

ALBANY AND GREATER ALBANY PUBLIC SCHOOLS INTERGOVERNMENTAL AGREEMENT
FOR MAPLE LAWN PRESCHOOL OPERATIONS AND MAINTENANCE

This Intergovernmental Agreement (“Agreement”) is made and entered into this ____ day of _____, ____ between the City of Albany, a municipal corporation of the State of Oregon (hereinafter called “ALBANY”), and the Greater Albany Public Schools, a municipal corporation of the State of Oregon (hereinafter called “GAPS”). This Agreement defines the respective responsibilities between ALBANY and GAPS for operation and maintenance of the Maple Lawn Preschool (hereinafter called “MLPS”).

WITNESSETH:

WHEREAS, ORS 190.003 et. seq. provides for intergovernmental cooperation in the interest of furthering economy and efficiency of local units of government; and

WHEREAS, ORS 190.003 for purposes of such intergovernmental cooperation defines a unit of local government as including a county, city, district, or other public corporation, commission, authority, or entity organized and existing under statute or county or city charter; and

WHEREAS, ORS 190.010 provides that a unit of local government may enter into a written agreement with any other unit or units of local government for the performance of any or all functions and activities that are party to the Agreement, its officers or agencies have authority to perform; and

WHEREAS, the Parties have a history of cooperatively working together for mutual benefit; and

WHEREAS, the Parties wish to build upon that cooperative history and sustain the early childhood services in Albany; and

WHEREAS, the Parties have determined that it is in the best interest of each organization and mutually beneficial to establish a joint agreement for GAPS to contract with ALBANY for Maple Lawn Preschool; and

WHEREAS, the Parties wish to establish this collaborative agreement to ensure continued consideration of opportunities for cooperation which may arise; and

WHEREAS, the negotiations concerning the adoption of a fair and equitable charge to be paid and the terms of coverage should be reduced to writing; and

WHEREAS, the funding for MLPS is transitional only and the program, and use of the building, will dissolve once GAPS operates and manages preschool programs across the city. After the transition, the building may be used for other non-preschool Parks & Recreation programs.

NOW, THEREFORE, under the contractual authority of ORS 190, it is agreed between the Parties as follows:

COVENANTS OF GAPS

GAPS will support MLPS in the following ways:

- A. Starting on July 1, 2020, GAPS will financially cover all expenses related to the MLPS program, such as program staffing along with facility utilities and services based on a nine-month prorated term.

- B. GAPS will pay for the following: 2.94 FTE program staff and benefits, materials and supplies, registration and supervisory support, registration processing fees (3.8%), electricity, water/sewer actual usage, garbage, custodial, information technology services, phone, internet, and a portion of building maintenance services and materials. The estimated costs for the 2021-2022 school year are noted in Exhibit A.
- C. GAPS will pay annual salary and benefit increases at the estimated rate of 2% COLA, 38% PERS, 18% Insurance, plus step increases (as eligible).
- D. GAPS will pay annual increases for utilities, materials, and support services at an estimated 3%.
- E. GAPS will be responsible for any increase in MLPS staff ~~retirement~~ leave payouts incurred due to the extension of the program beyond the FY20 school year.
- F. GAPS will be responsible for any liability or workers' compensation associated with MLPS staff during the Agreement term.
- G. GAPS will be responsible for third party costs associated with employee relations between the MLPS AFSCME staff and CITY management staff. Except as otherwise specified in this Agreement, GAPS will be responsible for third party or employment costs or claims relating to the operations of MLPS that are not the result of negligent or wrongful acts by City management or employees.
- H. GAPS will reimburse for any additional professional development required of MLPS staff.
- I. GAPS will provide payment within 30 days after receiving a monthly invoice from Albany.
- J. GAPS may assist with the interview and hiring process for program staff as they see fit.

CONVENANTS OF ALBANY

Albany will perform the following operations and maintenance services in accordance with department guidelines. The services listed below will be subject to the charges and rates listed in Exhibit A.

