

**FIRST AMENDMENT TO INTERLOCAL COOPERATIVE AGREEMENT  
BETWEEN FIFE SCHOOL DISTRICT NO. 417  
AND CITY OF FIFE  
FOR OPERATION & MAINTENANCE OF JUNIOR HIGH SCHOOL AND  
CITY SPORTS PARK**

1. Date and Parties. This First Amendment to Interlocal Cooperative Agreement between Fife School District No. 417 and City of Fife for Operation & Maintenance of Junior High School and City Sports Park is dated, for reference purposes, the 28<sup>th</sup> day of April, 2015 ("First Amendment"), and is entered into between the City of Fife (the "City"), and Fife School District No. 417 ( The "District"), each a "Party," collectively "Parties".

2. Background and Purpose.

2.1 on November 15, 1999, the City and the District entered into an Interlocal Cooperative Agreement between Fife School District No. 417 and City of Fife for Operation & Maintenance of Junior High School and City Sports Park (the "Agreement"). The purpose of the Agreement was to allow and encourage the City and the District to work together in planning, developing and maintaining the joint school/performing arts center/sports park site for joint use.

2.2 The City and the District have been operating and maintaining the school and park facilities under the Agreement since 1999, and desire to update the Agreement to incorporate agreed changes in the operation and maintenance of the school and park facilities. This First Amendment is intended to modify certain provisions of the Agreement as set forth below.

3. Amendment to Article I. Article I of the Agreement is hereby amended as follows:

**I. AVAILABILITY OF FACILITIES**

The School Building shall be facilities operated by the District. The Athletic Facilities and related parking lots shall be facilities operated by the City. The parties shall cooperatively work together to schedule the use of facilities to maximize the use of the facilities at all times and to further the purposes for which the parties entered into the Agreement.

For purposes of scheduling all requests for use of the School Building shall be made in writing by the City Manager or his or her designated representative and will be subject to the approval of Superintendent of Schools or his or her designated representative. The following facilities shall be made available to the City to the extent the proposed use does not conflict with school programs:



- a. Performing Arts Center (PAC)
- b. Kitchen facilities
- c. Classrooms
- d. Restrooms
- e. Hallways
- f. Gymnasiums

The City will make available to the District for school events, activities and/or programs, the athletic facilities to the extent the same are not needed for City activities and programs. Provided all requests for use of such sport facilities by the District shall be made in writing by the Superintendent of Schools or his or her designated representative subject to the approval of the City Manager or his or her designated representative.

4. Amendment to Article II. Article II of the Agreement is hereby amended as follows:

## II. SCHEDULING

A. The intent of this Agreement is to give priority to scheduling in activities that further the purpose of each party's primary mission. Thus, the District shall have priority in scheduling the school buildings for those activities that are directly related to educational activities. The District shall also have priority in scheduling with regards to the use of the athletic fields for physical recreation for its students as part of their physical education activities and sports events related thereto, including interscholastic events Monday through Friday until 5:30 p.m. or end of game in progress. The District shall provide interscholastic sports season schedules to the City as soon as they are finalized. Provided once the District has established its program of activities for a school term then the City shall have priority as to all times not designated as required for school activities during the specified school term. The City's use of District facilities shall be secondary to the District's own programming and scheduling needs, however City programming shall have priority relative to other users and user groups.

B. The use of the Facilities shall be in accordance with all applicable rules, policies, regulations, laws, procedures and permits governing the approved use of facilities of either party. The laws of the State of Washington, the terms of this Agreement, and any other mutual written agreement of the parties are supplemental thereto.

C. Reservations shall be booked according to the following policy:

Each party shall designate and identify to the other Party a staff person responsible for reservation coordination.

All requests shall be made in writing by the requesting Party and be submitted to the other Party's reservation coordinator.

Every attempt shall be made to submit requests at least two weeks in advance.

The City shall be the reservation coordinating agency for all outdoor athletic facilities and the District shall be the reservation coordinating agency for all functions within the School Buildings.

