

**AMENDMENT No. 2
AGREEMENT TO AMEND INTERLOCAL AGREEMENT**

Operation and Maintenance Agreement for Terrace Park School Dated February 2002

I. Parties.

This Amendment (“Amendment No. 2”) to the Operation and Maintenance Interlocal Agreement (“Agreement”) is entered into under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, by and between the City of Mountlake Terrace (“City”) and Edmonds School District #15 (“District”), both municipal corporations under the laws of the State of Washington who are collectively referred to herein as “Parties”.

II. Recitals.

WHEREAS, City and District entered into the Agreement in February 2002, which is currently in effect; and

WHEREAS, the Agreement maximizes public benefit by implementing an agreement for the use of City and District facilities; and

WHEREAS, the mutual use of each Party’s facilities and services were equitable at the time the Agreement was entered into; and

WHEREAS, the Agreement was amended October 22, 2014 to incorporate additional facilities; and

WHEREAS, the District and City entered into a subsequent agreement dated August 7, 2018 titled “Use of City and District Recreational Facilities and Services”; and

WHEREAS, the “Use of City and District Recreational Facilities and Services” Agreement includes the Facilities set forth in Amendment 1 Section 4.3 of this Agreement, and therefore creates a conflict between the two agreements; and

WHEREAS, the City and the District mutually agree and desire to keep the added indemnifications, hold harmless, and notification provisions of Amendment 1; and

WHEREAS, in light of the foregoing the Parties desire to amend Section 4.3 of the Operations and Maintenance Agreement to clarify and avoid conflicts or inconsistencies with the “Use of City and District Recreational Facilities and Services” Agreement.

NOW THEREFORE, IN CONSIDERATION of the benefits to be derived and the terms and conditions set forth herein the City and the District do hereby agree as follows:

III. Amendments.

1. Section 4.3 of the Agreement is hereby amended to read as follows:

4.3 Upon completion of the construction of the Expanded Facilities pursuant to the First Interlocal Agreement, the City shall be required to provide a quarterly reimbursement to the District

for operation and maintenance of the Expanded Facilities, as set forth in this Agreement, to the Contract Administrator, or at such intervals as the parties may agree upon. "Reimbursement," as used in this Agreement, may include nonmonetary compensation so long as the City and the District agree said nonmonetary compensation is substantially equivalent to the operations and maintenance of the Expanded Facilities provided by the District pursuant to this Agreement. The City shall submit the proposed nonmonetary compensation items along with the City's value attributed to those items to the District at least forty-five (45) days prior to the quarterly reimbursement date. Within twenty (20) days of receipt, the District shall be deemed to have rejected the items and related proposed values unless otherwise notifying the City in writing. Within five (5) days after the District either provides notice of or is deemed to have rejected any items or their values, the City and the District shall meet to allow the City the opportunity to convince the District to accept the disputed item and/or value, PROVIDED THAT the final decision of whether to accept or reject an item for nonmonetary reimbursement is within the sole discretion of the District.

2. Section 4.3A is hereby added to the Agreement to read as follows:

4.3A Each Party shall indemnify and hold harmless the other Party, officers, officials, agents, or employees and volunteers from and against any and all claims, suits, actions or liabilities for injury or death of any person, or for loss of damaged property, which arises out of each Party's use of the Expanded Facilities, or from any activity, work or thing done, permitted, included through any sublease, or suffered by each Party in or about the Expanded Facilities except only such injury or damage as shall have been occasioned by the sole negligence of that Party. In the case of negligence of more than one Party, and damages allowed shall be levied in proportion to the percentage of negligence attributable to each Party; and each Party shall have the right to seek contribution from each of the other Parties in proportion to the percentage of negligence attributable to each of the other Parties.

3. Section 4.3B is hereby added to the Agreement to read as follows:

4.3B Notice. Each notice or communication which may be or is required to be given under this Agreement shall be in writing and shall be deemed to have been properly given when delivered personally during the normal business hours to the party to whom such communication is directed or three working (3) days after being sent by regular mail, to the appropriate one of the following addresses as may be designated by the appropriate party:

City of Mountlake Terrace
c/o Recreation & Parks Department
5303 228th Street SW
Mountlake Terrace, WA 98043

Edmonds School District #15
c/o Director, Facilities Operations
20420 68th Ave. W
Lynnwood, WA 98036

4. Section 4.3C is hereby added to the Agreement to read as follows:

4.3C Each party shall designate a person who shall be responsible for handling the administrative needs with respect to their use of the above referenced facilities. The City's Designated Representative is the Recreation and Parks Director. The District's Designated Representative is the Director, Facilities Operations. Upon written notice, the Designated Representative from each Party may assign these tasks to a designee of their choosing.

IV. Conflicts.

In the event of any conflict between the terms and conditions of the Agreement and the terms and conditions of this Second Amendment, the terms and conditions of this Second Amendment shall prevail. If any term of this Second Amendment is held invalid or unenforceable, the remainder of the Second Amendment will not be affected but continue in full force. The terms and conditions set forth in this Second Amendment are not intended to conflict with the terms and conditions of any other Interlocal Agreement in effect at the time of this Second Amendment’s adoption. In the event of such a conflict, the parties mutually agree to negotiate a settlement or adjustment to the terms and conditions contained in any conflicting language thereof.

V. Remaining Terms of Agreement.

Except as specifically set forth in this Second Amendment, all other terms and conditions of the Agreement and Exhibits shall remain unmodified and in full force and effect.

VI. Effective Date of Amendment.

This Second Amendment shall become effective the last date that this Second Amendment is executed by either District or City.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 2 on the dates indicated below:

For the City of Mountlake Terrace

For Edmonds School District #15

Scott Hugill
City Manager

Gustavo Balderas, Ed.D
Superintendent

Date: _____

Date: _____

Approved as to Form

Hillary J. Evans
City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that on this ____ day of _____, 20____, _____ signed this instrument, on oath stated that they were authorized to execute the instrument, and acknowledged it, as the _____, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

Print Name: _____
Notary Public in and for the State of Washington,
residing at _____
My commission expires: _____

STATE OF WASHINGTON)
) ss.
COUNTY OF SNOHOMISH)

I certify that I know or have satisfactory evidence that on this ____ day of _____, 20____, _____ signed this instrument, on oath stated that they were authorized to execute the instrument, and acknowledged it, as the _____, to be the free and voluntary act of such corporation for the uses and purposes mentioned in the instrument.

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