

FIRST AMENDMENT TO INTERLOCAL AGREEMENT
(Schmid Sports Fields)

Grantor	WASHOUGAL SCHOOL DISTRICT, a Washington municipal corporation
Grantee	CITY OF WASHOUGAL, a Washington municipal corporation
Abbreviated Legal	#37 JOSEPH GIBBONS DLC; complete legal description on <u>Exhibit A</u> attached
Assessor's Tax Parcel No.	134166-000
Other Reference No.	N/A

THIS FIRST AMENDMENT TO INTERLOCAL AGREEMENT is made this ____ day of _____, 2024, by the WASHOUGAL SCHOOL DISTRICT (“District”), a Washington municipal corporation, and the CITY OF WASHOUGAL (“City”), a Washington municipal corporation, collectively referred to as the “Parties.”

RECITALS:

- A. The District and the City entered into an Interlocal Agreement dated April 8, 2019 (“Agreement”), related to the design, development, construction, and operation of sports fields on District property as part of the George Schmid Memorial Park, available for use by the District and the community (“Schmid Sports Fields” or “Property” legally described in **Exhibit A** to the Agreement and this Amendment).
- B. The District and the City desire to amend the Agreement to address the terms and responsibilities of the Parties’ ongoing obligations.

NOW, THEREFORE, the Parties amend the Agreement, as follows:

1. **Sport Field No. 3**. In a land use decision dated February 10, 2021, the City issued preliminary site plan approval to construct Phase III of the George Schmid Memorial Park (“Decision”). Improvements within Phase III include construction of a third little league baseball field, a new concession/restroom building, paving of the gravel parking lot, installation of a new access driveway to Evergreen Way, site landscaping, and lighting for the site, including lighting the three baseball fields. Other improvements include sidewalks throughout the site, dugouts,

batting cages, bleachers and fencing. The improvements listed in this Section are referred to as the Phase III Improvements.

The City represents that it has satisfied the conditions in the Decision. The District will have no obligation to satisfy the conditions in the Decision or to construct the improvements authorized by the Decision. Section 3.3 of the Agreement continues to apply to the development of the Sport Field No. 3 Improvements.

2. RCO Grant Approval. In a letter dated October 2, 2019 from the State of Washington's Recreation and Conservation Office, the City received grant approval for the George Schmid Sport Field #3 and Ballpark Lighting. The City and the District agree to fully comply with all terms and conditions of this grant. The City agrees to fully fund through grants or other funding all improvements on the Property unless otherwise specified in this Agreement.

3. Use of Sport Field No. 3 by District. The City will, in good faith, attempt to provide the District with priority scheduling for the use of Sport Field No. 3; however, all scheduling is at the sole discretion of the City and the District shall have no claim, legal or otherwise, if the District's priority scheduling requests are not granted. The District will provide the City with its request for schedule priority use at least sixty (60) days prior to commencement of the priority event or period.

4. Additional Improvements.

4.1 *Ballfield Access Mitigation*. The City agrees to install rock boulders on the eastside of the private District roadway to deter cars from parking on District office and operations center grounds. The City also agrees to install two (2) mitigation pillows on the same roadway that accommodate axle widths for emergency service apparatus and school buses. The rock boulder placement and the mitigation pillow location are shown on **Exhibit B** to this Amendment. The District agrees to monitor the effectiveness of the mitigation in partnership with the City.

4.2 *Bird Spiders*. During construction of the Phase III Improvements, the City must install bird spiders on top of the new light standards it constructs, to discourage bird nesting.

4.3 *Additional facilities*. During construction of the Phase III Improvements, the City may only install a scoreboard for Sport Field No. 3, a second batting cage structure, a flagpole north of the concessions building, scorekeeping sheds for fields 1, 2 and 3, and advertising banners for outfield fencing and field identification subject to the District's approval as detailed in Section 5 below.