D. The schedule of dates for use of the Joint Facilities will be worked out in advance to avoid conflict between the City and District. Once an event/activity is booked, every effort shall be made to honor the commitment. If, however, activities are in conflict, each party will notify the other as far in advance as possible. The party with priority rights, as per Article III, paragraphs A and B, may cancel such conflicting activities. The canceling entity shall do so in good faith and shall contact the party or activity canceled, in advance, and work with them to reschedule the event. The canceling entity shall have no liability or responsibility for damages resulting from the cancellation, and the non-canceling entity shall hold the other harmless from any such damages.

E. The Joint Operations & Maintenance Committee, as described further in Article XI, will hold bi-annual meetings in January, and September to discuss IV the upcoming scheduled events and the specific terms under which they will be operating. The bi-annual scheduling meeting in September shall forecast the following academic year's sports, school, and social events calendar for both the City and District. A date for these meetings will be scheduled by mutual agreement between the Superintendent of the Schools or his or her designated representative and the City Administrator/City Manager or his or her designated representative. Additional meetings of the Joint Operations & Maintenance Committee may be scheduled as needed.

5. Amendment to Article III. Article III of the Agreement is hereby amended as follows:

### **III. SUPERVISION AND STAFFING**

A. Each Party agrees to provide adequate adult personnel to supervise its activities which take place on or in the Joint Facilities; provided that: City supervision shall be required solely for City sponsored/organized events and shall not be required for general

community use of facilities. School supervision shall be required solely for school sponsored/organized events and shall not be required for general community use of facilities. The adequacy of the level of supervision is the subject to review by the other Party. Either agency may ask the other agency to clearly determine and define the role expected of the supervisor and staff.

B. Security and crowd control are the responsibilities of the Party using the property, which Party shall ensure that good order is maintained at all times. Such Party assumes full responsibility for the conduct of persons involved in the Party's activity or who are on the property with the consent of, at its invitation, or as a result of that Party's activity. Such responsibility also includes cost repair to or replacement of property damaged or destroyed by the act or omissions of the user, its agents, or invitee.

C. City use of the School kitchen may have costs associated with staffing and equipment usage if use of the kitchen area is requested.

6. Amendment to Article 4. Article 4 of the Agreement is hereby amended as follows:

#### **IV. MAINTENANCE**

A. The Parties shall maintain all Facilities jointly, excluding:

1. The Columbia Junior High School buildings and associated landscaping shall be maintained by the District.

2. The Dacca Park Athletic Field Complex lighting, utility infrastructure, and the storm water drainage collection and distribution system shall be maintained by the City.

B. The maintenance standards for all facilities shall meet or exceed the maintenance standards followed by the parties with regards to their current facilities. Within 90 days from the date of this O & M agreement the Superintendent and/or his designee and the City Manager and/or his designee hereby delegated the authority to develop a memorandum of understanding that will specify the applicable standards. Said memorandum shall be deemed an integral part of this O & M Agreement and shall be subject to its terms and conditions. The Superintendent and City Manager are also delegated the authority to establish a maintenance schedule in conformance with the maintenance standards referenced above. The schedule shall divide maintenance tasks between the Parties. Allocation of tasks shall be based upon criteria of (1) equity division; (2) the matching of Parties' capabilities, labor and

equipment resource to the tasks and consider whether each party will conduct the maintenance in-house or via contractor. The schedule may be modified upon written agreement of the Parties. Any issues or concerns with regard to the maintenance schedule will be discussed at the bi-annual meetings of the Joint Operations & Maintenance Committee.

C. Allocation between the Parties of maintenance tasks shall be in lieu of payments by one Party to the other for maintenance costs. Provided, however, in the event one Party fails to comply with a material task assigned to that Party in the maintenance schedule, the other party may, upon ten (10 days) prior written notice to the non-complying Party, perform the task and bill the non-complying Party for such. The non-complying party shall pay the bill within thirty days of receipt.

D. Costs of maintenance for the concession site shall be separately identified and shall not be included in the total maintenance costs to be shared by the Parties. The concession maintenance costs shall be borne solely by the City with the exception of the concession/restroom building alarm system which shall be maintained by the District as it is part of the overall system for Columbia Junior High School.

E. Costs of maintenance for the Fife History Museum, Dacca Barn, and Locomotive/Caboose site shall be considered separately and is understood not to be in the total maintenance costs to be shared by the Parties. The building and landscape maintenance costs of these areas shall be borne solely by the City.