- A. ALBANY shall continue to operate MLPS under the same program format with the same number of participants. ALBANY will provide 2.94 FTE to operate the following preschool classes:
 1. Apple Blossom (18 max enrollment)
 2. Peach Blossom (18 max enrollment)
 3. Red Rose (18 max enrollment)
 4. Yellow Rose (18 max enrollment)
 5. AM Ready, Set Go! (8 max enrollment)
 6. PM Ready, Set Go! (8 max enrollment)

ALBANY will reserve one spot in each program for a GAPS teen parent program participant.

- B. ALBANY shall advertise MLPS programs online and through Activate! guide. ALBANY will assist in registering students, collecting payment, and following up with program staff when issues arise. ALBANY will notify parents when payment has not been received and when services will be cancelled.
- C. ALBANY will not increase program registration fees by more than 3% and the supply fee by \$5.00 annually without written concurrence by both parties.
- D. ALBANY will invoice GAPS on the first (1st) of each month for actual costs associated with the programs minus collected revenue (regardless of how many classroom spots are filled).
- E. ALBANY program staff will not need to obtain additional certifications in order to continue teaching with the program. Should staff wish to apply for GAPS positions after the transition, they are accountable and financially responsible for their own professional development. All additional required professional development for GAPS will be completed on their own time without compensation.
- F. ALBANY will have primary use of MLPS building from five (5) business days after school ends to ten (10) business days before the first day of school in addition to winter and spring breaks.
- G. ALBANY will continue to have primary use of the basement.
- H. ALBANY will track and monitor expenses through a separate program grant fund to ensure no costs will be absorbed.
- I. ALBANY shall clean, maintain, and secure the MLPS building and surrounding park space to meet department guidelines.

BUDGETS, COSTS AND BILLING

- A. ALBANY will prepare and deliver to GAPS an estimate for service fees annually for the district's budget cycle by January first (1st) each year.
- B. Charges for services will be based on an itemized program budget:
 - 1. Labor will be billed at an hourly rate, which includes the costs of direct labor and the benefits for the hours required to perform the work.
 - 2. Materials will be billed at cost.
 - 3. Equipment will be billed at cost.
 - 4. Services will be billed at the prevailing rates.
 - 5. GAPS will be billed monthly in a combined invoice that includes a breakdown of revenue, staffing charges, material and service charges, and building/equipment use fees. Payments are due within 30 business days after the receipt. Late payments shall bear interest at 9% per annum.

OTHER TERMS AND CONDITIONS

- A. **Term and Termination.** This Agreement begins upon the date stated above and will remain in effect for a three-year period unless amended or terminated as provided herein. At the end of the three-year period, the Parties may be extended for an additional two year(s) with approval of the Albany City Council and GAPS Board.
 - a. **Amendment.** This Agreement may be amended by mutual written agreement, signed by authorized representatives of each party.
 - b. **Termination.** Any party may elect to terminate this Agreement by giving written notice of termination to the other party and stating a date of termination, which shall not be less than six months from the date of notice, but shall not allow for termination during the nine-month school year.
- B. **ALBANY Obligations Subject to Appropriation and Emergency.** All ALBANY obligations are subject to the availability of funds, adequate for work and designated for such purpose by the Albany City Council. The Parks & Recreation Department agrees to recommend necessary funding, but the City Council reserves final discretion for the allocation of available resources. In the event of conditions deemed to constitute an emergency by either party, the parties' obligations hereunder may be suspended or reduced.
- C. **Hold Harmless.** ALBANY will use its best efforts and professional judgment to maintain the MLPS to the extent called for in this Agreement. Each party agrees to hold harmless, and indemnify the other party, and its officers, agents and employees, from and against any and all claims, costs, demands, and damages, of any kind, arising from each party's own actions or failures, other than that party's negligence or gross negligence, whether occurring to the MLPS program or to third parties as a result of the operation and maintenance of activities identified in this Agreement. This obligation shall extend to all claims, costs, damages and demands, as well as costs of defense. As long as ALBANY operates the MLPS, it will maintain liability insurance covering against all claims normally associated with a preschool program in a form and amount acceptable to GAPS.
- D. **Indemnification.** GAPS agrees to defend, indemnity and hold ALBANY harmless from and against any and all liability, fines, penalties, claims, demands or lawsuits brought by any governmental entity or third party under any theory of law relating to or resulting in any manner from the actions, omissions or responsibilities of GAPS arising out of operation and maintenance of MLPS, or GAPS failure to comply with the terms of this Agreement.
- E. **Dispute Resolution.** If a dispute arises between the parties regarding breach of this Agreement or interpretation of any term of this Agreement, the parties shall first attempt to resolve the dispute by informal negotiation, followed by mediation. In the absence of an agreement between the parties, either part may apply to the presiding judge of the Linn County Circuit Court for the appointment of suitable mediator(s) or arbitrator(s), and the persons so appointed shall establish the rules of procedure. If mediation is unsuccessful,

