

MEMORANDUM OF UNDERSTANDING BETWEEN

CITY OF LAKE OSWEGO

AND

LAKE OSWEGO SCHOOL DISTRICT

Recreation and Aquatics Center at Municipal Golf Course

THIS MEMORANDUM OF UNDERSTANDING is entered into July 9, 2020, by and between the City of Lake Oswego, an Oregon municipal corporation ("City") and Lake Oswego School District No. 7J, also known as Clackamas County School District No.7, a common school district of the State of Oregon ("District").

WHEREAS, the District desires to build a new 25-yard stretch competition swimming pool to meet the needs of its student athletes; and

WHEREAS, the City desires to build a recreation center including, warm water pool, classrooms and offices for the Parks and Recreation Department; and

WHEREAS, District voters approved a bond measure that included funds for renovation and/or replacement of the competition swimming pool at Lake Oswego High School and has available additional funds from realized bond premiums; and

WHEREAS, the City voters approved a bond measure to fund the development of new recreation facilities in addition to repairing facilities and acquisition of property; and

WHEREAS, the City and District desire to enter into a Memorandum of Understanding ("MOU") to form the basis for negotiating an intergovernmental agreement for the design, construction and operation of a Recreation and Aquatics Center at the City-owned Municipal Golf Course property;

THE CITY AND DISTRICT AGREE AS FOLLOWS:

1. Non-Binding Effect of MOU.

This MOU sets forth the current intent and understandings of the parties that form the basis for negotiation of an intergovernmental agreement ("IGA"), described in Section 3 below. Except for the agreement to pay or reimburse design fees, charges and expenses in Section 4, and the indemnity provisions of Section 5, this MOU does not create a binding agreement between the parties and may not be relied upon as a basis for a contract by estoppel or for a claim based on detrimental reliance or any other theory. The parties understand that, except for the expressly exempted provisions, no party shall be bound until the IGA has been negotiated and signed by both parties.

2. Term of MOU.

This MOU is effective on the date set forth above and will expire on May 1, 2021, unless extended by the mutual written consent of both parties, or terminated under Section 7. This MOU will expire automatically upon execution of an IGA between the parties as described in Section 3.

3. Elements of IGA.

During the term of this MOU, the parties will, in good faith, negotiate the terms of an IGA addressing, but not necessarily limited to, the following key elements:

a. Construction of a recreation and aquatics center at the current Lake Oswego Municipal Golf Course property, including at a minimum:

- (1) A 25-yard stretch competition swimming pool;
- (2) A warm water recreation pool;
- (3) Dry activity and exercise rooms;
- (4) Parks and Recreation Department classrooms;
- (5) Parks and Recreation Department offices; and
- (6) Cardio/weight room and gymnasium.

b. Equal allocation of all outside direct costs associated with design, engineering, permitting and construction of the recreation and aquatics center, up to a total of \$30 million (\$15 million each).

- c. Methodology for allocating savings or additional costs.
- d. Contracting responsibility and methodology.
- e. Allocation of internal project management responsibilities.
- f. The parties' shares of operating costs and subsidies.
- g. Responsibilities and funding for maintenance, repair and replacement.
- h. Priority and scheduling of use of the various elements within the center.

The parties will use their best efforts to negotiate and execute the IGA within 180 days of the date of this MOU. In negotiating the IGA, each party will be free, in its good faith discretion, to agree or not agree on the proposed terms of the IGA. The parties intend that the IGA will be consistent with this MOU.

4. Selection of Design Professional; Preliminary Design Work.

Following execution of this MOU, the City, with input from the District, will select and contract with an architectural firm for the full range of architectural services for the anticipated recreation and aquatics center project, from preliminary design through construction. The City, in collaboration with the District, will develop the scope of work for the contract. The design will be based on the project as generally outlined in the conceptual materials presented to the City and the District at their March 16, 2020, joint meeting. The City and the District will collaborate and reach consensus on the project design. The parties agree that design work under the contract will commence promptly following award of the contract, regardless of whether the award precedes execution of the IGA. The District will pay or

reimburse one-half of all fees, charges and expenses for any such design work performed following execution of this MOU and before execution of the IGA promptly upon receiving invoices and supporting information from the City. The parties intend that the IGA will also provide for equal sharing of fees, charges and expenses for design work performed after that point.

5. Indemnification.

To the extent permitted by the Oregon Constitution, and subject to the limitations of the Oregon Tort Claims Act, both parties agree to indemnify and hold each other, its agents and employees, harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees arising out of or in any way connected with the indemnifying party's act or omissions of action under this MOU.

6. Modification.

No modification of the provisions of this MOU shall be effective unless reduced to writing and signed by both parties.

7. Termination.

Either party may terminate this Memorandum of Understanding prior to its expiration by giving 30 days' written notice to the other. In the event of termination, each party will be solely responsible for their own expenses incurred during the term of the MOU, subject to the cost-sharing obligations of Section 4, which shall survive the termination of the MOU.

8. Notices.

All notices required by, or relating to, this MOU must be in writing and sent by personal delivery, overnight delivery, or by email to the following:

For the City: Martha Bennett, City Manager
City of Lake Oswego
P.O. Box 369
380 A Avenue
Lake Oswego, OR 97034
mbennett@lakeoswego.city

For the District: Dr. Lora de la Cruz, Superintendent
Lake Oswego School District
P.O. Box 70
2455 Country Club Road
Lake Oswego, OR 97034
delacrul@loswego.k12.or.us

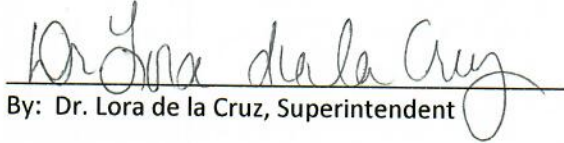
IN WITNESS WHEREOF, Lake Oswego School District No. 7J and the City of Lake Oswego have executed this Memorandum of Understanding as of the date first above written.

CITY OF LAKE OSWEGO, an Oregon municipal corporation



By: Martha J. Bennett, City Manager

LAKE OSWEGO SCHOOL DISTRICT NO. 7J, also known as Clackamas County School District No.7, a common school district of the State of Oregon



By: Dr. Lora de la Cruz, Superintendent