



RESOLUTION NO. 6822

A RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH LINN BENTON COMMUNITY COLLEGE FOR THE CONSTRUCTION, MAINTENANCE AND USE OF PICKLEBALL COURTS

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 a party to the Agreement, its officers or agencies, have authority to perform; and

WHEREAS, Linn Benton Community College (LBCC) and the City of Albany, Oregon (CITY) have a history of partnering to share resources in furtherance of the common goal of providing the best educational and recreational opportunities possible for their shared constituencies; and

WHEREAS, LBCC is willing to make available a portion of its Albany campus to the CITY for the purpose of constructing new pickleball courts to serve the CITY's and LBCC's community education and recreation purposes; and

WHEREAS, City is willing to commit its funding to the design and construction of these public improvements; and

WHEREAS, LBCC is willing to assume responsibility for the routine costs to maintain and operate these improvements; and

WHEREAS, both parties agree to negotiate any future costs or expenses associated with non-routine repair and upkeep of the new courts; and

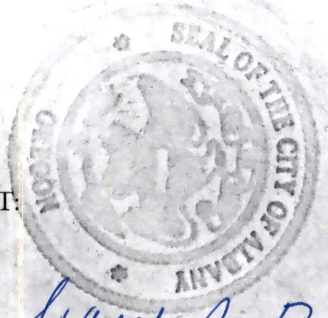
WHEREAS, both parties agree to sustain these public improvements in ways that preserve the use and availability of the facility for both community members and LBCC students and staff for twenty years, subject to future negotiations and amendments to this or other contracts; and

WHEREAS, both parties desire, by this Agreement, to memorialize their understandings concerning the sharing of facilities and compensation therefore;

NOW, THEREFORE, BE IT RESOLVED that the Albany City Council hereby authorizes the Mayor and City Manager to execute the attached intergovernmental agreement with Linn Benton Community College, provided as Attachment 1.

DATED AND EFFECTIVE THIS 26TH DAY OF JUNE 2019.

ATTEST:


Mary A. Dabbe
City Clerk

[Signature]
Mayor

Attachment 1

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("Agreement") is made and entered into upon execution by and between LINN-BENTON COMMUNITY COLLEGE (hereinafter called "LBCC") and the CITY OF ALBANY, OREGON, a municipal corporation organized under the laws of the State of Oregon (hereinafter called "CITY").

RECITALS

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, entity organized and existing under statute of 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 a party to the Agreement, its officers or agencies, have authority to perform; and

WHEREAS, Linn Benton Community College (LBCC) and the City of Albany, Oregon (CITY) have a history of partnering to share resources in furtherance of the common goal of providing the best educational and recreational opportunities possible for their shared constituencies; and

WHEREAS, LBCC is willing to make available a portion of its Albany campus to the CITY for the purpose of constructing new pickleball courts to serve the CITY's and LBCC's community education and recreation purposes; and

WHEREAS, City is willing to commit its funding to the design and construction of these public improvements; and

WHEREAS, LBCC is willing to assume responsibility for the routine costs to maintain and operate these improvements; and

WHEREAS, both parties agree to negotiate any future costs or expenses associated with non-routine repair and upkeep of the new courts; and

WHEREAS, both parties agree to sustain these public improvements in ways that preserve the use and availability of the facility for both community members and LBCC students and staff for twenty years, subject to future negotiations and amendments to this or other contracts; and

WHEREAS, both parties desire, by this Agreement, to memorialize their understandings concerning the sharing of facilities and compensation therefore; and

NOW, THEREFORE, in consideration of the mutual promises contained herein, LBCC and CITY agree as follows:

AGREEMENT

1. CITY Financial Obligation and Use of Facilities.

- A. CITY agrees to pay all costs to engineer, design and construct the proposed pickleball courts at LBCC. The estimated construction value is \$300,000.
- B. CITY will maintain liability insurance coverage naming LBCC as an additional insured during all CITY usage.
- C. CITY shall be responsible for all equipment and supplies necessary for CITY activities.
- D. CITY will have the right to use said facilities for its parks and recreation programs and activities, including classes, lessons, events, tournaments, and free play. Said uses will be subject to facility use schedules to be determined annually by mutual agreement of both parties.

