Long-Term Intergovernmental Agreement By And Between The Merrimack School Board and the Merrimack Board of Selectmen For The Community Use Of The O'Gara Drive Tennis Courts, Skating Rink, Basketball Court and Skateboard Park.

Entered into this 21st day of June, 2001.

Background

With authorization from Town Meeting of 1973, the Merrimack Board of Selectmen and the Merrimack School Board executed a long-term recreational easement on lands located on High School Exit Road (now O'Gara Drive) owned by the Merrimack School District, copies of said action Exhibit A and B. Subsequently, the Town of Merrimack built four tennis courts and a skating rink for community use on the property utilizing Town monies with federal match from the Land and Water Conservation Fund. A twenty-five year extension of the recreational usage easement was granted May 3, 1988. See attached Exhibits C and D. On July 15, 1991, the Merrimack School Board approved a request of the Merrimack Parks and Recreation Department to build a basketball court next to the tennis courts. See attached Exhibit E. In 1999, a skateboard park was built and opened to the public.

Witnesseth

In consideration of the mutual promises and undertakings hereinafter set forth, the parties hereto covenant and agree as follows:

A. The Merrimack School District continues grant of easement, including right to maintain, manage and further develop the lands described in Exhibit D (identified as Town Map 5D-3, Lot 128, as registered in Hillsborough County Registry of Deeds) for a period not less than twenty-five years from July 30, 1993.

B. Said easement to be subject to renewal on or before July 30, 2018.

C. The property will not be used for purposes inconsistent with the Parks and Recreation section of Chapter III of the Master Plan for the Town of Merrimack.

D. There is no monetary consideration for this easement, but the parties hereto enter into the same consideration of their desire to see the quality of life improved in the Town of Merrimack by virtue of the use of the premises.

E. Upon termination of this agreement, the premises shall be returned to a neat and sightly condition to the Merrimack School District.

F. The described property and any existing structures on it shall be maintained in a safe, sightly, and usable condition by the Town of Merrimack.

The Merrimack School District hereby covenants and warrants that they are the owner

of the described property and has full right and authority to enter into this agreement, and that the Town of Merrimack shall peacefully possess and enjoy the premises during the term hereof without any interruptions.

The Town of Merrimack shall, at its own expense, at all times during this agreement, maintain in force a policy or policies of insurance, which will insure the Town of Merrimack and the Merrimack School District against any liability for injury or death of persons or loss or damage to property occurring in or about the property described. A certificate of insurance naming the Merrimack School District as an additionally insured shall be issued on an annual basis.

The Town of Merrimack shall not assign this agreement or any interest therein, except by written permission of the Merrimack School Board.

This agreement may be modified or amended only by writing duly authorized and executed by both the Town of Merrimack and the Merrimack School District. Further, the provisions of this agreement can be revoked or amended only with the written concurrence of the State of New Hampshire Liaison Officer and the National Park Service which would require appropriate substitution of public recreation land and facility replacement from the Town of Merrimack in event of termination of this agreement. Said substitution and replacement will serve in perpetuity for the public good by the Town of Merrimack.

The Town of Merrimack and the Merrimack School District agree to execute, at the Town's expense and request, suitable notice of this agreement for recording as required by New Hampshire statutory law.

Each and every provision of this agreement shall bind and shall inure to the benefit of the parties hereto and their legal representative and successors.

In Witness Whereof, The Parties Have Hereunto Set Their Hands This 21st day of 2001.

Merrimack Board of Selectmen	Merrimack School Board

Town of Merrimack
Office of the Selectmen

Exhibit A

4 June 1973

Mr. Joseph F. Quinn, Chief
Recreation Services
Dept. of Resources and
Economic Development
P.O. Box 856
State House Annex
Concord, N.H. 03301

Dear Mr. Quinn,

In accordance with recent conversations between Mr. Wayne Eddie of your office, and Mr. Nelson Disco of Merrimack, we are hereby forwarding a letter of approval from the Merrimack School Board assuring a minimum 15 year use of our proposed tennis court and skating rink facility.

