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**PIERCE JOINT RECREATION
AGREEMENT FOR
DEVELOPMENT & JOINT USE OF
ART CRATE FIELD/STADIUM
BETWEEN
COUNTY &
BETHEL SCHOOL DISTRICT #403**

FEBRUARY 2004

**JOINT RECREATION AGREEMENT
FOR
DEVELOPMENT AND JOINT USE OF
ATHLETIC FIELDS AND TEACHING STATIONS
BETWEEN
PIERCE COUNTY AND BETHEL SCHOOL DISTRICT No.403**

This Joint Recreation Agreement (the "Agreement") is entered into between the Bethel School District No.403 (the "District"), and Pierce County (the "County") (collectively, "the Parties").

RECITALS

1. The Parties desire to enter into an agreement under RCW 67.20.020 for the purpose of cooperatively renovating and sharing a public recreation/athletic facility (the "Facilities") on property owned by the District located within the community of Spanaway in unincorporated Pierce County, which property (also known as the "Joint Use Site") is more specifically described as Art Crate Field located on the Bethel High School campus at 22215 38th Ave. E., Spanaway, WA 98387-6828.
2. RCW 67.20.020 authorizes a county and a school district to enter into an agreement for the purpose, among other things, of acquiring, constructing, improving and operating parks, playgrounds, and other recreational facilities. RCW 67.20.020 also provides that in the conduct of such a recreation program, the property or facilities of either party may be used with its consent.
3. The District owns approximately fifty-five (55) acres located at 38th Avenue East and 224th Street East, which houses the District Transportation Department, Shining Mountain Elementary School, Bethel Junior High School, and Bethel High School. Art Crate Field lies on a portion of this land and is designated as the Joint Use Site described above. The District has authority to permit use of its facilities in cooperation with the County under RCW 28A.335.050, 28A.335.150 and 67.20.020.
4. The County is authorized by Chapters 36.68, 36.89 and 67.20 RCW to establish parks and a wide range of recreation facilities for the public, and to acquire various interests in real property in connection therewith. The County desires to provide funding for the turf project at Art Crate Field, with a focus on providing recreational opportunities to the community on the weekends and in the evenings, when demand for play fields and other sports facilities by the general public is in particularly high demand and short supply.
5. The District has identified the need for renovation of this athletic field to enhance the District's educational and athletic programs, and the District's needs are greatest during school days and immediately after school, during periods when the general public demand for play fields and other sports facilities is relatively low.

6. The County collects impact fees and real estate tax fees authorized to be used for facilities described in the capital facilities element of the County's Growth Management Plan. The Capital Facilities Element of the County's Growth Management Plan identifies the need for a multi-purpose recreation complex in the Spanaway area.

7. The County and the District each have staff with the experience and expertise to assist each other in cooperation for planning, developing, operating, and maintaining the facilities, and the program for the Facilities.

NOW, THEREFORE, for the mutual benefits to be derived by both Parties, the Parties agree as follows:

AGREEMENT

1. Grant of Joint Use Rights and Interest in Property.

a. The District grants to the County rights of joint use in the Joint Use Site. Those rights of joint use are upon the terms, conditions, and limitations described in this Agreement. The Parties agree that the useful life of the Facilities is [30] years, as are the rights of joint use.

b. The District's conveyance of rights to the County hereunder to use the real property described in this Agreement constitutes a non-exclusive grant of an interest in that property by the District to the County for the purposes and subject to the terms and conditions contained in this Agreement.

2. TERM

This Agreement, and the rights of joint use granted herein, shall have duration of 30 years from the date of the Agreement, unless earlier terminated in accordance with Section 15 or extended by mutual written agreement of the Parties.

3. Purpose and Use

The purpose of this Agreement is to provide the Parties with the joint benefits contemplated by Chapter 67.20 RCW and to maximize citizen access to educational, athletic and recreational opportunities. To the extent permitted by law, it is the intent of the parties that priorities of non-educational use should be in the following order of precedence: (1) youths residing in the Bethel School District; (2) residents of the Bethel School District community; (3) citizens of Pierce County; and (4) the general public.

