

RESOLUTION NO. 5988

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN INTERGOVERNMENTAL AGREEMENT WITH GREATER ALBANY PUBLIC SCHOOLS, REVISING A PRIOR AGREEMENT AUTHORIZED BY RESOLUTION NO. 5897 AND PASSED ON MARCH 10, 2010.

WHEREAS, ORS 190.010 provides that a unit of local government may enter into a written agreement with any other unit of local government for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform. Among those specifically identified statutorily recognized functions includes the transfer of possession of or title to real property, or the apportionment among the parties to the agreement of the responsibility for providing funds to pay for expenses incurred in the performance of the functions or activities of the parties; and

WHEREAS, the parties to this agreement desire to enter into an agreement which will result in the sale or lease of certain real properties from one local government entity to another, the construction of public facilities and the maintenance of facilities, and

WHEREAS, Greater Albany Public Schools (GAPS) desires to construct public facilities by building a new soccer field and track at its Timber Ridge School.

WHEREAS, GAPS also owns certain real property known as Burkhart Park and Deerfield Park which the City of Albany desires to acquire by lease and/or sale;

WHEREAS, GAPS and the City of Albany previously entered into an Intergovernmental Agreement to achieve these ends; and

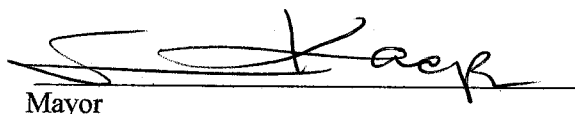
WHEREAS, both parties now intend to make substantive revisions to the original agreement;

NOW, THEREFORE, BE IT RESOLVED that the City of Albany City Council authorizes the City Manager to sign this revised agreement and execute the City's obligations contained therein.

DATED AND EFFECTIVE THIS 9th DAY OF MARCH 2011.

ATTEST:

The seal of the City of Albany is circular and features the text "CITY OF ALBANY" around the perimeter. In the center, there is a depiction of a landscape with a river and hills. The seal is partially obscured by the signature of Betty Squibell.
Betty Squibell
City Clerk

A handwritten signature in black ink, appearing to read "S. Kaer", is written over a horizontal line.
Mayor

ii. Failure of City to comply with any term or condition or fulfill any obligation of the lease, other than the payment of rent, within 30 days after written notice by GAPS specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30 day period, this provision shall be complied with if City begins correction of the default within the 30 day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

3. For three years from the date of this agreement, City shall have the sole and exclusive option to purchase Deerfield Park from GAPS. The purchase price shall be the sum of \$192,620 which shall all be payable at closing.

i. To exercise its option, City shall give written notice of its intent to exercise the option. Within 10 days of such notice, the parties shall agree to set up an escrow account at a mutually agreeable title company. The parties shall agree upon a closing date and GAPS will provide City with a preliminary title report at least 15 days prior to closing. Within 15 days of receiving the preliminary title report, City shall give GAPS written notice setting forth the exceptions that are not acceptable to the City. All other exceptions shall be deemed acceptable to the City. GAPS shall have 10 days after receiving the City's notice within which to give the City its written notice agreeing to eliminate the unacceptable exceptions or electing to terminate this agreement

ii. At the closing, a standard owner's title policy in the amount of the purchase price shall be issued to the City, insuring title vested in the City, subject only to exceptions which have been approved by the City at the expense of GAPS.

iii. All other closing costs, such as escrow fees and recording fees shall be split between the parties. Each party shall pay its own legal and professional fees which are incurred by that party.

4. In the event that City does not exercise its option, the City shall continue to lease the property from GAPS pursuant to the terms in Section 3, a. through f.

Section 4 General Provisions

A. Except as provided in this agreement, no party hereto will be responsible for or have any liability for the actions, negligence or performance of the employees, officers, agents or representatives of any other party. Nothing in this agreement is intended to create any joint liabilities between these parties and each party to this agreement, subject to the provisions of Oregon's Tort Claim Act, shall indemnify and hold harmless any other party to the agreement for any claims made for the actions of said parties' employees, officers, agents or representatives. Each party to this agreement shall name the other as an additional insured on that portion of the property and facilities which are covered by this Intergovernmental Agreement.

