

RESOLUTION NO. 2021-29

**RESOLUTION AUTHORIZING CITY MANAGER TO ENDORSE
AN INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN
CITY OF FOREST GROVE AND FOREST GROVE SCHOOL DISTRICT
FOR SUMMER PROGRAMS**

WHEREAS, the Forest Grove School District (District) has received Federal funding for summer programs and enrichment opportunities for students within the District's boundaries; and

WHEREAS, the District has asked the City of Forest Grove (City) to manage the summer programs and work collaboratively with the District on those programs; and

WHEREAS, an IGA has been prepared describing statement of work and other terms and conditions to be followed; and

WHEREAS, this IGA needs to be approved so the City can begin contracting with the companies who will be providing some of the programs.

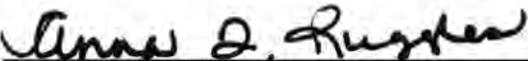
NOW, THEREFORE, BE IT RESOLVED BY THE CITY OF FOREST GROVE AS FOLLOWS:

Section 1. The City Council hereby approves the Intergovernmental Agreement between the City and the District for the summer programs.

Section 2. The City Manager is authorized to endorse the agreement on behalf of the City.

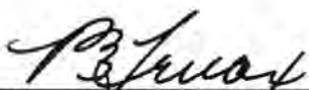
Section 3. This resolution is effective immediately upon its enactment by the City Council.

PRESENTED AND PASSED this 14th day of June, 2021.



Anna D. Ruggles, City Recorder

APPROVED by the Mayor this 14th day of June, 2021.



Peter B. Truax, Mayor

INTERGOVERNMENTAL AGREEMENT FOREST GROVE SUMMER PROGRAMS

This Intergovernmental Agreement (this "Agreement") is made and entered into under ORS 190.010 between Forest Grove School District No. 15, a school district of the State of Oregon organized under ORS Chapter 332 (the "District"), and the City of Forest Grove, a political subdivision of the State of Oregon (the "City") (each a "Party," and collectively, the "Parties").

Notices and Contacts:

To District: Ilean Clute, Director of Finance and Operations
Forest Grove School District
1728 Main Street
Forest Grove, OR 97116
iclute@fgsd.k12.or.us

To City : Anna Ruggles
City Recorder
City of Forest Grove
1924 Council Street
Forest Grove, OR 97116
Email:

Terms and Conditions:

1. **Term and Termination.** This Agreement becomes effective on July 1, 2021. Unless earlier terminated as provided below, this Agreement shall continue through August 30, 2021.
2. **Early Termination.** Unless otherwise specified herein, this Agreement may be terminated as follows:
 - a. **Mutual:** District and City may terminate this Agreement at any time by their written agreement.
 - b. **Unilateral:** Either party may terminate this Agreement upon providing 30 days' written notice to the other party.
3. **Purpose/Background.** This Agreement is for the City to provide summer programs and enrichment opportunities to the students within the Forest Grove School District's boundaries. These programs are designed to align with the State of Oregon's Summer Enrichment Program Grants to serve students in grades kindergarten through eighth and will help to reduce the negative impacts our students have experienced as a result of the pandemic over the past year.
4. **Agreement Documents.** This Agreement consists of these Terms and Conditions and the documents ("Exhibits") listed below in descending order of precedence. A conflict in these documents shall be resolved in the priority listed below with these Terms and Conditions taking precedence over all other documents. The Exhibits to this Agreement include the Following documents:
 - a. Exhibit A - Statement of Work
 - b. Exhibit B - Abuse and Sexual Conduct Information and Reporting Training
5. **Statement of Work.** City shall perform the work described in Exhibit A - Statement of Work.
6. **Maximum Total Payment: Invoices.** The District will make no payment until this Agreement is fully executed by the authorized representatives of both parties. District shall pay City up to a maximum total payment up to \$150,000 for services provided by City. City shall invoice District an initial payment of \$75,000 at the commencement of the work. City shall invoice the District for the balance of the actual costs up to the maximum total payment of \$150,000 upon work

