

INTERGOVERNMENTAL AGREEMENT
Construction of New Pool Facility

This Intergovernmental Agreement for Construction of a New Pool Facility (this “Agreement”) is made and entered into on _____, 2022, but made effective for all purposes as of February 22, 2022 (the “Effective Date”) between City of John Day (“City”), an Oregon municipal corporation, and John Day Canyon City Parks and Recreation District (“District”), a special purpose district created under ORS Chapter 266.

RECITALS:

A. District maintained and managed Gleason Pool from 1990 to 2020 under an agreement between District and City. Gleason Pool has been closed for three seasons. The City is in the process of selling the current property to Oregon State Parks and Recreation Department for the expansion and further development of the Kam Wah Chung Heritage Site.

B. City has received \$1 million in state funds for associated site development improvements adjacent to the Kam Wah Chung Heritage Site through 2021 House Bill 5006 and a grant agreement to receive \$2 million in 2023 State Lottery Bonds to assist with construction of a new pool facility in John Day through 2021 Senate Bill 5534.

C. City and District desire to work collaboratively to replace the Gleason Pool and construct a new pool facility on District land located at 845 NW Bridge Street, John Day, Oregon 97845, commonly known as the Upper Belshaw Fields at the 7th Street Sports Complex (the “Project”). City and District agree that the Project should be designed and constructed as depicted on the plans attached as Exhibit A.

D. This Agreement is made pursuant to ORS 190.010, which statute provides that units of local government may enter into agreements for the performance of any functions and activities that any party to the agreement, or its officers or agents, has the authority to perform.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. Unless defined elsewhere in this Agreement, capitalized terms contained in this Agreement have the meanings assigned to them in the attached Appendix A.

2. Project Planning and Pre-Construction.

2.1 City Obligations. Subject to the terms contained in this Agreement, City will perform the following obligations in preparation for construction of the Project: (1) prepare a land use site plan and design for the Project based on 2018-2020 feasibility studies and subsequent plan updates conducted by City and District, as presented in Exhibit B; (2) hire a public opinion research firm to complete a public opinion survey regarding the proposed Project to inform the public of the final design and ballot measure for construction bonds; (3) hire consultant(s) to complete the Project design, drawings, and specifications for bidding documents; (4) provide for the demolition of the Gleason Pool as part of the Kam Wah Chung re-development project in accordance with City’s purchase and sale agreement with Oregon State Parks and Recreation Department; and (5) provide the public with updates and information regarding the Project through radio, print, and social media sources.

2.2 District Obligations. Subject to the terms contained in this Agreement, District will perform the following obligations in preparation for construction of the Project: (1) sign and submit a Conditional Use Permit Application for the Project to the City; (2) testify in support of the application at the City Planning Commission hearing; (3) cooperate with City to conduct a public opinion survey; (4) participate with City to prepare the final design and specifications of Project by hosting any public engagement sessions recommended by

City and/or the Project consultants; (5) prepare and file for a general obligation bond measure election for the Project with the Grant County Clerk for consideration by District voters in the May 17, 2022 election; (6) determine and approve the amount of the proposed bond based on input from the City, consultants, capital campaign results, and other information obtained from the public survey; and (7) assure the public is fully informed of the Project by engaging in various outreach efforts, including but not limited to developing and initiating a public information campaign to distribute print and digital information describing the Project, the proposed bond measure, and any other applicable Project information.

3. Project Construction.

3.1 City Obligations. Subject to the terms contained in this Agreement, City will perform the following obligations for the construction of the Project: (1) provide technical and professional knowledge to District, as requested, to assist District with initiating and managing the general obligation bond sale; (2) prepare solicitation and bid documents for a competitive bid on Project construction; (3) issue request for proposals (“RFP”) and select a contractor in conjunction with District; (4) issue notice of intent to award and notice of award for construction of the Project upon voter approval; (5) oversee Project construction from negotiations, approval of a general contractor, and notice to proceed through Certificate of Occupancy, (including payment of invoices, Project financial management, and assuring that the Project remains within budgeted funds); (6) assure compliance with prevailing wage and other state and federal regulations and reporting requirements; (7) appoint a Project Manager; and (8) provide updates and information to the public regarding the Project through radio, print, and social media sources.