5. District Approval of Improvements. The City shall make no changes, alterations, additions, substitutions or further improvements to the Property, including to those described in the Agreement, unless the City first delivers to the District plans and specifications for, and

obtains the District's prior written approval of such changes, alterations, additions, substitutions or further improvements. All such improvements must be done at the City's sole cost and expense and at such times and subject to such conditions as the District may from time to time designate. Any improvements permitted by the District must be performed: (i) in a good and workmanlike manner; and (ii) in compliance with all legal requirements. In addition, prior to commencement of any improvements, the City must furnish to the District proof of insurance for any and all contractors working on behalf of the City in accordance with Section 8 of this Amendment. Any improvements that are not considered fixtures under Washington law will be owned by the Parties in equal share and may not be removed without mutual agreement of the Parties.

6. Maintenance. Except as set forth in Sections 3 and 4.2 of the Agreement, the City must, at its sole cost and expense, keep the Property, both outside and inside any structures, together with all Phase III Improvements, equipment and installations in good order, condition and repair at all times. Upon the City's approval of the schedule for the priority period described in Section 3 of this Amendment, the Parties shall confer and agree on shared maintenance of the facility proportionate to the shared use during that period. The City must make all repairs and replacements (ordinary as well as extraordinary, foreseen and unforeseen) which may be necessary or required so that at all times the Property is in good order, condition and repair. Without limiting the generality of the foregoing, the City must keep the glass of all windows and doors on structures clean and presentable, must replace all cracked or broken glass on structures, must keep the mechanical and electrical systems and all drains clean and in a good state of repair, must protect the sprinkler system and all pipes and drains so that they will not freeze or become clogged, and may not permit or suffer any waste, damages, or disfigurement to or upon the Property or any part thereof.

The first sentence of Section 4.2 of the Agreement is amended to state that "The District will pay their proportionate share of the cost of maintaining the eastern entry driveway and the portion of the Parking Lot constructed by the District under the terms of the Interlocal Agreement dated May 10, 2016."

7. Indemnity. Section 7.1 of the Agreement is stricken. The District, its board, officers, employees and agents will not be liable for obligation of the City under this Agreement or its grant funding, nor liable for any injury (including death) to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by District or by others, including but not limited to all persons directly or indirectly employed by District, or any agents, contractors, subcontractors, licensees or invitees of District, as a result of any condition (including existing or future defects in the Property) or occurrence whatsoever related in any way to the City's use of the Property or any area adjacent thereto.

The City must defend, indemnify, and hold entirely free and harmless the District and its board, officers, agents and employees from any and all loss, damages, expenses, attorneys'

fees, consultants' fees, court costs and other costs arising out of a: (a) the condition of the Property or out of the occupancy by the City or any member of the public, licensee, invitee or concessionaire of the City; (b) the condition of the Property or out of the occupancy by the City; (c) any accident, injury, death or damage to any party in or about the Property; (d) any fault or negligence by the City or any licensee, invitee or concessionaire of the City or of any officer, agent, employee, guest or invitee of any such person; or (e) any failure on City's part to comply with any of the covenants, terms and conditions contained in this Agreement, its grant funding, or any legal requirements; provided, however, nothing herein will require the City to indemnify the District for costs arising out of any accident, injury, death or damage caused by the sole negligence of the District or its board, officers, agents and employees, such sole negligence having been established by agreement of the parties or the final non-appealable judgment or adjudication of a court or other tribunal of competent authority.

Notwithstanding anything to the contrary in the preceding paragraph, in the event that any injury or loss is alleged to be the result of the concurrent negligence of the City, any of its licensees, assignees, concessionaires, agents, employees, or contractors on the one hand and the negligence of the District, its agents, employees or contractors on the other hand, relating to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of the Property such that RCW 4.24.115 is applicable, and such concurrent negligence is established by agreement of the parties or the final non-appealable judgment or adjudication of a court or other tribunal of competent authority, the parties' obligation to indemnify each other as set forth in this Section will be limited to the extent of that party's negligence and that of any of the negligent party's licensees, assignees, concessionaires, agents, employees, and contractors, including the negligent party's proportional share of costs, court costs, attorneys' fees, consultants' fees and expenses incurred in connection with any claim, action or proceeding brought with respect to such injury or damage. To the extent that the negligent party has paid in full any such costs prior to the establishment of such concurrent negligence as provided above, the each party shall reimburse the other for any excess sums paid for its proportional share of such costs using the same proportion as established for the concurrent negligence, or in the event that no proportion was established in the agreement of the parties of adjudication, a proportion to be agreed upon by the parties by binding arbitration.