- completion. City shall submit invoices to the person and address above. Upon invoice approval, District, and in accordance with these Terms and Conditions, District shall pay City net 15 days.
7. **Independent Contractor Status.** By its signature on this Agreement, City certifies that the service or services to be performed under this Agreement are those of an independent agency as defined in ORS 670.600, and that City is solely responsible for the work performed under this Agreement. City represents and warrants that City, its subcontractors, employees and agents are not "officers, agents or employees" of the District within the meaning of the Oregon Tort Claims Act (ORS 30.260 through 30.300). City shall be responsible for all federal, state and local taxes and any and all fees applicable to payments for services under this Agreement.
 8. **Subcontracts: Assignment.** Neither party may subcontract, assign or transfer (collectively, "Subcontract") any part of this Agreement without the prior written consent of the other party (or as outlined in the statement of work). If consent to a Subcontract is properly given, then in addition to any other provisions of this Agreement, the subcontracting party shall hold its subcontractor to all the terms and conditions of this Agreement that would otherwise bind the party to whom consent was given. The parties agree that any such Subcontracts shall have no binding effect on the consenting party to this Agreement.
 9. **Access to Records.** Each party shall have access to the books, documents, and other records of the other party (electronic or otherwise) that are related to this Agreement for the purpose of examination, copying, and audit, unless otherwise limited by law.
 10. **Ownership of Work.** City agrees that all work products created or developed for the District by the City pursuant to this Agreement are intended as "works made for hire" and shall be the exclusive property of the District. If any such work products contain City intellectual property that is or could be protected by federal copyright, patent, or trademark laws, City hereby grants District perpetual, royalty-free, fully paid, non-exclusive, and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, and use or re-use, in whole or in part, and to authorize others to do so, all such work products. District claims no right to any pre-existing work product of City provided to District by City in the performance of this Agreement, except to copy, use or re-use any such work for District use only.
 11. **Unsupervised Contact with Students; Criminal Background Checks.** City authorizes District to conduct a criminal background check, including fingerprinting, of any officer, agent, or employee of City that will have unsupervised contact with students. City also agrees to cause City's employees and/or subcontractors, if any, to authorize District to conduct such background checks. City shall pay all fees assessed by the Oregon Department of Education for processing the background check. District may deduct the cost of such fees from a progress or final payment to the City under this Agreement, unless City elects to pay such fees directly.
 - 12.
 13. **Confidentiality; FERPA Rediscovery. Family Education Rights and Privacy Act ("FERPA")** prohibits the re-disclosure of confidential student information. City or agrees to protect the confidentiality of student education records, including personally identifiable information found in education records, in compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) and its implementing regulations (34 C.F.R. Part 99), collectively "FERPA." City acknowledges that information disclosed to City by District may include records that are subject to FERPA, and that to the extent this is the case, City will be considered a "school official" as that term is used in FERPA. As such, City agrees that it will hold all information disclosed to it in strict confidence and will not use such information as required to perform its obligations under this Agreement. City further agrees that it will not disclose or re-disclose any such information except (a) with the express written authorization of the District, or (b) as required by law but only to the extent permitted by law and only in the manner prescribed by law. If the City receives a court order or subpoena seeking education records or information contained in education records, it shall immediately notify the District in

writing. If City re-discloses personally identifiable information from education records on behalf of the District in response to an order or subpoena under 34 C.F.R. 99.31(a)(9), City must provide the notification required under 34 C.F.R. 99.31(a)(9)(ii). District will assist the City with complying with this notification requirement.