The tennis court and skating rink facility will be open to the public at all times, and a permanent sign stating that it is a public area open to public use will be erected at the facility when it is completed. Adequate automobile parking will be provided for persons using the facility.

Very truly yours,

Board of Selectmen

Ronald E. Geiger, Chairman

Lawrence S. White

Lee Nugent

Exhibit B

MERRIMACK SCHOOL BOARD

MERRIMACK, N.H. 03054

4 June 1973

Mr. Wesley Greeley, Chairman
Park and Recreation Department
Merrimack, New Hampshire 03054

Dear Mr. Greeley:

Permission is hereby given to the Merrimack Park and Recreation Department to construct, operate and maintain for a minimum period of 15 years from this date four Tennis courts and a skating rink on High School Exit Road in accordance with the specifications dated 6 April 1973.

Very truly yours,

Norman E. Brown
Chairman

Martin Kelley

Paul F. Goodridge

SCHOOL ADMINISTRATIVE UNIT #26
36 McElwain Street
Merrimack, New Hampshire 03054
Telephone 603-424-2131

Exhibit C

CLAUDE H. LEAVITT
Superintendent of Schools
JAMES M. O'NEIL
Assistant Superintendent
RAYMOND J. RAUDONIS
Assistant Superintendent

MERRIMACK SCHOOL DISTRICT
BEDFORD SCHOOL DISTRICT

May 3, 1988

Mr. Daniel C. Ayer
Town Manager
Merrimack Town Hall
Baboosic Lake Road
Merrimack, NH 03054

Dear Mr. Ayer:

The Merrimack School Board has reviewed your correspondence of April 27, 1988, regarding tennis court improvements.

The board has voted to continue its support and cooperation with the town in this regard. At its meeting on May 2, 1988, the board voted to extend its use of land to the town for twenty-five (25) years so that matching funds from the Federal Land and Water Conservation Fund may be used to upgrade the tennis courts.

Sincerely yours,

Claude H. Leavitt
Superintendent of Schools

CHL/lsm

RECEIVED MAY 04 1988

Exhibit D

LONG-TERM INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE MERRIMACK BOARD OF SELECTMEN AND THE MERRIMACK SCHOOL BOARD FOR THE COMMUNITY USE OF THE O'GARA DRIVE TENNIS COURTS AND SKATING RINK

Entered into this 30th day of August, 1988.

Background

With authorization from Town Meeting of 1973, the Merrimack Board of Selectmen and the Merrimack School Board executed a long-term recreational easement on lands located on High School Exit Road (now O'Gara Drive) owned by the Merrimack School District. Copies of said action Exhibits A and B. Subsequently, the Town of Merrimack built four tennis courts and a skating rink for community use on the property utilizing town monies with federal match from the Land and Water Conservation Fund. A twenty-five-year extension of the recreational usage easement was granted May 3, 1988. See attached Exhibit C.

WITNESSETH

In consideration of the mutual promises and undertakings hereinafter set forth, the parties hereto covenant and agree as follows:

A. The Merrimack School District continues grant of easement, including right to maintain, manage and further develop the lands described in Exhibit D (identified as Town Map 5-D3, Lot 128, as registered in Hillsborough County Registry of Deeds) for a period not less than twenty-five years from May 3, 1988.

B. Said easement to be subject to renewal on or before May 3, 2013.

C. There is no monetary consideration for this easement, but the parties hereto enter into the same consideration of their desire to see the quality of life improved in the Town of Merrimack by virtue of the use of and improvements to be made upon the premises.

D. Upon termination of this agreement, the premises shall be returned in a neat and sightly condition to the Merrimack School District.