B. In the event of litigation to enforce any provision of this agreement, the parties agree that the venue shall be Linn County, Oregon. The parties also agree that in the event of litigation over this agreement, the prevailing party or parties to the litigation shall be entitled to the payment that party or parties reasonable attorney fees, both at trial and on appeal.

C. Notice shall be deemed delivered to any party upon the deposit of the same in the United States Mail, with adequate postage affixed thereto, and sent to the following addresses, or such other address which may be communicated between the parties from time to time:

For the City: Director, Albany Parks & Recreation
P. O. Box 490
Albany, OR 97321-0144

For GAPS: Director of Business
Greater Albany Public Schools
718 7th Avenue SW
Albany, OR 97321

D. Waiver by either party of strict performance of any provision of this agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

E. Time is of the essence of the performance of each of the responsibilities and obligations of this agreement.

F. Any remedies specifically mentioned in this agreement shall be in addition to and shall not exclude any other remedy available to the parties under applicable law.

G. This agreement sets forth the entire understanding of the parties with respect to the responsibilities and rights for the agreement which are contained herein. This agreement supersedes any and all prior understandings, negotiations, discussions and agreements between the parties. This agreement may not be modified or amended except by a written agreement executed by the parties.

This agreement is executed in duplicate, on the date and year above mentioned, by the parties as evidenced by the signatures of representatives of each party below.

For the City:

For Greater Albany Public Schools:

ORIGINAL

**INTERGOVERNMENTAL AGREEMENT
PURSUANT TO ORS CHAPTER 190**

This agreement is made this 9th day of March, 2011 between the City of Albany, a municipal corporation and political subdivision of the state of Oregon, (hereinafter referred to as "City") and the Greater Albany Public School District, a unit of local government (hereinafter referred to as "GAPS").

RECITALS

A. ORS 190.010 provides that a unit of local government may enter into a written agreement with any other unit of local government for the performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform. Among those specifically identified statutorily recognized functions includes the transfer of possession of or title to real property, or the apportionment among the parties to the agreement of the responsibility for providing funds to pay for expenses incurred in the performance of the functions or activities of the parties.

B. The parties to this agreement desire to enter into an agreement which will result in the sale or lease of certain real properties from one local government entity to another, the construction of public facilities and the maintenance of facilities.

C. GAPS desires to construct public facilities by building a new soccer field and track at its Timber Ridge School. GAPS also owns certain real property known as Burkhart Park and Deerfield Park which the City desires to acquire by lease and/or sale.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1. Construction of Soccer Field and Track. City agrees to pay to GAPS up to \$470,000 for the specific purpose of allowing GAPS to construct a soccer field and track (known herein as "the public facilities") at Timber Ridge School which is located at 373 Timber Ridge St. NE, Albany, Oregon 97322.

- a. The sum to be paid by City to GAPS shall be paid in a "lump sum".
- b. GAPS shall design and construct the facilities at Timber Ridge School during the spring and summer construction season of 2011, with a substantial completion date of September 1, 2011.
- c. GAPS shall be responsible for any costs in completing the public facilities which exceeds \$470,000. Should the project costs be less than \$470,000, the City's contribution to the project shall be reduced accordingly; the difference between the actual

contribution and \$470,000 shall be added to the remaining payment required by the City to purchase Deerfield Park, as detailed in Section 3.

d. The parties shall consult one another in the design of the public facilities and shall comply with all Oregon public contracting laws in the construction of the public facilities. GAPS is not obligated to accept the opinions of the City regarding the design of said public facilities.

e. Any agreements for the construction of the public facilities shall be entered into by GAPS. City shall make payment in full to GAPS on or before July 15, 2011.

f. The parties agree that the facilities constructed by GAPS at Timber Ridge School shall be for the benefit of GAPS and its students, teachers and other faculty during school hours and during the regular school year. At all other times, the public facilities shall be made available to the City as the Priority User.

g. GAPS shall be responsible for the costs of maintenance, the maintenance of the public facilities and the operation of the soccer field and track.

