

**MEMORANDUM OF AGREEMENT BETWEEN
LINCOLN COUNTY SCHOOL DISTRICT AND THE CITY OF NEWPORT
for the purpose of providing access to school video camera system**

THIS MEMORANDUM OF AGREEMENT, is made this 17 day of August, 2020, by and between the Lincoln County School District (hereinafter the "District"), an Oregon School District, and the City of Newport, a municipal corporation (hereinafter the "City").

RECITALS:

- 1. ORS Chapter 190 authorizes governmental entities such as cities/counties and school districts to enter into written agreements for the performance of any or all functions and activities that either entity has to perform on its own.**
- 2. Pursuant to ORS Chapter 332, Oregon school districts are empowered to enact rules governing student conduct and safety to ensure the orderly performance of its educational mission. As part of this authority, the District may install video surveillance cameras in certain of the public spaces within its facilities. In addition, the District is empowered to promulgate policies and procedures that govern the use of, and access to, these surveillance cameras.**
- 3. Pursuant to the City's Charter and applicable state law, the City is empowered by and through its Police Chief to enforce the State law and City ordinances and provide generally for the health, safety, and welfare of City residents.**
- 4. The District and the City believe that by cooperating in allowing the City Police Chief, to have access to the District's video and surveillance cameras, both entities can more efficiently work to ensure the health and safety of City residents and District students and patrons.**

AGREEMENT

In consideration of the mutual covenants of the District and City, each to the other, the District and City do hereby agree as follows:

- 1. The District shall allow access to the City Police Chief and his/her designee(s) to view images from the District's video camera system to: 1) assist the District in investigations, and/or 2) in situations where in consideration of the totality of circumstances, there is an articulable and significant threat to the health and safety of a student or other individuals, and/or 3) in response to a valid warrant, subpoena, or judicial order.**
- 2. In addition, the District shall allow access to the City Police Chief and his/her designee(s) with permission from a District level Administrator or District Safety Coordinator to view images from the District's video camera system to assist in school emergency training exercises and safety planning, and for law enforcement training exercises.**
- 3. The District shall ensure that the City Police Chief's access to, and use of, video images is consistent with State and Federal regulations and District policies and procedures concerning educational privacy laws including when video footage is deemed a 'Student Education Record'. See EXHIBIT "A" CAMERA PROTOCOLS" for additional details regarding this and on situations in which the City Police Chief and his/her designee can 'view' video footage verses when video footage can be 'released' to them.**

4. Both the District and the City will maintain the confidentiality of the video images obtained from the District's video cameras so as to comply with Federal and State privacy and educational laws and regulations, District policies and procedures, and the District's collective bargaining agreements.
5. This Agreement is perpetual and shall remain in effect until such time as written notice of termination is given by either party to the other at least 30 days prior to the date of termination. Provided, however, the parties may agree from time to time to adjust the terms and conditions of this Agreement.
6. To the extent permitted by the Oregon Constitution, and to the extent permitted by the Oregon Tort Claims Act, and to the extent otherwise provided for in private contracts of insurance, both the District and the City agree to indemnify, defend, and hold the other and its officers, board members, employees, or agents, harmless from all damages, losses and expenses, including but not limited to attorney fees, and to defend all claims, proceedings, lawsuits, and judgments arising out of or resulting from the indemnifying party's negligence in the performance of or failure to perform under this Agreement. No party to this Agreement will be required to indemnify or defend the other party for any liability arising solely out of wrongful acts of another party, or that other party's own officers, board members, employees or agents
7. If any portion of this Agreement is invalid or unenforceable with respect to any party, the remainder of this Agreement, or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
8. This Agreement does not in any way constitute or nominate either of the parties as the agent or legal representative of the other party for any purpose whatsoever. Neither party is granted any right or authority to assume or to create any obligation or responsibility, expressed or implied, on behalf of, or in the name of, the other party to this Agreement.
9. The effective date of this agreement is the 17 day of August, 2020.
10. This document contains the entire agreement and understanding between the parties as to the subject matter herein and supersedes all prior agreements, commitments, representations, writings, and discussions between them regarding the subject matter of this Agreement.

