

COOPERATIVE USE AGREEMENT for THE CITY OF NEWPORT and LINCOLN COUNTY SCHOOL DISTRICT

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 authority to perform; and
2. The Lincoln County School District is a municipal corporation of the State of Oregon furnishing educational services in Lincoln County, including that portion of the school district within the boundaries of the City of Newport; and
3. The City of Newport is a municipal corporation of the State of Oregon furnishing general governmental services within its corporate boundaries; and
4. The City of Newport has or may have certain equipment and property which might be made available for use by the Lincoln County School District; and
5. The Lincoln County School District has or may have certain equipment and property that might be made available for use by the City of Newport; and
6. Both the Lincoln County School District and City of Newport acknowledge they understand the circumstances regarding the COVID-19 pandemic and will take all necessary precautions as provided by the Centers for Disease Control/Prevention (CDC) guidelines and federal, state, and local orders regarding COVID-19; and
7. It is in the common interests of both the Lincoln County School District and City of Newport to further economy and efficiency in providing services to the public by utilizing the tax revenues obtained by each party to this agreement, and to maximize the benefits of the parties' respective constituencies, the parties do agree as follows:

AGREEMENT

IT IS HEREBY MUTUALLY AGREED by and between the LINCOLN COUNTY SCHOOL DISTRICT, hereinafter referred to as LCSD, and the CITY OF NEWPORT, hereinafter referred to as City, and in exchange for their mutual promises and agreements set forth below (hereinafter Agreement):

ARTICLE I: City Use of School Facilities. The LCSD will make available LCSD facilities and equipment to the City for community recreation activities.

- A. All permanently operated playgrounds and other school facilities and properties which are suitable for community recreational activities. The subject areas, properties, and facilities are to be identified and approved for use by the City Manager and the LCSD Superintendent.
 - 1) Outdoor: All playground areas, track facilities, football fields, softball/baseball fields, soccer fields, sports areas and associated equipment.
 - 2) Indoor: Gymnasiums, weight rooms, restrooms, shower rooms, dressing rooms, classrooms, art rooms, music rooms, cafeterias, shops, and multi-purpose areas.

- 3) Access: The above uses include access to designated school parking areas, and access to use of equipment including, but not limited to, audio-visual equipment, gymnastic equipment, scoreboards, volleyball nets and referee stands, and portable bleachers
 - 4) Consumables: The above-mentioned equipment does not include consumable items and/or materials.
- B. The use of identified LCSD facilities shall be in compliance with the regular procedures of the LCSD in granting permits and/or licenses for the use of LCSD facilities as provided in accordance with the laws of Oregon and the rules, regulations and policies of the Board of Education.
- C. Procedures shall be established for use, by designated representatives of the City Manager and LCSD Superintendent in a manner they determine, in scheduling and ordering of priorities of identified LCSD facilities.

ARTICLE II: School Use of City Facilities. The City will make available City owned facilities and equipment to the LCSD for LCSD supported activities.

- A. All permanently operated parks, playgrounds and other City facilities suitable for LCSD use. The subject areas, properties, and facilities are to be identified and approved for use by the LCSD Superintendent and City Manager.
- 1) Outdoor. All permanent park and playground areas, ballfields, soccer fields, tennis courts, sports areas and related equipment, and picnic shelters.
 - 2) Indoors. The Recreation Center (not including the Aquatic Center), gymnasiums, classrooms, meeting rooms, dance/aerobics rooms, cardio-fitness area and track, bleachers, chairs, tables, sound equipment, and kitchen.
 - 3) Access. The above uses include access to all designated parking areas consistent with a parking plan approved by the City, and identified facilities and equipment including, but not limited to, audio-visual equipment, volleyball nets and referee stands, scoreboards, cardio and exercise machines, portable bleachers and kitchen facilities and equipment.
 - 4) Consumables. The above mentioned equipment does not include consumable items and/or materials.
 - 5) Special Use. Use of the Aquatic Center will be specifically addressed in Article III below.
- B. The use of identified City facilities shall be in compliance with the regular procedures of the City in granting permits and/or licenses for use of City facilities as provided in accordance with the laws of Oregon and the rules, regulations and policies of the City.
- C. Procedures shall be established for use, by designated representatives of the City Manager and LCSD Superintendent in a manner they determine, in scheduling and ordering of priorities of identified City facilities.