F. Costs of maintenance for the school building and its associated landscaping shall be considered separately and is understood not to be included in the total maintenance costs to be shared by the Parties. School building and landscape maintenance costs shall be borne solely by the District (with the exception of direct service costs associated with programming usage of the school building itself; see I below).

G. Maintenance costs shall be borne by the using Party when such maintenance involves extra costs to the responsible Party, unless maintenance duties/equipment are exchanged in lieu of payments.

H. Game preparation and lining of tracks and fields shall be done by the user Party.

I. All facilities shall be repaired, restored or replaced as required to ensure safe operation. Each party shall notify the other in advance of any required repair, replacements and restoration of facilities.

Such costs shall be borne equally by the Parties, except as to the allocation of costs as to those facilities identified in paragraph V (A).

7. Amendment to Article V. Article V of the Agreement is hereby amended as follows:

## V. EQUIPMENT/FIXTURES

A. Equipment and Supplies. The equipment used in the conduct of the programs shall, to the extent practicable, be furnished by the Party providing the services. Each Party will furnish and supply all expendable materials (except sanitation supplies) necessary for operating its programs on the properties used. Equipment that is not easily moved on site (for example; soccer goals, volleyball standards, baseball bases, etc.) may be used by the other agency if available. Any damage to such equipment will be immediately reported and a mutually agreeable method and amount of payment for replacement or repair determined.

### B. Improvements and Safety Features.

1. The City may, with prior written approval of the District, improve Joint Facilities including the installation of recreation equipment not in conflict with school use, which shall be at no cost or expense to the District except by written mutual agreement.

2. The District may, with prior written approval of the City, improve Joint Facilities including installation of school equipment not in conflict with recreational use, which shall be at no cost or expense to the City except by written mutual agreement.

3. All improvements and equipment installed and to be installed for purposes of this Agreement, the design, plans and specifications thereof, and the type and construction thereof, including safety features, and the proposed placement thereof on sites shall all be subject to approval in writing by each Party prior to development, construction, purchase and installation thereof, which approval shall not be unreasonably withheld.

4. Either Party making improvements to the Joint Facilities may remove any of its fixtures from the property upon termination of this Agreement if such removal will not cause damage to the property, which removal shall be agreed to in advance. All other fixtures or alterations become the property of the site upon termination of this Agreement.



C. Utilities. The costs of the utilities provided to the Project's Joint Facilities shall, subject to the following exceptions, be borne equally by the Parties.

1. The school building utilities shall be separately metered for water and sewer and electricity, where possible, in order to ensure segregation of costs, and shall be borne solely by the District.

2. The cost of the Project's outdoor lighting shall be separately metered and shall be paid solely by the City. The utility cost of electricity for the Columbia Jr. High School parking lot shall be borne solely by the District.

3. Utility costs of water for irrigation of the park (exclusive of the school and its associated landscaping) is a cost that will be split 67% City and 33% District. The City shall be responsible for payment and shall bill the District for its share on a bi-monthly basis. The District shall pay the bill within 30 days of receipt.

4. Garbage collection costs for the school building shall be borne solely by the District. Garbage collection costs for Dacca Community Park shall be borne solely by the city. Garbage collection costs for all Special Events conducted at Dacca Community Park shall be borne solely by the agency sponsoring the event.

This portion of the Agreement regarding Utilities billing shall be reconsidered by the District and City after 3 years of use to determine if both Parties are in fact paying an equitable share of the non-school building utilities charges.

8. Amendment to Article VIII. Article VIII of the Agreement is hereby amended as follows:

### **VIII. ADVERTISING**

A. Any posting of advertising matter of any kind on the property shall be in places designated by the City or District for such purposes. Advertising matter for anything other than activities of the parties hereto may not be posted except pursuant to the policy of the affected facility's responsible Party. The placement of advertising in the sports fields and their associated facilities shall be governed by the City; the placement of advertising inside the school shall be governed by the District.