- 14. Compliance with Applicable Law.** Each party shall comply with all federal, state and local laws applicable to public contracts and to the work done under this Agreement, and all regulations and administrative rules established pursuant to those laws.
- 15. Mutual Indemnification.** Subject to the limitations of the Oregon Constitution (Article XI, Section 7) and the Oregon Tort Claims Act (ORS 30.260 through 30.300), City shall indemnify and defend District from and against all liability, loss and costs arising out of or resulting from the acts of City, its officers, employees, and agents in the performance of this agreement. Subject to the limitations of the Oregon Constitution (Article XI, Section 7) and the Oregon Tort Claims Act (ORS 30.260 through 30.300), District shall indemnify and defend City from and against all liability, loss, and costs arising out of or resulting from the acts of District, its officers, employees, and agents in the performance of this Agreement.
- 16. Insurance.** City shall maintain insurance acceptable to the District in full force and effect throughout the term of this agreement to the extent it is required. Such insurance shall cover risks arising directly or indirectly out of Contractor's activities or work hereunder, including the operations of its subcontractors of any tier. Such insurance shall include provisions that such insurance is primary and not contributory insurance with the insurance required hereunder. Contractor shall provide a minimum of 30 days' written notice to the District in cases of cancellation, intent not to renew, or reduction in its coverage by the insurance Company. All carriers must be A.M. Best rating of "A-VII" or better, or equivalent. The policy or policies of insurance maintained by Contractor shall provide at least the following limits and coverages:
 - a. Commercial General & Automobile Liability Insurance:** Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Comprehensive General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form (CG 2010 1185 or equivalent) with a per occurrence limit of \$1,000,000 and a general aggregate of \$2,000,000 including products completed and on-going operations, advertising and personal injury and bodily damage and property damage with a fire damage limit of \$1,000,000. Commercial Automobile Liability coverage on an "occurrence" form including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

Additional Insured coverage under Contractor's Commercial General Liability and Excess Liability Policy(ies), as applicable, will be provided by endorsement. Waiver of Subrogation endorsement via ISO form CG 2404 or its equivalent shall be provided. The following is included as additional insured: Forest Grove School District, its elected and appointed officials, officers, agents, employees, and volunteers.
 - b. Workers' Compensation Insurance:** Contractor, and all employers providing work, labor or materials under this Contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017. This shall include Employer's Liability Insurance with coverage limits of not less than \$1,000,000 each accident. Waiver of subrogation in favor of the District will be provided.
 - c. Professional Liability Insurance Liability Insurance (if applicable):** Contractor shall maintain Professional Liability Insurance on a policy form appropriate to Contractor's profession (must provide coverage for architects, engineers, and other licensed professionals providing work on the Project) covering claims arising out of errors, omissions or malpractice with limits of no less than \$2,000,000 per claim.