ARTICLE III: Aquatic Center.

- A. Swim Practice
- 1) Each season, typically mid-November through mid-February, a schedule will be established as outlined in Article IV of this Agreement that provides pool time and space to the Newport High School Swim Team. This established schedule will include

regular practice days and times; all swim meet dates (see Article III, Section B, for process of scheduling swim meets), holiday breaks AND modified practice times, and any dates that the swim team will NOT be present at the Aquatic Center. The Aquatic Center will be notified as soon as possible of any unanticipated events that result in a change to this schedule.

- 2) Daily Practice Schedule. Any modifications to this schedule (such as days off, away for swim meets, or time changes for schedule exceptions) must be made available and approved with Aquatic Center no later than one (1) month prior, unless said change is a result of a cancelation due to unforeseen circumstances.
Practice times on City Holidays and LCSD Winter Break will be based on staff availability and previously scheduled programs/activities.
- 3) Morning. Swim team will be provided a maximum of three (3) lanes twice a week for morning swim practices. Morning practice schedules will be arranged prior to the start of the swim season in accordance with Article IV of this Agreement. When these practice times occur at the start of business hours, swim team members will be allowed access to the Aquatic Center through the Aquatic Center entrance ten (10) minutes before opening to enable them to start their practice on time. The Aquatic Center reserves the right in certain circumstances to not allow early entrance if doing so is problematic because of staffing or other operational issues.
- 4) Evening. All LCSD usage of the Aquatic Center Lap Pool during normal business hours prior to 7:00 PM will be charged at the established swim team lane fee currently established by the City. Lifeguards will be provided at City expense.
All LCSD usage of the Aquatic Center Lap Pool after 7:00 PM will be at no charge, except for the cost of providing lifeguards. If water safety certified swim coaches are present on deck, one (1) lifeguard will be provided for the entire practice. If coaches are not certified, City lifeguards will be assigned based on a one (1) to twenty (20) swimmer ratio.
- 5) Coaches must remain on deck during all practices.

B. Swim Meets.

- 1) Schedule. The City will provide LCSD a schedule of any potential conflicts to swim meets in advance of LCSD finalizing a swim meet schedule. LCSD will then utilize the available schedule in selecting dates for swim meets.
Once a swim meet schedule is determined, LCSD must provide the Aquatic Center Supervisor the schedule prior to the start of the swim season. All meets must be scheduled with the Aquatic Center at least one (1) month prior to the start of the season, OR if that timeframe is not possible, then as soon as a finalized meet schedule is available.
LCSD will request all Recreation Center use through the Aquatic Center. The Aquatic Center Supervisor will be responsible for ensuring Recreation Center availability.
- 2) Meet Details.
 - a. A maximum of six (6) home meets during the high school swim season, including Districts and Alumni meets, will be permitted.
 - b. Swim meets will be charged in accordance with established City swim meet fees as specified in the City fee schedule. There will be no charge for lifeguards. The CITY and LCSD will review the fee schedule annually on April 1st of each year.
 - c. The Activity Pool will be made available for warm-up/cool down if over hundred (100) swimmers are entered in the meet.

- d. The Aquatic Center will be closed for public users and publicly offered programs and activities during the duration of LCSD swim meets that have one hundred (100) or more swimmers in attendance.
- e. The hot tub/spa will be closed off and unavailable for meets.
- f. Bleachers, tables, chairs, PA system, and timing system will be available for swim meets.

C. Pool Equipment and Deck Space.

- 1) Two equipment boxes will be allowed during the regular swim season. One equipment box must be removed at the end of the season, or be stacked on one another during the off-season.
- 2) Storage space on the deck and in the storage room will be provided to the Outdoor School Scuba Class for the duration of the program. This equipment must be removed at the end of the program.