the dispute shall be resolved through binding arbitration that shall take place in Linn County, and the prevailing party shall be entitled to such reasonable attorney's fees and costs as may be awarded by the arbitrator.

- F. City Council Approval Required. No committee or entity created by this Agreement may obligate either party to expend any Albany funds or take any actions, other than expressly provided herein, without the approval of the respective City Council or Board.
- G. References. References in this Agreement referring to statutes, laws, rules, ordinances, or code sections mean as they may be updated from time to time.
- H. Notices. Except as specifically provided herein, any notice required or permitted to be given shall be given in writing, shall be effective when actually received, and may be given by hand delivery or by United States mail, first class postage prepaid, addressed to the parties as follows:

If to City: Peter Troedsson, City Manager
City of Albany
P.O. Box 490
Albany, OR 97321

If to GAPS: Melissa Goff, Superintendent
Greater Albany Public Schools
718 SW 7th Avenue
Albany, OR 97321

- I. Parties Bound. This Agreement shall be binding on and inure to the benefit of Albany and GAPS and their respective successors and permitted assigns. No party may assign the rights and obligations provided by this Agreement without the other party's prior written consent.
- J. Enforceability by Third Parties. This Agreement is expressly not intended for any third party's benefit and is expressly not enforceable by any third party.
- K. Entire Agreement. This Agreement, including all attached exhibits, each of which is incorporated into this Agreement by reference, contains the entire agreement between the parties, and unless otherwise provided in this Agreement, no modification or waiver of any of the provisions, or any future representation, promise or addition shall be binding unless made in writing and signed by both parties.
- L. Severability. If a court of competent jurisdiction determines that any of this Agreement's provisions are invalid or otherwise unenforceable, all of the Agreement's remaining provisions shall remain in full force and effect.
- M. Attorney Fees; Consequential Damages. In the event action is instituted to enforce any term of this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorney fees and expenses incurring in such action as set by the arbitrator or trial court and, in the event of appeal, as set by the appellate court. In no event shall any party to

this Agreement be liable for punitive damages except to the extent such damages are awarded to or recoverable by a third part unrelated to the party seeing recovery.

- N. Survival of Covenants. The rights and obligations of the parties in Sections D and C shall survive termination or expiration of this Agreement, along with any other provision that creates an indemnity obligation or provides for rights, obligations or remedies that by their nature continue after termination or expiration of this Agreement.
- O. Execution in Counterparts. This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same Agreements. Facsimile and electronic signatures will be valid for all purposes of this Agreement.
- P. Choice of Law. This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by Oregon law, venue being in the Circuit Court in and for Linn County, Oregon.
- Q. Interpretation. When used in this Agreement, the words “will” and “shall” have the same meaning and the word “or” is not exclusive.
- R. Waiver. Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party’s right to enforce the provision, nor shall any waiver of any breach of any provision constitute a waiver of the provision unless the waiver is in writing and signed by the waiving party. The waiver by a party of a provision shall not constitute or be deemed to be a waiver of any other provision, nor shall it constitute or be deemed to be a waiver of any subsequent breach of the same or any other provision.