IN WITNESS WHEREOF, the City and the District have executed this Agreement pursuant to due authority, as evidenced by the signature of the duly appointed representative of each entity below.

LINCOLN COUNTY SCHOOL DISTRICT

By: Karen F. Gray

(signature)

Dr. Karen Gray, Superintendent

CITY OF NEWPORT

By: Spencer Nebel

(signature)

Spencer Nebel, City Manager

EXHIBIT "A" CAMERA PROTOCOLS

Lincoln County School District

Purpose: Video cameras may be in operation inside and/or outside at District properties to support the safety, welfare, and health of all staff, students, and visitors; and to safeguard district facilities (see Policy ECAC). Cameras serve as a deterrent to undesirable behavior and crime. The District controls the video footage it records and may use it for any purpose pertinent to a school district interest such as investigative activities, surveillance, training, exercises, planning, education, and other school district business. Law Enforcement, including local police chiefs, sheriff, and their designees, may also access video footage under the specific circumstances identified in this document and the corresponding Memorandum of Agreement (MOA).

Placement: District video cameras may be placed in public areas such as entrances, hallways, gyms, cafeterias, play areas, parking lots, athletic fields, social areas, computer labs, weight rooms, and on school buses, etc. Video cameras are not allowed in areas where there is a reasonable expectation of privacy (i.e. bathrooms and gym locker room changing areas).

Our school-based video camera system currently records video images, not audio. The bus cameras are set up to record both video and audio. The District is not restricted from recording audio in schools, but if we expand from video-only cameras in certain areas or situations, notice should be given in the school handbook.

Prohibited Activity: Use of the video cameras is to be conducted in a professional, ethical, and legal manner. No attempt shall be made to alter any part of any video recording, except when required to protect privacy as described in the "Request for Video Footage, Parents" section of this document. Video monitoring shall not be used to harass, intimidate, or discriminate against any individual or group.

Confidentiality & FERPA (Family Educational Rights & Privacy Act): All staff and law enforcement shall maintain the confidentiality of the video footages on the District's video cameras and comply with Federal and State privacy and educational laws. This includes when a portion of video becomes a 'Student Education Record'.

Here are some examples of situations in which video images are considered a 'Student Education Record' and are protected by FERPA. 1) If the video shows a student being injured, attacked, victimized, ill, or having a health emergency. 2) If the video shows a student in violation of local, state, or federal law. 3) If a student is disciplined, or if discipline is being considered or pending due to actions of the student caught on a security video. Conversely, if a student is in a video, but the student is not subject to discipline, the video is not considered a 'Student Education Record'.

Preserving Video Footage & Record-Keeping: Video footage is recorded on hard drives and is automatically written-over after approximately 15-25 days, depending on the capacity of each system. If a portion of video footage is kept as a student education record, it should be stored electronically at the district level and noted by a flag in the Student Information System (SIS) record.

Upon written request of law enforcement, the District will work to preserve a portion of video footage that law enforcement anticipates it may need as part of a criminal investigation or court proceedings (criminal or civil) in case it is later required by a subpoena, warrant or judicial order. In that case, the portion of video footage in question will be stored electronically at the district level.

School Staff Use of Cameras: Video cameras may be accessed by school administrators, school safety personnel, school resource officers, campus monitors, and other personnel as determined by a district administrator, in order to conduct school district business.

Law Enforcement Use of Cameras: Law enforcement may view video footage:

1. When invited by the District to assist in investigating a matter of district interest. In this case no parent permission is necessary for a related review of video footage; or
2. When there is an articulable and significant threat to the health and safety of a student or other individuals (including individuals in the community, not just students); or
3. In response to a valid warrant, subpoena, or judicial order.

