will not use herbicides or other pesticides in the Alberta Ryder Community Garden. The City shall notify the District prior to using products containing hazardous chemical(s) to which District staff or students may be exposed. Products containing hazardous chemicals are those products defined by ORS Chapter 465. Contractor shall supply Material Safety Data Sheets ("MSDS") as required by Oregon Administrative Rules.