IN WITNESS WHEREOF the parties have caused this document to be executed pursuant to the authorities of the City Council and Board by the City Manager of Albany, and the Superintendent of GAPS.

GREATER ALBANY SCHOOL DISTRICT

CITY OF ALBANY, OREGON

By: _____
Melissa Goff

By: _____
Peter Troedsson

Title: Superintendent

Title: City Manager

Dated: _____, 2020

Dated: _____, 2020

EXHIBIT A

| <u>Estimates</u> | <u>2020-2021</u> | <u>2021-2022</u> | <u>2022-2023</u> | <u>2023-2024</u> | <u>2024-2025</u> |
|---|---------------------|---------------------|---------------------|---------------------|---------------------|
| Revenue | | | | | |
| <u>Registration & Supply Fees</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> |
| | <u>\$131,621.80</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> |
| Expense | | | | | |
| <u>Staffing</u> | <u>\$194,915.00</u> | <u>\$211,987.00</u> | <u>\$223,698.00</u> | <u>\$234,048.00</u> | <u>\$246,272.00</u> |
| <u>Materials & Supplies</u> | <u>\$5,150.00</u> | <u>\$5,304.50</u> | <u>\$5,463.64</u> | <u>\$5,627.54</u> | <u>\$5,796.37</u> |
| <u>Supervision Support</u> | <u>\$6,370.50</u> | <u>\$6,561.62</u> | <u>\$6,758.46</u> | <u>\$6,961.22</u> | <u>\$7,170.05</u> |
| <u>Leave Payouts</u> | <u>\$7,500.00</u> | <u>\$7,650.00</u> | <u>\$7,803.00</u> | <u>\$7,959.06</u> | <u>\$8,118.24</u> |
| <u>Registration/Payment Support</u> | <u>\$6,300.00</u> | <u>\$6,489.00</u> | <u>\$6,683.67</u> | <u>\$6,884.18</u> | <u>\$7,021.86</u> |
| <u>Processing Fees</u> | <u>\$5,001.63</u> | <u>\$5,001.63</u> | <u>\$5,001.63</u> | <u>\$5,001.63</u> | <u>\$5,001.63</u> |
| <u>Electric</u> | <u>\$1,000.00</u> | <u>\$1,030.00</u> | <u>\$1,060.90</u> | <u>\$1,092.73</u> | <u>\$1,125.51</u> |
| <u>Water/Sewer Usage</u> | <u>\$2,773.89</u> | <u>\$2,857.11</u> | <u>\$2,942.82</u> | <u>\$3,031.10</u> | <u>\$3,122.04</u> |
| <u>Garbage</u> | <u>\$500.00</u> | <u>\$515.00</u> | <u>\$530.45</u> | <u>\$546.36</u> | <u>\$562.75</u> |
| <u>Custodial</u> | <u>\$3,300.00</u> | <u>\$3,399.00</u> | <u>\$3,500.97</u> | <u>\$3,606.00</u> | <u>\$3,714.18</u> |
| <u>Computer & Phone</u> | <u>\$5,760.00</u> | <u>\$5,932.80</u> | <u>\$6,110.78</u> | <u>\$6,294.11</u> | <u>\$6,482.93</u> |
| <u>Park & Building Maintenance Services</u> | <u>\$4,335.00</u> | <u>\$4,465.05</u> | <u>\$4,599.00</u> | <u>\$4,736.97</u> | <u>\$4,879.08</u> |
| <u>Repair Materials</u> | <u>\$2,187.50</u> | <u>\$2,253.13</u> | <u>\$2,320.72</u> | <u>\$2,390.34</u> | <u>\$2,462.05</u> |
| <u>Health Inspection</u> | <u>\$180.00</u> | <u>\$185.40</u> | <u>\$190.96</u> | <u>\$196.69</u> | <u>\$202.59</u> |
| <u>Central Services</u> | <u>\$18,000.00</u> | <u>\$18,540.00</u> | <u>\$19,096.20</u> | <u>\$19,669.09</u> | <u>\$20,259.16</u> |
| | <u>\$263,273.52</u> | <u>282171.2251</u> | <u>\$295,761.20</u> | <u>\$308,045.02</u> | <u>\$322,190.45</u> |
| <u>Estimated GAPS Subsidy</u> | <u>\$131,651.72</u> | <u>\$150,549.43</u> | <u>\$164,139.40</u> | <u>\$176,423.22</u> | <u>\$190,568.65</u> |