B. When joint programs are sponsored, each Party will share in the public acknowledgement.



9. Amendment to Article X, Paragraph E. Article X, Paragraph E of the Agreement is hereby amended as follows:

E. Joint Operations & Maintenance Committee. Each January and September the Joint Operations and Maintenance Committee will meet to consider and recommend changes to this Agreement, if any may be needed. Membership on the Committee will consist of three (3) representatives from each Party, to include the following:

- School District – Assistant Superintendent
- School District – Manager of Maintenance & Operations
- School District – Grounds Technician
- City – Parks, Recreation & Community Services Director
- City – Facility & Operations Supervisor
- City – Division Manager

Any substantive change to this Agreement which is recommended by the Joint Operations and Maintenance Committee shall be presented to the appropriate governing bodies for approval.

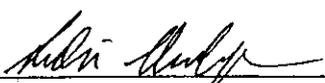
10. Amendment to Article X, Paragraph I. Article X, Paragraph I of the Agreement is hereby amended as follows:

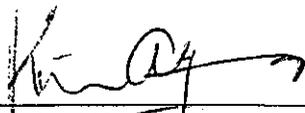
I. Alcohol and Tobacco Use. Alcohol consumption and sale shall be prohibited unless prior express written permission is obtained from the Party in charge of the event and all applicable local and State laws are obeyed. Tobacco sales are prohibited. No tobacco products, electronic smokeless devices, or drug paraphernalia may be used, consumed or smoked in any building. No tobacco products, electronic smokeless devices, or drug paraphernalia may be used, consumed or smoked on any property subject to this agreement when school is in session, or a District sponsored event is occurring on any of the sports facilities.

11. Confirmation of Agreement Terms. Except as modified herein, the Agreement terms remain in full force and effect. This First Amendment and the Agreement are now an integrated document. In case of a conflict between the terms of the Agreement and the terms of the First Amendment, the terms of the First Amendment shall control.

CITY OF FIFE

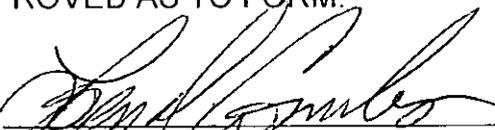
FIFE SCHOOL DISTRICT NO. 417

By:   
Subir Mukerjee, City Manager

By:   
Kevin Alfano, Superintendent

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By:   
for Gregory F. Amann  
Assistant City Attorney

By: N/A  
School District Attorney

APPROVAL BY GOVERNING BOARD GIVEN:

FIFE CITY COUNCIL

FIFE SCHOOL DISTRICT NO. 417

4/28/15  
Date

7/27/15  
Date

Resolution #1661  
Action

Action

INTERLOCAL COOPERATIVE AGREEMENT  
BETWEEN FIFE SCHOOL DISTRICT NO. 417  
AND CITY OF FIFE  
FOR OPERATION & MAINTENANCE OF JUNIOR HIGH SCHOOL  
AND CITY SPORTS PARK

This Agreement, is dated, for reference purposes, the 15<sup>th</sup> day of November, 1999, and is entered into by and between the City of Fife, a municipal corporation of the State of Washington (hereinafter "City"), and Fife School District No. 417, a municipal corporation of the State of Washington (hereinafter "District").

WHEREAS, the governing bodies of the City and the District are mutually interested in an adequate program of community recreation and student activities; and

WHEREAS, the Parties have, concurrent with this Agreement, entered into an Interlocal Agreement for the design and development of a suitable joint site for a Junior High School that will include an auditorium with state of the art equipment that can be used as a Performing Arts Center and a City Sports Park, said Interlocal Agreement being incorporated herein by reference and referred to as the "Agreement". The facilities contemplated under the terms of the Agreement are the facilities subject to this Operation and Maintenance Agreement (the "O & M Agreement"); and

WHEREAS, the City intends to use the Facilities that are the subject of the Agreement and this O & M Agreement (collectively referred to herein as the "Facilities") for activities that will encourage and promote tourism within the City;

WHEREAS, said governing bodies are authorized to enter into agreements with each other, and to do any and all things necessary or convenient to aid and cooperate in the cultivation of good citizenship by providing for programs of community recreation and student activities; and

WHEREAS, in the interest of providing the best services with the least possible expenditure of public funds, full cooperation between the City and the District is necessary; and

WHEREAS, a joint use concept can provide for the maintenance and operation of the project's fields and buildings for their better utilization by both Parties; and

WHEREAS, the purpose of this joint use Agreement is to allow and encourage the City and District to work together in planning, developing and maintaining the joint school/performing arts center/sports park site for joint use; and