The City and the District agree that the foregoing indemnity obligations specifically covers actions brought by their own employees, and thus the parties expressly waive their immunity under industrial insurance, Title 51, as necessary to effectuate this indemnity. THE CITY AND DISTRICT AGREE AND ACKNOWLEDGE THAT THE ABOVE PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION. The City's obligations under this Section will survive the expiration or earlier termination of the Agreement.

8. Insurance.

8.1 Required Policies. Section 5.3 of the Agreement is stricken from the Agreement. The City must obtain and keep in force, at its sole cost and expense, the following types of insurance, in the amounts specified hereinafter provided for:

8.1.1 *General Liability Insurance.* The City must obtain and keep in force a commercial general liability policy of insurance that protects against liability for bodily injury, personal and advertising injury and property damage arising out of the use, occupancy or maintenance of the Property and all areas appurtenant thereto, and specifically including the action/inaction of any licensee or concessionaire. Such insurance must be on an occurrence basis with limits applicable to the Property not less than five million dollars (\$5,000,000) per occurrence and \$5,000,000 in the aggregate.

8.1.2 *Automobile Liability Insurance.* The City must obtain and keep in force a commercial automobile liability policy of insurance that protects the City against claims for bodily injury and property damage based upon, involving or arising out of motor vehicle operations on or about the Property and all areas appurtenant thereto. Such insurance must cover any "Auto" (i.e., owned, hired and non-owned) and must be on an occurrence basis providing single limit coverage in an amount not less than two million dollars (\$2,000,000) per occurrence. The policy may not contain any intra-insured exclusions as between insured persons or organizations.

8.1.3 *Property Insurance.* The City must obtain and keep in force property insurance insuring the City's personal property, and improvements made by or for the City, against physical loss or damage, including loss of use, arising out of physical loss or damage to the Property. The policy must include coverage for Earthquake and Flood. The policy must include coverage for any additional costs resulting from debris removal and reasonable amounts of coverage for the enforcement of any ordinance or law regulating the reconstruction or replacement of the damaged property including any undamaged sections of the Property required to be demolished or removed by reason of the enforcement of any legal requirement as the result of a covered cause of loss. The amount of such insurance must be on a replacement cost basis. Such policy may not provide coverage on a "blanket" basis but must carry specific limits applicable to the Property.

8.1.4 *Workers Compensation and Employers Liability.* The City must maintain statutory Workers Compensation coverage as required by the State Washington. In addition, Employers Liability coverage with limits not less than \$2,000,000 must be provided by the City.

8.1.5 The policies shall stipulate that the insurance afforded the District shall apply on a primary and non-contributory basis and that any other insurance carried by any of the District will be excess only and will not contribute with the insurance coverage provided under the City's policies.

8.1.6 The amount of coverage available to the District shall not be limited to any minimum amounts of insurance required by this Agreement. In the event that the City's insurance currently contains any language purporting to so limit the amount of coverage available to the District, such language must be removed as to the District in order for the insurance to meet the requirements of this Agreement.

8.1.7 An Evidence of Coverage Endorsement Form evidencing the coverage required under this sub-part must be provided to the District along with the certificates of insurance required by this Agreement.

8.1.8 Each policy as to which the District shall be provided coverage shall be written or endorsed such that the status of the District shall not be jeopardized by the conduct or omissions of the Named Insured other than non-payment of premiums or such other acts as shall require advance notice to the Named Insured.