| <u>Estimates</u> | <u>FY21-22</u> | <u>FY22-23</u> | <u>FY23-24</u> | <u>FY24-25</u> | <u>FY25-26</u> |
|---------------------------------------|---------------------|---------------------|---------------------|---------------------|---------------------|
| Revenue | | | | | |
| <u>Registration & Supply Fees</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> |
| | <u>\$131,621.80</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> | <u>\$131,621.80</u> |
| Expense | | | | | |
| <u>Staffing</u> | <u>\$194,915.00</u> | <u>\$211,987.00</u> | <u>\$223,698.00</u> | <u>\$234,048.00</u> | <u>\$246,272.00</u> |
| <u>Materials & Supplies</u> | <u>\$5,150.00</u> | <u>\$5,304.50</u> | <u>\$5,463.64</u> | <u>\$5,627.54</u> | <u>\$5,796.37</u> |
| <u>Supervision Support</u> | <u>\$6,370.50</u> | <u>\$6,561.62</u> | <u>\$6,758.46</u> | <u>\$6,961.22</u> | <u>\$7,170.05</u> |
| <u>Retirement Payouts</u> | <u>TBD</u> | <u>TBD</u> | <u>TBD</u> | <u>TBD</u> | <u>TBD</u> |
| <u>Registration/Payment Support</u> | <u>\$6,300.00</u> | <u>\$6,489.00</u> | <u>\$6,683.67</u> | <u>\$6,884.18</u> | <u>\$7,090.71</u> |

| | | | | | |
|-----------------------------|--------------|--------------|--------------|--------------|--------------|
| Processing Fees | \$5,001.63 | \$5,001.63 | \$5,001.63 | \$5,001.63 | \$5,001.63 |
| Electric | \$1,000.00 | \$1,030.00 | \$1,060.90 | \$1,092.73 | \$1,125.51 |
| Water/Sewer Usage | \$2,773.89 | \$2,857.11 | \$2,942.82 | \$3,031.10 | \$3,122.04 |
| Garbage | \$500.00 | \$515.00 | \$530.45 | \$546.36 | \$562.75 |
| Custodial | \$3,300.00 | \$3,399.00 | \$3,500.97 | \$3,606.00 | \$3,714.18 |
| Computer & Phone | \$5,760.00 | \$5,932.80 | \$6,110.78 | \$6,294.11 | \$6,482.93 |
| Security | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Pest Control | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Mowing | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Park & Building Maintenance | | | | | |
| Services | \$4,335.00 | \$4,465.05 | \$4,599.00 | \$4,736.97 | \$4,879.08 |
| Repair Materials | \$2,187.50 | \$2,253.13 | \$2,320.72 | \$2,390.34 | \$2,462.05 |
| Health Inspection | \$180.00 | \$185.40 | \$190.96 | \$196.69 | \$202.59 |
| Central Services | \$18,000.00 | \$18,540.00 | \$19,096.20 | \$19,669.09 | \$20,259.16 |
| Mifi | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Fire Safety | \$0.00 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| | \$255,773.52 | 274521.2251 | \$287,958.20 | \$300,085.96 | \$314,141.05 |
| Estimated GAPS Subsidy | \$124,151.72 | \$142,899.43 | \$156,336.40 | \$168,464.16 | \$182,519.25 |