2. LBCC Financial Obligation and Use of Facilities.

- A. LBCC agrees to pay all routine operating and maintenance costs that may be necessary to ensure a safe and useful facility for community uses. Anticipated expenses include but may not be limited to litter collection, general cleaning, spray washing, striping, the use of electricity and water.
- B. LBCC will maintain liability insurance coverage naming CITY as an additional insured.
- C. LBCC shall be responsible for all equipment and supplies necessary for LBCC activities.
- D. LBCC will have the right to use said facilities for its education and recreation programs and activities, including classes, lessons, events, tournaments, and free play. Said uses will be subject to facility use schedules to be determined annually by mutual agreement of both parties.

3. Related Facilities.

Use of the pickleball courts shall include parking lots and pedestrian walks on the LBCC campus. LBCC shall designate and maintain said parking and walks. CITY may also provide portable toilets if necessary, to serve its participants.

4. Operational Modifications of Agreement.

The parties envision that LBCC and the CITY will continue to cooperate concerning the

scheduling of activities and events in a manner intended to avoid conflict with scheduled activities of either party. In order to carry out this intent, the Parks & Recreation Director of the CITY and the Athletic Director of LBCC, or such other persons who may be designated by the CITY or LBCC, may cooperate to modify the usage schedule.

5. Term of Agreement.

This agreement will expire May 31, 2039.

6. Termination of Agreement.

Should LBCC determine a need to terminate this Agreement before May 31, 2039, LBCC and CITY agree to do so as follows:

- A. Written notice shall be issued the CITY no less than 180 days in advance of the desired termination date.
- B. Recognizing CITY's significant capital expenditure to establish the pickleball facility, LBCC will reimburse CITY's construction costs on a prorated scale:
 - a. 80% of final construction costs if terminated prior to December 1, 2024.
 - b. 60% of final construction costs if terminated prior to December 1, 2029.
 - c. 30% of final construction costs if terminated prior to December 1, 2034.
 - d. 15% of final construction costs if terminated prior to December 1, 2039.

7. Governing Law:

This Agreement and its construction shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law. Any claim, action, suit or proceeding, including discovery proceedings, (collectively, "Claim") between the Parties that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of the State of Oregon and venue shall lie in Linn County, Oregon.

8. Severability:

If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision, or portion thereof, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9. Entire Agreement:

This Agreement and the exhibits attached hereto sets forth the entire understanding among the Parties with respect to the subject matter referenced herein, there being no terms, conditions, warranties or representations with respect to its subject matter other than as contained herein.

10. Notices and Demands:

Any notice, demand, or other communication under this Agreement shall be sufficiently given if sent by (i) registered or certified mail return receipt requested, postage prepaid, (ii) nationally recognized overnight courier service or (iii) facsimile transmission, when it is sent by overnight or two day delivery by nationally recognized courier service within two (2) days of the facsimile transmission:

In the case of LBCC:

Linn-Benton Community College
ATTN: Dave Henderson, Vice President of Finance
6500 Pacific Boulevard SW, CC-133
Albany, OR 97322

In the case of the City:

City of Albany
ATTN: Peter Troedsson, City Manager
333 Broadalbin SW
P.O. Box 490
Albany, OR 97321-0144
Facsimile: (541) 917-7511

11. Binding Effect:

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors and assigns.

12. Modifications:

This Agreement cannot be changed orally, and no agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such agreement is in writing and is signed by the Parties against whom enforcement of any waiver, change, modification or discharge is sought.

13. Further Assurances:

Each Party agrees that it will, without further consideration, execute and deliver such other documents and take such other action as may be reasonably requested by another Party to more effectively consummate or achieve the purposes or subject matter of this Agreement.

14. Attorneys' Fees:

In the event of any controversy, claim or dispute between the Parties affecting or relating to the subject matter or performance of this Agreement, each prevailing Party shall, to the extent prohibited by applicable law, be entitled to recover from each non-prevailing Party all of its reasonable expenses, including reasonable attorneys, experts and accountants fees and expenses of litigation, whether incurred at trial or on appeal and including any incurred in or in connection with any bankruptcy proceeding.

15. Counterparts:

The Agreement may be executed in several counterparts, either by manual, facsimile or email signatures and all such executed counterparts shall constitute one and the same agreement.

16. Headings:

The section headings set forth in this Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

17. Construction:

The Parties acknowledge that the parties and their counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

18. Time of the Essence:

Time is of the essence of each and every term, covenant, and condition set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in duplicate by the duly authorized persons whose signature appear below. Each party, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions. Each person signing this Agreement represents and warrants to have the authority to execute this Agreement.

LBCC :

Dated: 5/30, 2019

By: 
Dave Henderson

Title: Vice President of Finance

CITY OF ALBANY, OREGON:

Dated: _____, 2019

By: _____
Peter Troedsson

Title: City Manager