8.1.9 Each insurance policy required herein must be endorsed to provide that the coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after ten (10) days written notice in the case of non-payment of premiums, or thirty (30) days written notice in all other cases, has been given to the District and such notice is by postal mail, return receipt requested. This notice requirement does not waive the insurance requirements contained herein.

8.2 Other Insurance. The City must further obtain and keep in force such other and further insurance as the Parties may from time to time reasonably agree upon for the protection by insurance relating to the Property.

8.3 Limit Adjustments. The limits of insurance specified in this Section are subject to periodic adjustment, at the District's election, to reflect changes in insuring practices for similar properties in the same geographic area and changes in insurance products.

8.4 Additional Insurance Requirements.

8.4.1 *Insurance Companies.* Insurance required hereunder must be in companies duly licensed to transact business in the State of Washington, and maintaining during the policy term a General Policyholders Rating of 'A-' or better and a financial rating of 'IX' or better, as set forth in the most current issue of "Best's Insurance Guide."

8.4.2 *Deductibles and Retentions.* No insurance required herein may contain a deductible or self-insured retention in excess of \$100,000 without the prior written consent of the District.

8.4.3 *Termination; Renewal.* Insurance is to remain current throughout the term of this Agreement. The District must receive documentation annually from the City to include a certificate of insurance and any applicable endorsements to validate the insurance

required herein has been purchased and is compliant with the requirements of this Agreement within ten (10) days of each insurance renewal. Should any insurance required herein be terminated, cancelled, or not renewed, the City will have five (5) days to obtain replacement insurance from the date of the termination, cancellation or non-renewal notice the City receives from their insurer(s). In the event the insurance is not replaced within five (5) days, the City will be considered in default.

8.5 *Evidence of Insurance.* The City must deliver, or cause to be delivered, to the District, certificates of insurance, loss payee endorsements for property insurance, waivers of subrogation and any other documentation or endorsement that provides evidence of the existence and amounts of such insurance, compliance with any other requirements specified above, and the amounts of all deductibles and/or self-insured retentions. Upon request by the District, the City must deliver or cause to be delivered to the District, certified copies of the policies of insurance that the City has purchased in order for the District to verify insurance coverage, limits, and endorsements or view any exclusions to the City's insurance policies.

8.6 *No Limitation of Liability.* The limits of insurance required by this Agreement or as carried by the City shall not limit the liability of the City nor relieve the City of any obligation hereunder.

8.7 *Waiver of Subrogation.* Without affecting any other rights or remedies, the City (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the District, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to the City arising out of or incident to the perils required to be insured against under this Agreement. Accordingly, in addition to the requirements stated above related to waivers of subrogation, the City must cause each insurance policy required by this Agreement to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages may not be limited by the amount of insurance carried or required, or by any deductibles applicable thereto.

9. Signage. The City must install signage at all entrances to the Property stating that it is operating the facilities on the Property and that all inquiries and reports of incidents should be directed to the City.

10. Requirements of Chapter 39.34 RCW. This Amendment does not establish a separate legal entity to conduct the joint or cooperative undertaking. There will be no joint financing of the costs under the Agreement; nor will the parties jointly own property. Each party will bear its own costs in carrying out its obligations under the Agreement. Upon termination, the Property, and all improvements thereon, will be retained by the District. Each agency must publish a copy of this Amendment on its website. The Public Works Director of the City of Washougal and the Superintendent of the Washougal School District are designated as joint administrators of the Agreement.

11. Amendatory. Except as otherwise amended by this First Amendment, the Agreement remains in full force and effect. If there is a conflict between this First Amendment and the Agreement, the First Amendment controls. This First Amendment may be executed in counterparts.

Signatures on following page

DISTRICT:

By: _____
Name: Mary Templeton
Its: Superintendent
Date: _____

CITY:

By: _____
Name: David Scott
Its: City Manager
Date: _____

ATTEST:

City Clerk/Finance Director
Date: _____

APPROVED AS TO FORM:

City Attorney
Date: _____

State of Washington)
) ss.
County of Clark)

On this day personally appeared before me personally appeared Mary Templeton, to me known to be the Superintendent of the WASHOUGAL SCHOOL DISTRICT, a Washington municipal corporation, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal this ____ day of _____, 2024.