D. Space will be afforded in the Aquatic Center to display district or state competition banners. Advertising banners will not be allowed. All banners must be approved by Parks and Recreation Director. Wall space will be available for record boards. All records boards must be approved by the Parks and Recreation Director.

E. NHS Swim Team will be granted use of the Aquatic Center once per calendar year (outside of regular season or normal practice hours) for the purpose of fundraising or activities not related to practice or meet use. These fundraising activities must not conflict with or create competition with existing City programming, and must be approved by the Parks and Recreation Director.

F. End of season celebrations may be held during regular set practice times, or at a pre-arranged date after the season is over. Scheduling of this event, if it is outside of normal practice times, must be arranged per the established scheduling policy and in accordance with Article IV of this Agreement.

G. No off-season reduced pool passes will be offered to Swim Team participants. Special pass prices that are offered to the public will be available to the Swim Team.

H. Reservations by other school groups, or by swim team outside of the swim season, must be scheduled in accordance with existing rental policy; 24-hours in advance for lane rentals, three (3) weeks advance reservation for single pool rental, and two (2) months advance for full facility rental. These rentals will be charged as such:

- 1) Lap Pool.
 - a. After 7:00 PM, no charge except for the cost of providing lifeguards, at a ratio of one (1) guard per twenty (20) swimmers.
 - b. Prior to 7:00 PM, charged at the established swim team per lane fee.
- 2) Activity Pool.
 - a. All use of the Activity Pool by school groups must be pre-arranged in accordance with Aquatic Center Reservation Policy and will be available to the school group for the cost of providing lifeguards for the activity at one (1) lifeguard per twenty (20) swimmers in the pool. In cases where there are no other activities that require staff to be present in the facility, the group will be charged for a minimum of two (2) lifeguards. If swim instructors are requested, this cost will be included.

ARTICLE IV: Notice of Scheduling. A schedule of dates for the use of facilities subject to this Agreement shall be established 90 days in advance for existing programs; where new programs or where changes to facilities are planned, a schedule of dates shall be established 180 days in advance. The schedule will be arranged with the objective being to reduce conflict between the uses of the respective facilities by LCSD and the City.

- A. **School Facilities:** In the scheduling of the identified LCSD facilities, school events and programs shall have the first priority; recreational programs of the City shall have secondary priority. Scheduling by other groups or agencies for events or programs utilizing LCSD facilities shall have priority as determined by the LCSD.
- B. **City Facilities:** In the scheduling of the identified City facilities, City events and programs shall have the first priority; school programs and events of the LCSD shall have secondary priority. Scheduling by other groups or agencies for events or programs utilizing City facilities shall have priority as determined by the City.
- C. The priorities established above shall be maintained to the greatest extent possible. Once event or program schedules have been established, groups or agencies will not be "bumped" to accommodate a request from a higher priority user without first seeking the consent of the group or agency, or offering reasonable compensation to the lower priority group or agency user.
 - 1) The schedule may be changed at the request of either party hereto by mutual consent.
 - 2) To utilize LCSD facilities during months that school is in session, the City will contact the respective school principal, or designee for scheduling use of the facility. During summer months, or when the principal is not available, scheduling for facility use shall be arranged through a LCSD designated agent or employee.
 - 3) To utilize City facilities, the appointed LCSD positions will contact the below positions for scheduling use of a City facility:
 - a. Sports Program Supervisor – gyms and athletic fields
 - b. Aquatics Supervisor – Aquatic Center
 - c. Recreation Superintendent – Recreation Center
 - d. Parks and Recreation Director – all facilities
 - 4) To utilize LCSD facilities, the appointed City positions will contact the below positions for scheduling use of a LCSD facility:
 - a. Designated School Administrative Position – facilities related to their school
 - b. School Principal – facilities related to their school
 - c. Facilities Director – all facilities
 - d. School District Superintendent – all facilities
 - 5) The parties acknowledge LCSD properties and facilities are not required for school purposes during certain hours and on certain days during summer break and vacation periods. It is, therefore, agreed that at such times, suitable facilities will be made available for recreational uses by City, and that designated school playgrounds will be available for City recreational uses.
 - 6) Seasonal meetings (fall, winter, and spring) shall be held to review current and upcoming scheduling of respective facilities uses and to address relevant matters of concern between the parties. LCSD will be responsible for setting up these meetings.