WHEREAS, the City and the District have the authority to enter into this Agreement pursuant to the Interlocal Cooperation Act, chapter 39.34.030 RCW. The Fife City Council

NOW, THEREFORE, in consideration of the premises, said City and said District do now agree to cooperate with each other in carrying out the above purposes, and to that end do agree as follows:

## **I. AVAILABILITY OF FACILITIES**

The School Building shall be facilities operated by the District. The Sports Facilities and related parking lots shall be facilities operated by the City. The parties shall cooperatively work together to schedule the use of facilities to maximize the use of the facilities at all times and to further the purposes for which the parties entered into the Agreement.

For purposes of scheduling all requests for use of the School Building shall be made in writing by the City Manager or his or her designated representative and will be subject to the approval of Superintendent of Schools or his designated representative. The Auditorium, cafeteria and classrooms and related facilities shall be made available to the City to the extent the proposed use does not conflict with school programs.

The City will make available to the District for school events, activities and/or programs, the sports facilities to the extent the same are not needed for City activities and programs. Provided all requests for use of such sport facilities by the District shall be made in writing by the Superintendent of Schools or his or her designated representative subject to the approval of the City Manager or his or her designated representative.

## **II. SCHEDULING**

A. The intent of this Agreement is to give priority to scheduling in activities that further the purpose of each party's primary mission. Thus, the District shall have priority in scheduling the school buildings for those activities that are directly related to educational activities. The District shall also have priority in scheduling with regards to the use of the sports fields for physical recreation for its students as part of their physical education activities and sports events related thereto. The scheduling of activities for each school term shall be made available to the City as soon as it has been approved by the District. Provided, once the City has established its program of activities for a school term then the City shall have priority as to all times not designated as required for school activities during the specified school term.

B. The use of the Facilities shall be in accordance with all applicable rules, policies, regulations, laws, procedures and permits governing the approved use of



facilities of either party. The laws of the State of Washington, the terms of this Agreement, and any other mutual written agreement of the parties are supplemental thereto.

C. Reservations shall be booked according to the following policy:

Each Party shall designate and identify to the other Party a staff person responsible for reservation coordination.

All requests shall be made in writing by the requesting Party and be submitted to the other Party's reservation coordinator.

Every attempt shall be made to submit requests at least two weeks in advance.

The City shall be the reservation coordinating agency for all Sports facilities and the District shall be the reservation coordinating agency for all functions within the School Buildings.

D. The schedule of dates for use of the Joint Facilities will be worked out in advance to avoid conflict between the City and District. Once an event/activity is booked, every effort shall be made to honor the commitment. If, however, activities are in conflict, each party will notify the other as far in advance as possible. The party with priority rights, as per Article III, paragraphs A and B, may cancel such conflicting activities. The canceling entity shall do so in good faith and shall contact the party or activity canceled, in advance, and work with them to reschedule the event. The canceling entity shall have no liability or responsibility for damages resulting from the cancellation, and the non-canceling entity shall hold the other harmless from any such damages.

E. The Joint Operations & Maintenance Committee, as described further in Article XI, will hold quarterly meetings in August, November, February, and May to discuss the upcoming scheduled events and the specific terms under which they will be operating. The quarterly scheduling meeting in August shall forecast the following academic year's sports, school, and social events calendar for both the City and District. A date for these meetings will be scheduled by mutual agreement between the Superintendent of Schools or his or her designated representative and the City Administrator/City Manager or his or her designated representative.

### III. SUPERVISION AND STAFFING

A. Each Party agrees to provide adequate adult personnel to supervise its activities which take place on or in the Joint Facilities; provided that: City supervision shall be required solely for City sponsored/organized events and shall not be required for general community use of facilities. School supervision shall be required solely for school sponsored/organized events and shall not be required for general community



use of facilities. The adequacy of the level of supervision is subject to review by the other Party. Either agency may ask the other agency to clearly determine and define the role expected of the supervisor and staff.

B. Security and crowd control are the responsibilities of the Party using the property, which Party shall ensure that good order is maintained at all times. Such Party assumes full responsibility for the conduct of persons involved in the Party's activity or who are on the property with the consent of, at its invitation, or as a result of that Party's activity. Such responsibility also includes cost of repair to or replacement of property damaged or destroyed by the act or omissions of the user, its agents, or invitee.