- d. Pollution Liability Insurance (if applicable):** If, as a result of performance of this Agreement, Contractor generates any hazardous wastes, Contractor shall be responsible for disposal of any such hazardous wastes in compliance with all applicable federal and state requirements. Contractors shall provide District with documentation, including all required manifests, demonstrating proper transportation and disposal of any such hazardous wastes. Contractor shall defend, indemnify, and hold harmless District for any disposal or storage of hazardous wastes generated pursuant to this Contract and any releases or discharges of hazardous materials.
 - e. Extended Reporting Coverage (if applicable):** If any of the aforementioned liability insurance is arranged on a "claims-made" basis, Extended Reporting coverage will be required at the completion of this contract to a duration of 24 months. Continuous "claims-made" coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this contract.
 - f. Certificates of Insurance:** As evidence of the insurance coverage required by the contract, Contractor shall furnish a Certificate of Insurance to the District. No contract shall be effective until the required Certificates of Insurance have been received and approved by the District. The certificate will specify and document all provisions within this contract and include a copy of Additional Insured Endorsement. A renewal certificate will be sent to the District prior to coverage expiration.
- 17. Sexual Abuse and Misconduct Reporting Training.** All Contractor's staff must be trained annually on sexual abuse and misconduct information and reporting as required by ORS 339.400(2) as outlined in Exhibit B.
- 18. Waiver; Severability.** Waiver of any default or breach under this Agreement by either party does not constitute a waiver of any subsequent default or a modification of any other provisions of this Agreement. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular term or provision held invalid.
- 19. Non-discrimination Clause.** Both parties agree that no person shall be subject to unlawful discrimination based on race; national or ethnic origin; color; sex; religion; age; sexual orientation; gender expression or identity; pregnancy; marital status; familial status; economic status or source of income; mental or physical disability or perceived disability; or military service in programs, activities, services, benefits, or employment in connection with this Agreement. The parties further agree not to discriminate in their employment or personnel policies.
- 20. Controlling Law; Venue.** Any dispute under this Agreement or related to this Agreement shall be governed by Oregon law, and any litigation arising out of the Agreement shall be conducted in courts located in Washington County, Oregon.
- 21. Amendments; Renewal.** Any amendments, consents to or waivers of the terms of this Agreement shall be in writing and signed by both parties. The Agreement is non-renewable after the Termination date of August 30, 2021.
- 22. Counterparts.** The parties may execute this Agreement in counterparts, each of which constitutes an original and all of which comprise one and the same Agreement. Counterparts may be delivered by electronic means.
- 23. Entire Agreement.** When signed by the authorized representatives of both parties, this Agreement and its attached exhibits is their final and entire agreement. As their final expression, this Agreement supersedes all prior and contemporaneous oral or written communications between the parties, their agents, and representatives. There are no representations, promises, terms, conditions, or obligations other than those contained herein.

I HAVE READ THIS CONTRACT AND ITS ATTACHED EXHIBITS, IF ANY. I CERTIFY THAT I HAVE THE AUTHORITY TO SIGN AND ENTER INTO THIS CONTRACT ON BEHALF OF THE PARTY I REPRESENT AND AGREE TO BE BOUND BY ITS TERMS.

City of Forest Grove

Signature

Jesse VanderZanden, City Manager
Printed Name and Title

6/15/21
Date

Forest Grove School District

Signature

Ilean Clute, Director of Finance and Opps
Printed Name and Title

June 8, 2021
Date

Exhibit A

Statement of Work

What: Summer O' Fun (Parks & Rec Program)

When: July 6-Aug 27

Time: 8:30-4:15

Who: Drop in & pre-registered youth

Number of students served total: approx 250/day

Where: Lincoln Park, Rogers Park, Harleman Park, TMUES

Why: Youth will have opportunities to explore and engage in positive behaviors through a variety of recreational programming. Traditional and non-traditional organized sports and special interest camps and programs. Weekday drop in activities: Arts and crafts, field games for any size group of kids. All of the rest of the programs will be pre-registration-required (half day and full day programs for 5 days).

Extras: Free Meals in the Park provided by FGSD

Costs: Parks Staff supervision, Parks Presentations
Parks Programs, Supplies

Exhibit B

Abuse and Sexual Conduct Information and Reporting Requirements for School Contractors, Agents and Volunteers

FOREST GROVE SCHOOL DISTRICT DOES NOT TOLERATE CHILD ABUSE OR SEXUAL CONDUCT IN ANY FORM.

PREVENTION:

The Forest Grove School District seeks to prevent child abuse and sexual harassment by committing to:

- Teaching students about appropriate boundaries and relationships (in coordination with curriculum);
- Training all employees regarding child abuse and sexual conduct, and clearly communicating responsibilities and procedures;
- Making this training available to parents, community members, contractors and volunteers; and
- Promptly and thoroughly investigating any reports or complaints of abuse or sexual conduct.

ABUSE DEFINED

- Any assault of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.
- Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.
- Rape of a child.
- Sexual abuse.
- Sexual exploitation, including but not limited to: Contributing to the sexual delinquency of a minor, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, sexual abuse involving a child or rape of a child, and Allowing, permitting, encouraging or hiring a child to engage in prostitution or a commercial sex act, to purchase sex with a minor or to engage in commercial sexual solicitation.
- Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.
- Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.
- Buying or selling a person under 18 years of age.
- Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

- Unlawful exposure to a controlled substance, or to the unlawful manufacturing of a cannabinoid extract, that subjects a child to a substantial risk of harm to the child's health or safety. ORS 419B.005(1).