Section 2. Sale of Burkhart Park. Upon the payment of the sales price as provided in section 1 of this agreement from City to GAPS, GAPS will convey by its warranty deed to City the following described real property, located in Albany, Linn County, Oregon:

Beg. At NE cor of Lot 1, Blk 2 in Bryants Add. to Albany
th E along S side of 5th St. 371 ft. to W line of Burkhart St.
th S along W li of Burkhart S 220 ft. to N line of 6th St.,
th W along N li of 6th St 371 ft. to SE cor of Lot 3, Blk 2, Bryants
Add. To Albany
th N 220 ft. to pob contg

a. Conditions of this sale are as follows:

1. Within 30 days of the execution of this Agreement, GAPS agrees, at its expense and cost, to cause the issuance of a preliminary title report on the Property, along with copies of all documents that give rise to any exceptions listed in the report. The title company designated by the parties to act in this capacity is Amerititle, 1393 Clay St. SE, Albany, Oregon. Within 15 days of receiving the preliminary title report, City shall give GAPS written notice setting forth the exceptions that are not acceptable to the City. All other exceptions shall be deemed acceptable to the City. GAPS shall have 10 days after receiving the City's notice within which to give the City its written notice agreeing to eliminate the unacceptable exceptions or electing to terminate this agreement.

2. At the closing, a standard owner's title policy in the amount of the \$117,720 shall be issued to the City, insuring title vested in the City, subject only to exceptions which have been approved by the City at the expense of GAPS.

3. All other closing costs, such as escrow fees and recording fees shall be split between the parties. Each party shall pay its own legal and professional fees which are incurred by that party.

4. To the best knowledge of GAPS' officials, after reasonable inquiry, the Property is materially in compliance with applicable state and federal environmental standards and requirements affecting it. GAPS has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to the Property. GAPS has not transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations or permit requirements. No other person has transferred hazardous waste from the Property to another location that is not in compliance with applicable environmental laws, regulations or permit requirements. There are no proceedings, governmental administrative actions, or judicial proceedings pending or, to the best of GAPS' knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment. GAPS has not stored, produced or disposed of any hazardous substance, including asbestos, on the Property.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 and 195.305 to 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

Section 3. Lease/Sale of Deerfield Park. GAPS agrees to lease to the City the real property known as Deerfield Park, which is located in the City of Albany, Linn County, Oregon and more particularly described as follows:

Lot 1, Block 15, in FIRST ADDITION TO DEERFIELD, Linn County, Oregon.

a. The term for this lease shall commence upon the signing of this agreement and continue for a term of 25 years, unless sooner terminated as hereinafter provided.

b. The City shall have the right of possession and obligations under the lease shall commence as of the date of signing of this agreement.

d. City shall pay to GAPS as rent the sum of \$1000 per year, payable annually, the first payment to be made upon the signing of this lease and successive payments to be made upon the same date each year thereafter.

e. Any taxes, insurance costs, utility charges or other expenses of operation of the Park that City is required to pay to GAPS or to any third party shall be additional rent.

f. For so long as this lease is effective, the property shall be used as a public park and no other purpose. City shall not cause or permit any Hazardous Substance to be spilled, leaked, disposed of or otherwise released on or under the property. City may store such Hazardous Substances on the property only to quantities necessary to satisfy City's reasonably anticipated needs. City shall comply with all Environmental Laws and exercise the highest degree of care in the use, handling and storage of Hazardous Substances and shall take all practicable measures to minimize the quantity and toxicity of Hazardous Substances used, handled or stored on the Property. The term "Environmental Law" shall mean any federal, state or local statute, regulation or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term "Hazardous Substance" shall mean any hazardous, toxic, infectious or radioactive substance, waste and material as defined or listed by any Environmental Law and shall included, without limitation, petroleum oil and its fractions.

g. Early Termination of Lease. This lease may be terminated in one of the following manners:

1. Either party may terminate this lease for no cause by giving written notice to the other party of at least 180 days prior to the date for the termination of the lease.