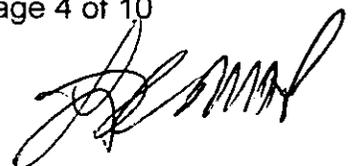
#### IV. MAINTENANCE

A. The Parties shall maintain all Facilities jointly, excluding:

1. The Junior High School building, which shall be maintained by the District.
2. The Sports Field Complex lighting and utility infrastructure (excluding the storm water drainage collection and distribution system) shall be maintained by the City.

B. The maintenance standards for all facilities shall meet or exceed the maintenance standards followed by the parties with regards to their current facilities. Within 90 days from the date of this O & M agreement the Superintendent and/or his designee and the City Manager and/or his designee are hereby delegated the authority to develop a memorandum of understanding that will specify the applicable standards. Said memorandum shall be deemed an integral part of this O & M Agreement and shall be subject to its terms and conditions. The Superintendent and City Manager are also delegated the authority to establish a maintenance schedule in conformance with the maintenance standards referenced above. The schedule shall divide maintenance tasks between the Parties. Allocation of tasks shall be based upon criteria of (1) equity division; (2) the matching of Parties' capabilities, labor and equipment resources to the tasks and and consider whether each party will conduct the maintenance in-house or via contractor. The schedule may be modified upon written agreement of the Parties. Any issues or concerns with regard to the maintenance schedule will be discussed at the quarterly meetings of the Joint Operations & Maintenance Committee.

C. Allocation between the Parties of maintenance tasks shall be in lieu of payments by one Party to the other for maintenance costs. Provided, however, in the event one Party fails to comply with a material task assigned to that Party in the maintenance schedule, the other party may, upon ten (10 days) prior written notice to the non-complying Party, perform the task and bill the non-complying Party for such.



D. Costs of maintenance for the concession site shall be separately identified and shall not be included in the total maintenance costs to be shared by the Parties. The concession maintenance costs shall be borne solely by the City.

E. Maintenance costs shall be borne by the using Party when such maintenance involves extra costs to the responsible Party, unless maintenance duties/equipment are exchanged in lieu of payments.

F. Game preparation and lining of tracks and fields shall be done by the user Party.

G. All facilities shall be repaired, restored or replaced as required to ensure safe operation. Each party shall notify the other in advance of any required repair, replacements and restoration of facilities. Such costs shall be borne equally by the Parties, except as to the allocation of cost as to those facilities identified in paragraph V(A).

## V. EQUIPMENT/FIXTURES

A. Equipment and Supplies. The equipment used in the conduct of the programs shall, to the extent practicable, be furnished by the Party providing the services. Each Party will furnish and supply all expendable materials (except sanitation supplies) necessary for operating its programs on the properties used. Equipment that is not easily moved on site (for example: soccer goals, volleyball standards, baseball bases, etc.) may be used by the other agency if available. Any damage to such equipment will be immediately reported and a mutually agreeable method and amount of payment for replacement or repair determined.

### B. Improvements and Safety Features.

1. The City may, with prior written approval of the District, improve Joint Facilities including the installation of recreation equipment not in conflict with school use, which shall be at no cost or expense to the District except by written mutual agreement.

2. The District may, with prior written approval of the City, improve Joint Facilities including installations of school equipment not in conflict with recreational use, which shall be at no cost or expense to the City except by written mutual agreement.

3. All improvements and equipment installed and to be installed for purposes of this Agreement, the design, plans and specifications thereof, and the type and construction thereof, including safety features, and the proposed placement thereof on sites shall all be subject to approval in writing by each Party prior to development, construction, purchase and installation thereof, which approval shall not be unreasonably withheld.



4. Either Party making improvements to the Joint Facilities may remove any of its fixtures from the property upon termination of this Agreement if such removal will not cause damage to the property, which removal shall be agreed to in advance. All other fixtures or alterations become the property of the site upon termination of this Agreement.

C. Utilities. The costs of the utilities provided to the Project's Joint Facilities shall, subject to the following exceptions, be borne equally by the Parties.