3.2 District Obligations. Subject to the terms contained in this Agreement, District will perform the following obligations for the construction of the Project: (1) upon approval of the bond measure to construct the Project, District will contract with Special Districts Association of Oregon Advisory Services, or another qualified firm, to sell general obligation bonds for the Project; (2) appoint board members to serve on the Source Selection Panel; (3) appoint a board member or staff representative to serve on the Project Management Team; and (4) provide updates and information to the public regarding the Project as part of the District’s outreach through print and social media sources.

4. Pool Operation; Management.

4.1 City Obligations. Subject to the terms contained in this Agreement, City will be responsible for partial payment of utilities for the pool and office facility including water, sewer, electricity, propane, broadband/cable/internet service, and telephone as further explained in Section 5.1 of this Agreement. City will own all right, title and interest in the Aquatics Center Building (the “Building”). Notwithstanding anything contained in this Agreement to the contrary, City shall transfer title of the Building to District upon completion of the Project.

4.2 District Obligations. Except as provided by Section 4.1 of this Agreement, District will be responsible for all operations, maintenance, and programming costs associated with operating the pool and District’s office located in the Building. District will open the pool facility for public use a minimum of ninety (90) days per year between the months of May and September unless unforeseen circumstances including but not limited to inclement weather, utility, mechanical failures, and/or natural hazards prevent public access to the facility. District will be responsible for all exterior maintenance of the pool building, fencing and grounds, including the maintenance of all parking lots associated with and constructed as part of the Project. Exterior maintenance includes, but is not limited to routine sweeping, snow plowing/removal, stripping, signage, and preventative maintenance measures such as seal coating and crack sealing. District will be responsible for maintaining all landscaping, turf, pedestrian trails/walkways, signs, lights, and other outdoor appurtenances associated with development and operation of the Project.

5. Budget. In accordance with and subject to the Laws, including, without limitation, applicable Oregon Local Budget Law provisions, City and District will each make expenditures for the services, supplies,

facilities, personnel, and/or equipment as may be necessary or appropriate to carry out the purposes of this Agreement. Expenditures will not exceed funds appropriated for the specific purposes and will be made in accordance with applicable law. City and District will each prepare and develop an operating budget as further described in Section 5.1 and Section 5.2 of this Agreement.

5.1 City Budget Obligations. City will establish an aquatic center capital construction fund or department within City's budget to receive and expend funds for the project. City will provide up to fifty (50) percent of the project costs or \$3 million, whichever is less, as outlined in Exhibit C, Project Construction Budget. City will secure an interim financing credit facility for the design and construction of the Project. The credit facility shall be backed by the proceeds of the 2023 Oregon lottery bonds issued in accordance with 2021 SB 5534, as authorized by the grant from the Department of Administrative Services to City for expenditures related to Project and the Declaration of Official Intent to Reimburse Capital Costs with State of Oregon Lottery Revenue Bonds, enclosed as Exhibit D. Any balance of funds from the sale of the Gleason Pool property and/or any remaining funds on interim credit facility will be dedicated toward Project construction upon notice of award and approval of the general obligation bond sale. Subject to the terms of this Agreement, Project planning and pre-construction costs incurred by the City will be reimbursed to the City through funds received from sale of the Gleason Pool property, interim financing grant proceeds described in Recital B, and other City funds and grants. City will maintain accurate records of all project costs, both direct and indirect, associated with the project. Upon Project completion, and subject to the terms of this Agreement, City will be responsible for partial payment of utilities for the pool and office facility including water, sewer, electricity, propane, broadband/cable/internet service, and telephone.

5.2 District Budget Obligations. District will establish an aquatic center capital construction fund within the District's budget to receive and expend funds for the Project. Except as provided by Section 4.1 of this Agreement, District will be responsible for all operations, maintenance, and programming costs associated with operating the Project and District's office located in the Project property.

5.3 Joint City and District Budget Obligations. City and District will jointly and collaboratively prepare and submit the Oregon State Parks Local Government Grant application (the "Application") to fund a warm water pool as part of the Project. City and District will jointly present the Project to the grant review committee. City and District will submit the Application prior to April 1, 2022.

6. Term; Termination. Subject to the terms and conditions contained in this Agreement, the term of this Agreement commenced on the Effective Date and will remain in full force and effect for a term of twenty-five (25) years, unless sooner terminated in accordance with this Agreement. The term of this Agreement may be extended subject to the mutual written agreement of each party. This Agreement may be terminated (a) at any time by the mutual written agreement of City and District, or (b) by either party upon 120 days prior written notice if either party breaches and/or otherwise fails to perform any representation, warranty, covenant, and/or obligation contained in this Agreement. In the event District ceases to exist, the Project property and all parking lots developed as part of the Project will become property of the City.