E. The described property and any structures placed on it shall be maintained in a safe, sightly and usable condition.

F. The Town of Merrimack shall, at its own expense, at all times during this agreement, maintain in force a policy or policies of insurance, which will insure the Town of Merrimack and the Merrimack School District against liability for injury to or death of persons or loss or damage to property occurring in or about the property described.

G. The Merrimack School District hereby covenants and warrants that they are the owner of the described property and has full right and authority to enter into this agreement, and that the Town of Merrimack shall peacefully possess and enjoy the premises during the term hereof without any interruptions.

H. The Town of Merrimack shall not assign this agreement or any interest therein, except by written permission of the Merrimack School Board.

I. This agreement may be modified or amended only by writing duly authorized and executed by both the Town of Merrimack and the Merrimack School District. Further, the provisions of this agreement can be revoked or amended only with the written concurrence of the State of New Hampshire Liaison Officer and the National Park Service which would require appropriate substitution of public recreation land and facility replacement from the Town of Merrimack in event of termination of this agreement. Said substitution and replacement will serve in perpetuity for the public good by the Town of Merrimack.

J. The Town of Merrimack and the Merrimack School District agree to execute, at the town's expense and request, suitable notice of this agreement for recording as required by New Hampshire statutory law.

K. Each and every provision of this agreement shall bind and shall inure to the benefit of the parties hereto and their legal representatives and successors.

IN WITNESS WHEREOF, THE PARTIES HAVE HEREUNTO SET THEIR HANDS THIS 30th DAY OF AUGUST, 1988.

MERRIMACK BOARD OF SELECTMEN

Kathy L. Wales

Mary R. Lawson

Robert E. Brundige

MERRIMACK SCHOOL BOARD

Linda Thurston

Paul R. Morgan

Victor R. Slentz

Exhibit E

MERRIMACK SCHOOL DISTRICT
School Administrative Unit #26
36 McElwain Street
Merrimack, New Hampshire 03054
Tel. (603) 424-6200 Fax (603) 424-6229

JAMES M. O'NEIL
Superintendent of Schools
MARJORIE C. CHIAFERY
Assistant Superintendent
JOHN H. LINDSELL, Ed.D
Assistant Superintendent

June 24, 1991

Mr. David F. Osborn, Acting Director
Parks and Recreation Department
Merrimack Town Hall
P.O. Box 940
Merrimack, NH 03054

Dear Mr. Osborn:

The Merrimack School Board approves your request to use the land in front of the tennis courts on O'Gara drive for the purpose of building a 75' x 40' basketball court for use of the residents of Merrimack.

If you feel that anything further is necessary, please feel free to contact me.

Sincerely yours,

James M. O'Neil

James M. O'Neil
Superintendent of Schools

JMO/jr

Letter from Eric Feldbaum to Matt Casparius, Director of Parks and Recreation regarding O'Gara Drive Tennis Courts

Matt,

Thanks for being patient while we discussed with the NPS the issues regarding the Town's lease agreement with the Merrimack School District (MSD) relative to LWCF projects #33-00092 and #33-00560. As is understood, the lease between the Town and MSD will expire on July 30, 2018. It should also be reiterated that as the projects' sponsor, the Town remains subject to the provision of section 6(f) through the active term of the lease. The following options are available for the Town to proceed, with the applicable program compliance requirements noted:

A. The Town may break the lease prior to expiration. If so, the provisions of section 6(f) remain in effect and the Town will be required to initiate a conversion process and supply substitute public recreational property of equal or greater value that would then be designated as a 6(f) property in perpetuity.
   1. This option would be used if we essentially wanted to eliminate the recreational value of that space. We would have to supply "substitute public recreational property of equal or greater value" The value is a combination of acreage, yellow book standards appraisal, and recreational value. That new recreational amenity we're creating would have to go on land in Town that is not currently a designated park, open space or recreation area or the town can purchase new property.
   2. The area leased from the MSD would no longer be subject to any LWCF program requirements and the protections in perpetuity would transfer to the new facility we've now created to replace it.