SEXUAL CONDUCT DEFINED

Verbal or physical conduct or verbal, written or electronic communications by a school employee, a contractor, an agent or volunteer that involve a student and that are: sexual advances or requests for sexual favors directed toward the student or of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with the student's educational performance or of creating an intimidating, hostile or offensive educational environment. Sexual conduct does not include touching that is necessitated by the nature of the school employee's job duties or by the services required to be provided by the contractor, agent or volunteer and for which there is no sexual intent. ORS 339.370(11)(a).

STUDENT DEFINED:

Any person who is in any grade from prekindergarten through grade 12 or twenty-one years of age or younger and receiving educational or related services from an education provider that is not a post-secondary institution or education or who was previously known as a student by the person engaging in sexual conduct and who left school or graduated from high school within 90 days prior to the sexual conduct. ORS 339.370(12).

GROOMING AND EXAMPLES OF SEXUAL CONDUCT

Sexual Conduct may include grooming behavior. This is behavior in which adults develop trust to break down a child's defenses so that the adult may engage the child in sexual conduct or sexual abuse. Sexual Conduct includes but is not limited to the following examples: Reporting Requirements for 3rd Parties 2

- Performing back rubs on students
- Touching students frequently
- Kissing students
- Commenting on students' bodies or appearance in a sexual manner
- Videotaping or photographing a student in revealing poses
- Sharing one's own sexual exploits or marital difficulties
- Exchanging romantic gifts or communications with a student
- Discussing/writing about sexual topics unrelated to curriculum with students, making sexual jokes, gestures and innuendos or engaging in inappropriate banter with students (e.g., discussion of student's dating behavior)
- Intentionally invading the student's privacy
- Using email, text messaging or instant messaging to discuss sexual topics with individual students

OBLIGATIONS OF SCHOOL EMPLOYEES TO REPORT ABUSE AND SEXUAL CONDUCT ALL EMPLOYEES are required to follow Policy JHFE "Reporting of Suspected Abuse of a Child" and

policy JHFF/GBNAA "Reporting Requirements for Suspected Sexual Conduct with Students." These policies help ensure employees are properly reporting incidents of abuse and sexual conduct.

Policy JHFE requires employees who have a reasonable cause to believe any child with whom the employee has come into contact has suffered abuse, to report this to DHS or the law enforcement agency within the county where the person making the report is located at the time of the contact. It also requires employees who have a reasonable cause to believe that any adult or student with whom the employee is in contact has abused a child to report this to DHS or to the law enforcement agency within the county where the person making the report is located at the time of the contact. See district policy JHFE "Reporting Requirements for Suspected Abuse of a Child" for more detail regarding these reporting obligations. Reporting Requirements for 3rd Parties.

Policy JHFF requires employees who have reasonable cause to believe that another employee, contractor, agent or volunteer has engaged in sexual conduct with a student, to immediately notify the designated licensed administrator of the conduct. The designated licensed administrator who receives the report is required to report to the Oregon Department of Education (ODE or Teacher Standards and Practices Commission (TSPC) as appropriate. See attached district policy "Reporting Requirements for Suspected Sexual Conduct with Students" for more detail regarding these reporting obligations.

INVESTIGATORY PROCESS When the designated licensed administrator (or alternate) receives a report of sexual conduct and has reasonable cause to believe that it has occurred, the designated licensed administrator will report the alleged conduct to TSPC if the alleged perpetrator is a licensed individual, and to ODE if the alleged perpetrator is not licensed (effective July 1, 2020). TSPC or ODE will conduct an investigation and report back to the district. The district may also conduct an investigation into the alleged sexual conduct. If the designated licensed administrator (or alternate) receives a report of child abuse and has reasonable cause to believe that it has occurred, the designated licensed administrator will ensure that the report has been made to DHS and/or law enforcement for investigation. The district may also conduct an investigation into the alleged abuse. The designated licensed administrator will also report to TSPC if required by OAR 584-020-0041. A contractor, agent or volunteer may be removed from their position based on information of sexual conduct and/or child abuse.