1. The school building utilities shall be separately metered for water and sewer and electricity, where possible, in order to ensure segregation of costs, and shall be borne solely by the District.

2. The cost of the Project's outdoor lighting shall be separately metered and shall be paid solely by the City, provided that the District shall pay to the City an amount equal to the cost of the District's use of the Project's outdoor lighting. This cost shall be calculated based upon the District's pro-rata share of the City's outdoor Project Facility lighting billing for the applicable period of use.

3. Garbage collection costs for the school building shall be borne solely by the District. Garbage collection costs for the sports complex shall be shared equally by both parties.

This portion of the Agreement regarding Utilities billing shall be reconsidered by the District and City after 5 years of use to determine if both Parties are in fact paying an equitable share of the non-school building utilities charges.

## **VI. RETAIL SALES AND CONCESSIONS**

The City shall conduct retail sales or grant concessions for the sale of refreshments on the site at a mutually agreed location or locations, as indicated in the Project's design documents. The City shall bear all expenses and retain all profits from concession sales. Maintenance costs directly attributable to the concession site shall be separately identified and shall not be included in the total maintenance costs of the site to be borne equally by the Parties. Provided, however, with regards to school related activities the District shall have the right to allow school student body or other organizations to sell concessions at the school events and those sales, expense of the sales and profits therefrom shall be the sole responsibility of the District.

## **VII. LONG RANGE PLANNING**

The City and the District will encourage cooperative efforts in this Project's future school and recreation design, development and improvement. Each Party shall offer



the other the opportunity to review and comment on any future development, modification, and/or re-design or improvement plans.

### **VIII. ADVERTISING**

A. Any posting of advertising matter of any kind on the property shall be in places designated by the City or District for such purposes. Advertising matter for anything other than activities of the parties hereto may not be posted except pursuant to the policy of the affected facility's responsible Party.

B. When joint programs are sponsored, each Party will share in the public acknowledgement.

### **IX. USE OF THE PROPERTY**

There will be no rental charges for usage by either Party of the Facilities. Direct costs related to the use of the facility by the other party such as janitorial service costs, equipment and supplies shall be the responsibility of the party using the facility. The parties shall annually analyze the direct costs with regards to the use of the Facilities in the previous year and shall reconcile the expenditures, if necessary, so that no party has incurred a direct cost related to the other party's activity.

It is anticipated that the parties may sponsor or authorize groups to utilize the Facilities that are the subject of this Agreement for other community related activities and tourism related activities. Any use of the Facilities by a third party shall require the third party to execute an Indemnity and Hold Harmless Agreement that indemnifies both the District and the City and provides adequate security for damages to sustained to the Facility as a result to the third party's activities. The third party agreement shall include a deposit sufficient to cover the janitorial costs and other clean-up costs and supervision related to the Facility use. The indemnity and security provisions to be used by both parties with regards to third party use shall be approved by the other party.

### **X. GENERAL PROVISIONS**

A. Indemnification. The District agrees to indemnify and hold the City, and its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the District, its elected officials, officers, employees, agents, and volunteers, or by the District's breach of this Agreement.

The City agrees to indemnify and hold the District, its elected officials, officers, employees, agents, and volunteers harmless from any and all claims, demands, losses, actions and liabilities (including costs and all attorney fees) to or by any and all persons



or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Agreement to the extent caused by the negligent acts, errors or omissions of the City, its elected officials, officers, employees, agents, and volunteers, or by the City's breach of this Agreement.

The provisions of this paragraph shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

B. Insurance.

1. It is hereby understood and agreed that each Party to this Agreement shall obtain and maintain public liability insurance in an amount no less than TWO MILLION AND NO/100 DOLLARS (\$2,000,000) single limit liability.

2. Each Party shall provide the other Party with a certificate of public liability insurance naming the other Party as an additional insured and showing proof of the required insurance coverage. Insurance coverage shall be maintained at all times.

C. Mediation. Both parties agree to carry out the terms and conditions of this Agreement in good faith to assure that the intent of this Agreement is fulfilled. If a dispute should arise between the parties with regards to the interpretation or implementation of any provision of this Agreement then the issue shall be submitted to mediation upon the request of either party. Mediation shall occur in Pierce County, Washington, utilizing a mediator or mediation service to be agreed to by both parties. If the parties cannot agree as to a mediation service then the mediator shall be selected by the American Arbitration Association in accordance with its rules for mediation.