Here are some examples of situations in which law enforcement may view video footage:

- **Misconduct or Safety Concern:** Upon request of the District, a law enforcement officer may help the school official to review video footage of a hallway, gym, athletic field, parking lot, etc., in the course of a District's investigation of a safety or misconduct situation that has occurred. This is also allowable regarding misconduct or safety concerns occurring at non-district sponsored events on district property during non-school hours.
- **Crime:** If the District has suffered damage (theft, vandalism, break-ins, etc.) and is in the course of investigating, and has filed a complaint with law enforcement, then law enforcement can view video footage that might help identify who was responsible or help make a case for restitution.
- **Community Safety:** If there is a missing person in the community and video footage may provide information to police that could affect community safety. Another example involves if two students left school early and were later arrested for committing a home burglary. The Police Chief could ask to see video for the day of the theft to determine if there were any preliminary activities involving other students or adults in the school. The District could agree to that if they felt that the police actually needed the video to intervene in a crime, anticipated off-school grounds, where school video could affect community safety.

Local law enforcement agencies may also use school video footage to assist the District with school emergency training exercises and safety planning and for police training exercises with advance notice and scheduling, as long as the footage does not contain footage that constitutes a "Student Education Record" of a student(s).

Requests for Video Footage: The district will maintain a log of all instances of release of video footage to parents/guardians, other school districts, and/or law enforcement.

- **Parents:** If a parent/guardian requests a copy of a *video* student education record, they can be permitted to *view* the video, but should not be provided with a copy. However, the district must make a good-faith effort to obscure the faces of the other students in the video, either by blurring them out or by focusing in on what is relevant, so that only the student in question can be seen.
- **Another School District:** If a records request comes from a school district where the student is enrolling, the sending district is required to provide copies of all education records, including any *video* student records that are stored electronically by the district. The copy of video should be sent with a note explaining the video's purpose and significance, and cautioning that the video should not be copied for the parents and should not be viewed by any outside party (including the parents) without redacting other students in the video. The district should retain a copy of the video (either in a copy of the student's education record or in an investigatory file).

- **Law Enforcement:** The district will release video footage to law enforcement under these circumstances:
 1. When needed due to an articulable and significant threat to the health & safety of a student or other individual (including individuals in the community), or
 2. In response to a valid warrant, subpoena*, or judicial order, or
 3. With written consent of the parent/guardian or eligible student.

The district may also release video footage to law enforcement without a warrant, subpoena, or judicial order:

- When the District believes there is a legitimate purpose to District interests, as long as there are no student images that would potentially constitute a student record.
- When there is an incident of vandalism, theft, damage, and/or harm to a neighboring property, as long as no student images are pictured. If students are pictured, then either parent permission or a warrant, subpoena or judicial order would suffice to allow release.

This is an example of the 'threat to health and safety' category. If a student is reported to not have returned home after school. The police could sit with school officials to review video footage during a time period right after the last class where the student was marked as in attendance, to determine if they can see the student leaving the building or in the parking lot next to a car, etc. If there is a concern that the student left with a stranger or unapproved individual, video footage of the student walking off campus or when last seen could be released to law enforcement for circulation to the public, other law enforcement, etc. Video pictures from the parking lot or building entry of non-student persons may also be released.

*Compliance with a subpoena: When there is a subpoena for video footage that is a 'Student Education Record' the school must: 1) Notify the parent that the record has been subpoenaed (unless the Court or issuing agency specifically directs the District not to notify the parent of the subpoena), and 2) Wait a reasonable amount of time (14 days is common) before releasing the record to allow the parent time to quash the subpoena.

Notification: LCSD policy ECAC says: "The district shall notify staff and students through student/parent and staff handbooks that video surveillance may occur on district property." A sign should also be posted near the main entrance indicating that video cameras *may* be in operation.



Equipment & Upkeep: LCSD's Facilities & Maintenance Department is the only department authorized to install video cameras. Schools should not take it upon themselves to purchase, install, move, or deploy video cameras on their own. If cameras are not working properly, schools can do a work order to request maintenance. If the picture is not clear due to cobwebs, grime, etc., the school's custodian can clean them.

Cost: A set of 16 cameras, along with the DVR and all necessary installation and equipment costs approximately \$10,000. School Administrators can contact our Facilities & Maintenance Manager if interested in budgeting and planning for another set of 16 cameras.