Notary Public for Washington

(Printed or Stamped Name of Notary)
Residing at _____
My appointment expires: _____

State of Washington)
) ss.
County of Clark)

On this day personally appeared before me personally appeared David Scott, to me known to be the City Manager of the CITY OF WASHOUGAL, a Washington municipal corporation, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he or she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal this ____ day of _____, 2024.

Notary Public for Washington

(Printed or Stamped Name of Notary)
Residing at _____
My appointment expires: _____

EXHIBIT A

LEGAL DESCRIPTION FOR WASHOUGAL SCHOOL DISTRICT NO. 112-6 ADJUSTED ASN 134166-000

February 5, 2018

A portion of that parcel conveyed to the Washougal School District No. 112-6, recorded under Auditor's File No. 3380338, records of Clark County, located in a portion of the Joseph Gibbons Donation Land Claim in the Northeast quarter of Section 16, Township 1 North, Range 4 East of the Willamette Meridian, City of Washougal, Clark County, Washington, described as follows:

BEGINNING at the Northeast corner of the Washougal School District No 112-6 parcel as shown in Record of Survey Book 60, at Page 175, records of said county, said point being 20.00 feet Westerly of, when measured perpendicular to, the centerline of Sunset View Road;

THENCE along the North line of said parcel, South 89° 58' 17" West, a distance of 10.01 feet to a point on the West right of way line of Sunset View Road conveyed to the City of Washougal, recorded under Auditor's File No. 5359215, records of said County, said point being 30.00 feet Westerly of, when measured perpendicular to, the centerline of said Sunset View Road and the TRUE POINT OF BEGINNING;

THENCE continuing along the North line of said Washougal School District parcel, South 89° 58' 17" West, a distance of 13.52 feet;

THENCE leaving said North line, South 75° 37' 00" West, a distance of 607.62 feet to an angle point;

THENCE North 73° 23' 00" West, a distance of 777.00 feet to a point on the West line of said Washougal School District parcel;

THENCE South 01° 13' 58" West, along said West line, a distance of 502.00 feet to a point on the North right of way line of SE. Evergreen Way, said point being 30.00 feet Northerly of, when measured perpendicular to, the centerline of said Way;

THENCE South 73° 55' 40" East, along said North right of way line, a distance of 1056.01 feet to the Southwest corner of that parcel of land conveyed to the Corporation of the Catholic Archbishop of Seattle as described in Exhibit "A-1" of Auditors File No. 4621911, records of said County;

THENCE North $24^{\circ} 17' 16''$ East along the West line of said Corporation of the Catholic Archbishop of Seattle, and the Northerly extension thereof, a distance of 372.88 feet to the Northwest corner of said Corporation of the Catholic Archbishop of Seattle parcel as described under Auditor's File No. 4621910, records of said County;

THENCE South $77^{\circ} 46' 34''$ East, along the North line of said Corporation of the Catholic Archbishop of Seattle parcel as described under said Auditor's File No. 4621910 and said Auditor's File No. 4621911, a distance of 172.28 feet to a point on the West right of way line of Sunset View Road as conveyed to the City of Washougal under Auditor's File No. 5359215, said point being 30.00 feet Westerly of, when measured perpendicular to, the centerline of said Road, said point also being on a non-tangent 542.86 foot radius curve to the left;

THENCE parallel with and 30.00 feet from said centerline, and along said 542.86 foot radius curve to the left (the long chord of which bears North $06^{\circ} 27' 15''$ East, a distance of 85.32 feet), an arc distance of 85.40 feet;

THENCE continuing along said West line, North $01^{\circ} 56' 50''$ East, a distance of 335.01 feet to the TRUE POINT OF BEGINNING.

Except public roads.

Containing 15.32 acres, more or less.

EXHIBIT B

Speed Cushion Installation Location / Rock Boulder Placement