7. Miscellaneous.

7.1 Insurance. City will provide for adequate insurance to cover the directors, officers, employees, staff, contractors, agents, and activities undertaken by City. City will obtain and maintain adequate property insurance against physical loss or damage to the Building, which insurance will include, without limitation, perils of fire, theft, vandalism, Acts of God, and/or malicious mischief. City's insurance obligations under this Agreement will be in form and content satisfactory to City and District, which will include general liability coverage with limits of no less than \$_____ per occurrence, \$_____ in the aggregate. District will provide for adequate insurance to cover the directors, officers, employees, staff, contractors, agents, and activities undertaken by District.

7.2 Indemnification. To the fullest extent permitted under applicable law, City and District will defend, indemnify, and hold each other and their respective Representatives harmless for, from, and against all claims, actions, proceedings, damages, liabilities, injuries, losses, and expenses of every kind, whether known or unknown, including, without limitation, attorney fees and costs, resulting from or arising out of the City or District's breach and/or failure to perform the obligations contained in this Agreement. Each party's indemnification obligations provided under this Section 7.2 will survive the termination of this Agreement.

7.3 Relationship. This Agreement does not create an agency relationship between City and District and does not establish a joint venture or partnership between City and District. Neither City nor District has the authority to bind the other or represent to any person that a one is an agent of the other. Neither City nor District will provide any benefits to the other; each will be solely responsible for obtaining their own benefits, including, without limitation, insurance, medical reimbursement, and retirement plans.

7.4 Coordination; Severability; Remedies. The parties will maintain adequate levels of communication to ensure maximum cooperation between the parties. Each provision contained in this Agreement will be treated as a separate and independent provision. The unenforceability of any one provision will in no way impair the enforceability of any other provision contained herein. Any reading of a provision causing unenforceability will yield to a construction permitting enforcement to the maximum extent permitted by applicable law. If a party breaches and/or otherwise fails to perform any of its terms, covenants, conditions, and/or obligations under this Agreement, the other party may, in addition to any other remedy provided to the party under this Agreement, pursue all remedies available to the party at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

7.5 Assignment; Binding Effect. No party may assign any of the party's rights and/or obligations under this Agreement to any person without the prior written consent of the other party. Subject to the immediately preceding sentence, this Agreement will be binding on the parties and their respective heirs, executors, administrators, successors, and permitted assigns and will inure to their benefit. This Agreement will be deemed binding and effective for all purposes as of the Effective Date.

7.6 Expenses; Notices. Subject to the terms and conditions contained in this Agreement, each party will pay all wages and benefits due the party's personnel, including, without limitation, overtime, workers' compensation, and death benefits. Any notice will be deemed given when personally delivered or delivered by facsimile or email transmission (with electronic confirmation of delivery), or will be deemed given three days following delivery of the notice by U.S. mail, certified, return receipt requested, postage prepaid, by the applicable party to the address shown in Appendix A (or any other address that a party may designate by notice to the other party), unless that day is a Saturday, Sunday, or legal holiday, in which event it will be deemed delivered on the next following business day.

7.7 Waiver; Entire Agreement. Notwithstanding anything contained in this Agreement to the contrary, no provision of this Agreement may be modified, waived, and/or discharged unless such waiver, modification, and/or discharge is agreed to in writing by the parties. No waiver by a party at any time of the breach of, or lack of compliance with, any conditions or provisions of this Agreement will be deemed a waiver of other provisions or conditions hereof. This Agreement contains the entire agreement and understanding between parties with respect to the subject matter of this Agreement and contains all the terms and conditions of the parties' agreement and supersedes any other oral or written negotiations, discussions, representations, and/or agreements.