4. Funding

The District and the County shall share funding for this project. The County's funding portion shall be 50 percent of the defined project costs as appropriate and in accordance with County Council Ordinance Number 2002-99s (see Exhibit 4). The County's funding portion shall not exceed \$500,000 dollars. Invoices from contractors, architects, engineers, etc. will be directed through the District's business office and 50

percent of payments toward project related billings will be reimbursed to the District by the County within 60 days of notification. The District will invoice the County monthly (or as appropriate) for reimbursement.

5. Design, Construction and Ownership of Improvements

The District shall, at its cost, including 500,000 dollars in funds from Pierce County, renovate the Facilities on the Joint Use Site as described in the planning process attached hereto and incorporated herein by reference as Exhibit 1. The cost of the renovation of the Facilities is anticipated to be substantially as outlined in the attached Exhibit 2 ("Estimate of Costs") attached and incorporated herein by reference. However, the Parties recognize that the actual costs may be different from those set forth on Exhibit 2. Any additional costs shall be the responsibility of the District and any savings shall accrue solely to the District. This agreement does not obligate the County to contribute toward the replacement costs of the turf.

a. Environmental Review

The District shall provide all necessary environmental reviews, including acting as lead agency with regard to SEPA, delineation of wetlands, zoning, and permitting.

b. Design

The District shall provide all project management functions including but not limited to, SEPA process, site surveying, landscape architectural, civil engineering, traffic study and planning, analysis of sanitary sewer availability, construction costs estimating, and bidding and construction documents. The County shall have the right to receive copies of all such design documents as they are produced and shall have the opportunity to provide input and comments during the development and review of such design. Before release for public bidding, the plans shall be subject to the approval of the County's Executive or designee, provided that such approval shall not unreasonably be withheld. In the event approval for design of significant project elements is withheld, the dispute shall be resolved under the dispute resolution arbitration provisions of this Agreement.

c. Renovation

The District shall administer the renovation contracts and shall have responsibility to use best efforts to ensure that the renovation conforms to the approved renovation documents. Representatives of the County shall be permitted to accompany District representatives on site and make comments to the District representative, but the County representative shall have no authority to direct or superintend the operations of the contractor in any manner.

6. Construction or Development in Addition to Exhibit 2.

The District or the County may propose additional development plans (other than those described in this Agreement and its attachments) for improvements to the Facilities after first consulting with the other party to this Agreement concerning the feasibility of such improvements. The costs of preparing any such

improvement or development plans shall be borne entirely by the initiating Party unless a written agreement to share such costs is approved by both Parties. Improvement and development plans for the site shall be approved by the other Party prior to initiating construction, improvement, or installation. The preparation of proposed development plans does not obligate the initiating party to agree to construction of the improvements described in any such plans.

7. Rights of Use and Scheduling

Each party shall have priority rights to use and to schedule use of the Joint Use Site for certain defined periods of times and dates, heretofore described as BSDUPT and PCUPT for Bethel School District Use Priority Times and Pierce County Use Priority Times respectively. It is the intention of the parties that each will cooperate fully with the other in the scheduling of “non-priority use time” events that do not unduly interfere with scheduled activities of the defined “priority use” party. Each party shall designate to the other a single administrator whose office shall have responsibility for scheduling during that party’s priority use time. The designated representatives from each party shall meet at least annually to coordinate calendars, schedules and other issues as appropriate.

a. Bethel School District’s Use Priority Times (BSDUPT)

Bethel School District shall have priority of use and the exclusive right to schedule use of the Joint Use Site from 12:00 a.m. to 6:00 p.m. on every week day during the defined Washington Interscholastic Activities Association sports year (beginning with the first turnout date in the fall and concluding with the final spring championship event). The Bethel School District shall also have the priority use during a four-hour block of time on all Saturdays and unspecified dates/times during the PCUPT as mutually agreed upon by the party’s official representatives. Such priority use shall not exceed 15 percent of the BSDUPT on an annual basis, except that when and if a fourth high school goes on line, this shall be increased to 20 percent. District use outside of the time frames described above shall be specified in writing to the County at the beginning of each sports season.