OBLIGATIONS OF SCHOOL CONTRACTORS, AGENTS AND VOLUNTEERS TO REPORT ABUSE AND SEXUAL CONDUCT.

ALL CONTRACTORS, AGENTS AND VOLUNTEERS are required to report all known or suspected incidents of abuse and sexual conduct to a school administrator. Failure to report known or suspected incidents of abuse and sexual conduct may lead to termination of your contract with the District, termination of your right to volunteer with the District, and/or trespass from all school property and events.

APPROPRIATE ELECTRONIC COMMUNICATIONS WITH STUDENTS

Policy JHFF/GBNAA requires that any electronic communications with students by a contractor, agent or volunteer for the district will be appropriate and only when directed by district administration. When communicating with students electronically regarding school-related matters, contractors, agents or volunteers shall use district e-mail using mailing lists and/or other internet messaging to a group of students rather than individual students or as directed by district administration. Texting or electronically communicating with a student through contact information gained as a contractor, agent or volunteer for the district is prohibited.

ADDITIONAL PROHIBITIONS If a school employee, contractor or agent knows or has reason to know that another school employee, contractor or agent has engaged in sexual conduct or abuse, the school employee, contractor or agent may not assist the other in obtaining a new job. This prohibition does not apply if the employee, contractor or agent knows or has reasonable cause to believe that the conduct was reported to the appropriate agency and was resolved, or the investigation remains ongoing after four years.

Signature

Name

Date



A place where families and businesses thrive.

CITY RECORDER USE ONLY:

AGENDA ITEM #: 9.
MEETING DATE: 06/14/2021
FINAL ACTION: RESO 2021-29

CITY COUNCIL STAFF REPORT

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

MEETING DATE: *June 14, 2021*

PROJECT TEAM: *Anne Lane, Parks & Recreation Director
Paul Downey, Administrative Services Director*

SUBJECT TITLE: *IGA with School District for Summer Programs*

ACTION REQUESTED:

<input type="checkbox"/>	Ordinance	<input type="checkbox"/>	Order	<input checked="" type="checkbox"/>	X	Resolution	<input type="checkbox"/>	Motion	<input type="checkbox"/>	Informational
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X all that apply

ISSUE STATEMENT: The Forest Grove School District (District) has received Federal funding for summer programs and enrichment opportunities for students within the District’s boundaries. District staff has discussed with City staff that the City would manage the summer programs to be provided. City staff has agreed to manage the summer programs in collaboration with the District. An intergovernmental agreement (IGA) outlining the responsibilities for the City and the District has been prepared. A resolution approving the IGA and authorizing the City Manager to execute the IGA is attached for Council consideration.

BACKGROUND: The summer program, called the Summer O’ Fun, will be held July 6 through August 27 at three locations in Forest Grove and one in Cornelius. The City will manage the programs. The City will use lifeguards, who are unable to work at the Aquatic Center due to the closure of the main pool, to staff the sites. The District will also provide a teacher and an assistant at each site. The Parks and Recreation Director has been planning the programs and has made arrangement with companies who will be providing some of the programming. Once the IGA is completed, the City can sign contracts with those companies. The District has approved the IGA.

FISCAL IMPACT: The funds the City will receive from the District will pay for the City staff working at the sites and the vendors who will be contracted with to provide some of the programs so no City funds will be required for this program.

STAFF RECOMMENDATION: Staff recommends that the City Council approve the resolution approving the proposed IGA with the FGSD and authorize the City Manager to execute the IGA.

ATTACHMENT(s):
Resolution and IGA