ARTICLE V: Rental and Other Charges: City and LCSD agree that neither party shall charge a rental fee for the use of their respective properties and facilities except as provided under the terms of this Agreement, unless otherwise agreed to in writing by the parties.

ARTICLE VI: Supervision: The City agrees to provide adequate personnel to supervise City activities at LCSD properties and facilities. The LCSD agrees to provide adequate personnel to supervise LCSD activities at City properties and facilities.

ARTICLE VII: Facility Construction and Renovation: It is agreed that City and LCSD will notify one another of the plans to develop new facilities and renovation/remodel of existing facilities to the extent possible to coordinate such projects to the mutual benefit of the parties.

ARTICLE VIII: Maintenance: Maintenance and utilities of City facilities and properties shall be the responsibility of City. Maintenance and utilities of LCSD facilities and properties shall be the responsibility of LCSD.

ARTICLE IX: Dispute Resolution: In the event of any dispute that arises concerning the terms of this Agreement, the respective agents/employees of City and LCSD shall attempt to resolve same; where a dispute remains unresolved after good-faith efforts at the staff level, the matter shall be referred to the City Manager and LCSD Superintendent for resolution.

ARTICLE X: Termination: This Agreement shall terminate five years after the date of execution, unless extended in writing by the parties. Either party may terminate this Agreement by providing 180-day notice to the other party of intent to terminate the Agreement. Notice shall be in writing to the following person/address:

If to City: City Manager
 City of Newport
 169 SW Coast Hwy
 Newport, OR 97365

If to LCSD: Superintendent
 Lincoln County School District
 PO Box 1110
 Newport, OR 97365

At the conclusion of a period of five years from the date of the signing of this Agreement, both parties will evaluate this Agreement in its entirety for philosophical and overall benefits for both parties. If the Agreement is not extended at the conclusion of the five-year period, the use period will expire at the end of the active program season.

ARTICLE XI: Responsibility for Damages: The City shall be responsible for any and all damages to LCSD properties and facilities caused as a proximate result of use by the City recreational activity. The LCSD shall be responsible for any and all damages to City properties and facilities caused as a proximate result of use by the LCSD activity.

ARTICLE XII: Liability to Third Parties: To the extent permitted by the Oregon Constitution, and to the extent permitted by the Oregon Tort Claims Act (ORS 30.280 to 30.300), and to the extent otherwise provided for in private contracts of insurance, both the City and LCSD 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. Indemnity and defense for claims arising during the term of this Agreement shall survive expiration or termination of this Agreement.

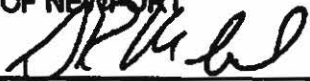
Article XIII: Additional Insureds: Both the City and LCSD agree to obtain and maintain in force at all times during the term of this Agreement a policy or policies of general liability insurance with liability limits of at least \$2,000,000 (two million dollars) per occurrence and \$3,000,000 (three million dollars) in the annual aggregate, with the City policy or policies naming LCSD and its officers, board members, employees, and agents as additional insureds, and the LCSD policy or policies naming the City and its officers, board members, employees, and agents as additional insureds.

ARTICLE XIV: Merger: This Agreement contains the entire agreement and understanding between the parties as to the subject matter herein and supersedes all prior agreements, commitments, representations, and discussions between the parties, whether written or verbal, relating to the subject matter of this Agreement.

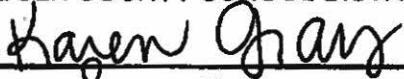
ARTICLE XV: Amendments: This Agreement may be amended or modified only upon written agreement of both parties.

IN WITNESS WHEREOF, the parties have entered into this Agreement by directing their respective authorized representatives to affix their signatures hereto.

CITY OF NEWPORT

By: 
Title: City Manager
Date: 09-22-20

LINCOLN COUNTY SCHOOL DISTRICT

By: 
Title: Supt.
Date: 9/24/20