b. Pierce County’s Use Priority Times (PCUPT)

The County shall have priority of use and the exclusive right to schedule use of the Joint Use Site for all dates and hours not within the BSDUPT described above. The District will make available to the County no more than 15 percent of the PCUPT for County priority use during the BSDUPT, except that when and if the Bethel School District brings on line a fourth high school, this shall be increased to 20 percent. For purposes of this agreement, the term “community use” is essentially equivalent to County use.

c. Scheduling for Community Use Beyond County Sponsored Programs

The Bethel School District shall be responsible for the scheduling and coordination of all

“community use” of the Joint Use Site during the PCUPT other than usage related to activities directly sponsored and scheduled by the County per the terms described above. The County shall have the right to review community use scheduling.

8. Annual Review

The Parties shall jointly perform an annual review of the percent of usage by each entity. Additionally, the District shall make available to the County an accounting of all community and District usage of the Joint Use Site on an annual basis. The County shall likewise provide the District with an accounting of usage related to County sponsored activities on an annual basis.

9. Fees for Use

Each party shall establish its own fee schedule consistent with the policies established by its governing board. The District shall be entitled to collect fees and to carry out Associated Student Body (ASB) fundraising events at the Facilities during the District's hours of its priority use. In addition, the School District shall be entitled to charge and collect fees from any ASB related events which it schedules with the advance permission of the County during the County's hours of priority use. The County shall have the right to charge and collect fees for use for events which it schedules in its times of priority use. In addition, the County shall have the right to charge and collect its fees for use for events that it schedules with advance permission from the District during the District's hours of priority use. Neither Party shall have any right to reimbursement for fees charged and collected in accordance with this Agreement by the other party. Each Party will keep records of such fees received and make those records available to the other Party upon request. The District and County shall provide each other with an annual accounting of facility usage during their respective usage times to include hours of usage, the number of uses, the names of user groups, fees collected, etc. The District's rental fee schedule and facility usage policy is included in Exhibit 5.

10. Concessions.

Each Party may during its hours of priority use contract for, or itself provide, concessions for any event the party schedules, retaining the proceeds. Neither party shall permit the sale of alcohol or tobacco products in concessions on the site. Signage for the Facilities will be designed to inform the public that the Facilities are a cooperative effort between Pierce County and the Bethel School District. Such signage shall be subject to the requirement that both parties agree to location, appearance, and content.

11. Advertisement on Site.

Neither Party shall sell to third parties the right to advertise on site except with the advance written consent of the other Party, and neither Party shall be under any obligation to consent.

12. **Maintenance.**

a. **Event Specific Maintenance.**

Game preparation shall be the responsibility of the user Party. Event specific maintenance costs shall be borne by the initiating Party and shall be arranged by the District. Custodial services for the facility shall be arranged through the District and costs associated shall be borne by the initiating Party.

b. **General Maintenance.**

General maintenance of the facility, including periodic replacement of synthetic turf shall be the District's responsibility.

13. **Security**

Security for emergency callouts during non-facilities use hours will be provided by the Bethel School District. Such security will be limited to responding to fire or security alarms in a timely fashion and making periodic inspections of the facility during non-use hours. Event security will be the responsibility of the County or the District during their respective priority use times and/or events.

14. **Modification of Facilities.**

Changes to the facilities shall only be made with the concurrence of both parties. Requests for any changes (physical modifications) will be presented in writing and will be prepared by appropriate professional staff.

15. **Successors to the Agreement.**

Subject to applicable law, upon the incorporation of the area in which the Facilities are located, the District may at its option retain its rights to the Facilities under this Agreement or may assign and transfer those rights, in whole, to the city into which the area incorporates. Furthermore the District may at its option assign and transfer its rights hereunder to a park and recreation service area, park and recreation district, metropolitan park district or other municipal corporation. However, any such transfer, either to a new city or to a special purpose district, shall be effective only upon the city or county's written acceptance of the assignment and transfer subject to the terms and conditions of this Agreement and the District's rights hereunder. Similarly, if the District is merged with another school district or if the area within which the Facilities are located is transferred to another school district, the District may at its option assign and transfer its rights under this Agreement so long as the successor district accepts that assignment and transfer in writing, subject to the terms and conditions of this Agreement and the County's rights hereunder.