2. In the event of default, or for cause, either party may terminate this lease by giving no less than 45 days notice to the other party. In the event of an early termination of the lease as set forth in this paragraph or under paragraph 3(g)(1), any permanently affixed improvements to the property shall remain on the property and shall be owned by GAPS. For the purposes of this paragraph, default or cause shall be one or more of the following:

i. Failure to pay rent when due within 15 days after written notice that the rent is due.

ii. Failure of City to comply with any term or condition or fulfill any obligation of the lease, other than the payment of rent, within 30 days after written notice by GAPS specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30 day period, this provision shall be complied with if City begins correction of the default within the 30 day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

3. For three years from the date of this agreement, City shall have the sole and exclusive option to purchase Deerfield Park from GAPS. The purchase price shall be the sum of \$192,620 which shall all be payable at closing.

i. To exercise its option, City shall give written notice of its intent to exercise the option. Within 10 days of such notice, the parties shall agree to set up an escrow account at a mutually agreeable title company. The parties shall agree upon a closing date and GAPS will provide City with a preliminary title report at least 15 days prior to closing. Within 15 days of receiving the preliminary title report, City shall give GAPS written notice setting forth the exceptions that are not acceptable to the City. All other exceptions shall be deemed acceptable to the City. GAPS shall have 10 days after receiving the City's notice within which to give the City its written notice agreeing to eliminate the unacceptable exceptions or electing to terminate this agreement

ii. At the closing, a standard owner's title policy in the amount of the purchase price shall be issued to the City, insuring title vested in the City, subject only to exceptions which have been approved by the City at the expense of GAPS.

iii. All other closing costs, such as escrow fees and recording fees shall be split between the parties. Each party shall pay its own legal and professional fees which are incurred by that party.

4. In the event that City does not exercise its option, the City shall continue to lease the property from GAPS pursuant to the terms in Section 3, a. through f.

Section 4 General Provisions

A. Except as provided in this agreement, no party hereto will be responsible for or have any liability for the actions, negligence or performance of the employees, officers, agents or representatives of any other party. Nothing in this agreement is intended to create any joint liabilities between these parties and each party to this agreement, subject to the provisions of Oregon's Tort Claim Act, shall indemnify and hold harmless any other party to the agreement for any claims made for the actions of said parties' employees, officers, agents or representatives. Each party to this agreement shall name the other as an additional insured on that portion of the property and facilities which are covered by this Intergovernmental Agreement.

B. In the event of litigation to enforce any provision of this agreement, the parties agree that the venue shall be Linn County, Oregon. The parties also agree that in the event of litigation over this agreement, the prevailing party or parties to the litigation shall be entitled to the payment that party or parties reasonable attorney fees, both at trial and on appeal.

C. Notice shall be deemed delivered to any party upon the deposit of the same in the United States Mail, with adequate postage affixed thereto, and sent to the following addresses, or such other address which may be communicated between the parties from time to time:

For the City: Director, Albany Parks & Recreation
P. O. Box 490
Albany, OR 97321-0144

For GAPS: Director of Business
Greater Albany Public Schools
718 7th Avenue SW
Albany, OR 97321

D. Waiver by either party of strict performance of any provision of this agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

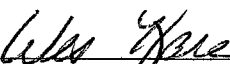
E. Time is of the essence of the performance of each of the responsibilities and obligations of this agreement.

F. Any remedies specifically mentioned in this agreement shall be in addition to and shall not exclude any other remedy available to the parties under applicable law.

G. This agreement sets forth the entire understanding of the parties with respect to the responsibilities and rights for the agreement which are contained herein. This agreement supersedes any and all prior understandings, negotiations, discussions and agreements between the parties. This agreement may not be modified or amended except by a written agreement executed by the parties.

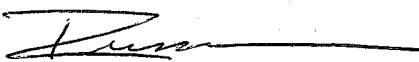
This agreement is executed in duplicate, on the date and year above mentioned, by the parties as evidenced by the signatures of representatives of each party below.

For the City:



Wes Hare, City Manager

For Greater Albany Public Schools:



Russell Allen, Director of Business