D. Arbitration. If the parties are unsuccessful in mediating a dispute then they agree that any dispute may be resolved by binding arbitration. The parties will seek to agree to an arbitrator on an informal basis to provide for expeditious and inexpensive resolution of the arbitration issues. If the parties cannot agree then arbitration can be commenced by either party through the American Arbitration Association. The Rules of the American Arbitration Association shall govern the arbitration. A single arbitrator shall be used and the decision of the arbitrator shall be binding and may be enforced in the Pierce County Superior Court.

E. Joint Operations & Maintenance Committee. Each August (month) a Joint Operations and Maintenance Committee will meet to consider and recommend changes to this Agreement, if any may be needed. Membership on the Committee will consist of three (3) representatives from each Party, to include the following:

1. School District – Dir of Adm Svcs (position title)
2. School District – Jr HS Principal (position title)
3. School District – Supervisor of  
Maint. (position title)



4. City – CITY MANAGER (position title)
5. City – PUBLIC WORKS DIR (position title)
6. City – PARKS, REC & SE SER (position title)  
DIRECTOR

The School District Board shall make appointments for the School District's positions. The City Council shall make appointments for the City's positions. In cooperation with the City's Parks Commission, the Committee will develop a Policy and Procedures Manual (Manual) to govern use of the Joint Facilities and submit such Manual to the District's School Board and the City Council for approval. Any change to this Agreement or to the Manual shall be presented to the appropriate governing bodies for approval.

F. Term. The term of this Operation and Maintenance Agreement shall be the same as the term of the Agreement. This O & M Agreement shall automatically terminate upon the termination of the Agreement.

G. Filing. A copy of this Agreement shall be filed with the Secretary of State, the City Clerk of the City of Fife, the Department of Fiscal Services/Fife Schools, and the Pierce County Auditor.

H. This Agreement does not authorize the Joint Operations & Maintenance Committee to acquire, hold and/or dispose of real or personal property. Terms of use, and payment and liability related to the use of any real or personal property owned or operated by the Parties hereto are governed by the terms of this Agreement.

I. Alcohol and Tobacco Use. Alcohol consumption and sale shall be prohibited. Tobacco sales are prohibited. No tobacco may be used, consumed or smoked in any building. No tobacco may be used, consumed or smoked on any property subject to this agreement when school is in session, or a District sponsored event is occurring on any of the sports facilities.

IN WITNESS whereof the Parties have executed this Agreement the day and year set forth below.

CITY OF FIFE

FIFE SCHOOL DIST. 417

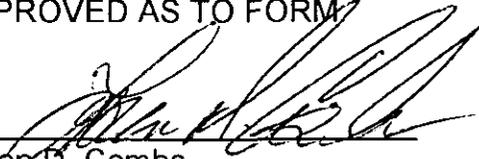
Marian Martelli Wetsch  
Marian Martelli Wetsch, Mayor

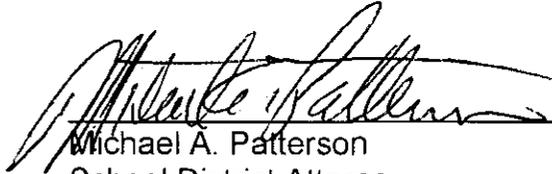
Robert Z. Corley  
Dr. Robert Corley, Superintendent

ATTEST:

Pam Harris  
Lynne Goodman, City Clerk  
Pam Harris, Deputy Clerk

APPROVED AS TO FORM

  
\_\_\_\_\_  
Loren D. Combs  
City Attorney  
McGavick Graves, P.S.

  
\_\_\_\_\_  
Michael A. Patterson  
School District Attorney  
Lee Smart Cook Martin & Patterson

APPROVAL BY GOVERNING BOARD GIVEN:

FIFE CITY COUNCIL

FIFE SCHOOL DIST. 417

October 12, 1999  
\_\_\_\_\_  
Date

November 29, 1999  
\_\_\_\_\_  
Date

Resolution #672  
\_\_\_\_\_  
Action

Motion for Approval by School Board  
\_\_\_\_\_  
Action

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