16. **Termination.** This Agreement may be terminated as follows:

a. Termination prior to completion of improvements to the Facilities on the Joint Site, as described in Exhibit 1:

(i) If the District terminates this Agreement prior to completion of improvements to the Facilities, the District shall reimburse to the County the amount of the County's capital expenditures paid to the District for improvements to the Facilities.

(ii) If the County terminates this Agreement prior to completion of improvements to the Facilities, the County shall pay the District that portion of the \$500,000 committed by the County for the improvements to the Facilities remaining unpaid at the time of termination.

b. Termination after completion of improvements to the Facilities on the Joint Site, as described in Exhibit 1:

(i) This Agreement may be terminated at any time by mutual agreement of the parties and on such terms and conditions as they may then agree.

(ii) Notwithstanding paragraph (i) above, the District may terminate the Agreement under those conditions provided in RCW 28A.335.040 as it now exists or is hereafter amended. In such event the District shall reimburse the County for the County's capital expenditures for improvements to the Facilities, reduced by the Schedule of Depreciation per year based upon the manufacturer's representation of the lifespan of the turf. The Schedule of Depreciation is attached to this Agreement at Exhibit 3.

c. Should the District be unable to complete the improvements to the Facilities on the Joint Site within three (3) years of the date of this Agreement, the Agreement will terminate without liability by any party to the other.

17. Indemnification.

The County agrees to defend, protect, and save the District, its elected and appointed officials, its employees and agents, harmless from and against any and all claims, demands, and causes of action of any kind or character, including claims for attorneys' fees and the cost of defense thereof, including reasonable attorneys' fees arising out of the County's sole fault with respect to the subject matter of this Agreement. In the event the Parties agree that one party shall defend the other Party, the defending party shall have the sole right to select legal counsel to defend against the claim, demand, or cause of action. In the event either party agrees to defend, protect, and save the other harmless, the defending Party shall be empowered to settle or compromise at defending Party's cost the claim, demand or cause of action, and the defended party shall not interfere therewith. In the case of liability for damages or injuries to persons other than employees of any Party and in the case of liability for damages for injuries to property not belonging to either Party, when the damages or injuries are due to causes which cannot be traced to the sole fault of one party, the County and the District shall be responsible for such damages or injuries in proportion to their respective shares of the fault, or equally if the parties' proportionate shares of fault cannot be determined.

18. Insurance (General Liability & Property).

Each Party shall be responsible for maintaining adequate insurance or adequate self-insurance to provide for any liabilities, which might arise under this Agreement or in the operation and maintenance of the Facilities.

19. Notice and Day-to-Day Contact.

Day-to-day contact, communications and formal notices between the Parties under this Agreement shall be through the person named below or their successors or through any other person or persons designated by the District and by the County, respectively.

Bethel School District #403
516 176th Street East
Spanaway, WA 98387-8399
Contact Name: Director of Athletics
Currently Mr. Dan Heltsley

Pierce County Parks and Recreation
9112 Lakewood Dr. S.W., St. #121
Lakewood. W A 98499
Contact Name: Director or Designee
Currently Mr. Jan Wolcott

Dispute Resolution.

If the County's and the District's representatives are unable to come to an agreement in the administration of this Agreement and/or any dispute involving this Agreement, including payment of operating or maintenance costs or making good on subsequent agreements, the matter shall be referred to the County's Executive and the District's Superintendent for resolution. Should agreement not be reached between the Executive and the Superintendent, the County and the District shall appoint a neutral arbitrator at their shared expense. Upon failure to agree, either party may apply to Pierce County Superior Court for appointment of a neutral arbitrator. The arbitrator's decision shall be binding on both Parties.

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Board of Directors