7.8 Applicable Law; Attorney Fees. This Agreement will be construed, applied, and enforced in accordance with the laws of the State of Oregon. Except as provided otherwise under ORS 403.160, any action or proceeding arising out of this Agreement will be litigated in courts located in Grant County, Oregon. Each Party consents and submits to the jurisdiction of any local, state, or federal court located in Grant County, Oregon. With respect to any dispute relating to this Agreement, or if a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to interpret or enforce the provisions of this Agreement, including, without limitation, any

proceeding under the U.S. Bankruptcy Code and involving issues peculiar to federal bankruptcy law or any action, suit, arbitration, or proceeding seeking a declaration of rights or rescission, the prevailing party will be entitled to recover from the losing party its reasonable attorney fees, paralegal fees, expert fees, and all other fees, costs, and expenses incurred in connection therewith, as determined by the judge or arbitrator at trial, arbitration, or other proceeding, or on any appeal or review, in addition to all other amounts provided by law.

7.9 Person; Interpretation; Signatures. For purposes of this Agreement, the term “person” means any natural person, corporation, limited liability company, partnership, joint venture, firm, association, trust, unincorporated organization, government or governmental agency or political subdivision, or any other entity. All pronouns contained herein and any variations thereof will be deemed to refer to the masculine, feminine, or neutral, singular or plural, as the identity of the parties may require. The singular includes the plural and the plural includes the singular. The word “or” is not exclusive. The words “include,” “includes,” and “including” are not limiting. This Agreement may be signed in counterparts. A fax or email transmission of a signature page will be considered an original signature page. At the request of a party, the other party or parties will confirm a fax or email transmitted signature page by delivering an original signature page to the requesting party.

7.10 Conflict of Interest. The law firm of Bryant, Lovlien & Jarvis, P.C. (“Law Firm”) has been retained by City to prepare this Agreement, and all related documents and instruments. Law Firm currently represents City and District on one or more unrelated matters. Oregon’s rules of ethics for lawyers limit or prohibit one lawyer or law firm from representing two or more clients when their interests conflict. Law Firm may not oppose a current client (even on an unrelated matter) without informed consent after an explanation about the material risks of, and reasonable alternatives to, consenting. Law Firm has discussed the conflict of interest with each party. Each party consents to Law Firm’s representation of City in connection with the preparation of this Agreement and all related documents and instruments. Notwithstanding the parties’ informed consent, should a conflict or dispute arise between the parties, Law Firm will not represent any party in connection with the conflict or dispute (each party will obtain the party’s own, independent legal counsel).

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first written above but made effective for all purposes as of the Effective Date.

CITY:
City of John Day,
an Oregon municipal corporation

DISTRICT:
John Day Canyon City Parks and Recreation District,
an Oregon special district

By: _____
Its: _____

By: _____
Its: _____

Dated: _____

Dated: _____

Appendix A
Definitions

“Agreement” has the meaning assigned to such term in the preamble.

“Application” has the meaning assigned to such term in Section 5.3.

“Building” means the Aquatics Center Building constructed on District land located at 845 NW Bridge Street in John Day, Oregon 97845.

“City” means the City of John Day, an Oregon municipal corporation, whose address is 450 East Main Street, John Day, Oregon 97845.

“District” means John Day Canyon City Parks and Recreation District, a special purpose district created under ORS Chapter 266, whose address is 845 NW Bridge Street, John Day, Oregon 97845.

“Effective Date” means February 22, 2022.

“Gleason Pool” means the property located at 250 NW Canton Street, John Day, Oregon 97845.

“Law(s)” mean all federal, state, and local laws, statutes, ordinances, and/or regulations directly or indirectly affecting this Agreement, and/or the Project, including, without limitation, the Americans with Disabilities Act of 1990 (and the rules and regulations promulgated thereunder) and ORS chapter 190, all as now in force and/or which may hereafter be amended, modified, enacted, or promulgated.

“Law Firm” has the meaning assigned to such term in Section 7.10.

“Project” has the meaning assigned to such term in Recital C.

“Project Manager” means that certain City appointed individual who will work with District staff/representatives and project consultants on the Project Management Team to provide technical assistance and general Project oversight.

“Project Management Team” means those certain District appointed board members or staff representatives who will collaborate with City and Project consultants to review Project construction, approve all changes orders, and approve final documents at the completion of the Project.

“Representative(s)” mean the officers, employees, volunteers, and authorized representatives of the identified party.

“Source Selection Panel” means that certain panel of individuals for the Project construction RFP made up of appointed District board members and City councilor

Exhibit A
Depiction of Project

DRAFT

Exhibit B
Land Use Site Plan

DRAFT

Exhibit C
Project Construction Budget

DRAFT

Exhibit D

Declaration of Official Intent to Reimburse Capital Costs with State of Oregon Lottery Revenue Bonds

DRAFT