B. The Town may allow the current lease agreement to expire. If so, the provisions of section 6(f) would also expire with the lease at that time, and the Town as projects' sponsor would no longer be federally required to provide perpetual public recreational property relative to these projects. It should be understood that the Town remains subject to LWCF compliance requirements, at a minimum, through current term of the lease. The present condition of the tennis courts would be considered by this office to be non-compliant.
   1. The Town would have to restore the area to alternate or passive recreation uses (pending NPS concurrence)
   2. The area where the tennis courts now sit can't be used for anything except alternate or passive recreation uses. (So for example, the School District couldn't decide to turn it into a parking lot unless the parking lot was needed to service other recreational uses and facilities within the boundary.
   3. Being declared obsolete and obtaining the letter from the National Park Service brings the Town back into compliance with the current lease which expires in 2018.
   4. The question in this option is what happens in 3 years when the lease expires.
      i. If no new lease is signed with the school district – the perpetuity restrictions disappear but they also would take over the entire parcel of land. (Basketball courts, Skateboard Park, etc.). MSD would regain legal control of their own property
      ii. If the Town signs a new lease with the School District to manage that parcel of land (basketball courts, Skatepark, etc.) the perpetuity restrictions remain in place as a recreational space for the length of the new lease. The new lease would have to be reviewed by NH State Parks and also the National Park Service. The new lease would need NH Parks approval before the lease is signed.

C. Prior to expiration, the Town and MSD may extend the current lease past the signed expiration date. If so, the provisions of section 6(f) would continue to be applicable and the Town as projects' sponsor would be responsible for program compliance through the term of the extension.
   1. The town could choose option C and declare the tennis courts obsolete and establish an alternate recreational use for the facility and maintain the facility thru the current lease period. (See A1)

Eric Feldbaum – Community Recreation Specialist/CPRP
Division of Parks & Recreation
NH Dept. of Resources & Economic Development
603-271-3556- x 227

Our Wastewater Treatment Facility was selected as the New Hampshire Plant of the Year for 2014. The selection is made by the New Hampshire Water Pollution Control Association, and will be announced at the winter meeting held at the Crowne Plaza in December. Finalists were the cities of Concord and Keene and the Town of Milford. Selection is based on environmental permit compliance, safety record and innovative and energy efficiency projects.

Consent Agenda - None

Old Business

1. O'Gara Drive Tennis Courts Follow-up Discussion
Submitted by Town Council Chairman Nancy Harrington and Vice Chair Tom Mahon
Town Council will discuss the details and options from the latest information received from the National Park Service relative to the O'Gara Drive tennis courts.

Several years ago the Town received a grant through the State from the Federal Government to pay 50% of the cost of constructing tennis courts. The grant also included the skating rink as the desire was for the amenity to contain an entire year's worth of recreational activity. The second grant that arrived ten± years later was to reconstruct the tennis courts and add lighting.

The amenities were constructed on a piece of land on O'Gara Drive, owned by the School District and leased by the Town. That piece of property not only includes the amenities encumbered by the grant, but also a skateboard park and basketball courts.

The tennis courts are in a state of disrepair. The Town has been working with the State to identify the responsibilities imposed by the Federal Government in connection with the grant. There are two issues; the Town's obligations under the lease to the School District and the Town's obligation to the Federal Government for maintaining these recreational enmities in perpetuity. Chairman Harrington noted the cost provided for repair of the tennis courts was $183,000 with a three-year warrantee. The Council reached a decision not to expend the funds, and to ascertain the Town's obligations with regard to this facility. Councilor Dwyer clarified what the Council agreed to was not to expend the funds on that site. Although the idea of moving the amenities to another location was tossed out, the discussion never got off the ground.

Town Manager Cabanel stated Matt Casparius, Director, Parks & Recreation Department, was successful in obtaining a response to the Town's inquiries in an email from Eric Feldbaum, Community & Recreation Specialist for the Division of Parks and Recreation under the New Hampshire Department of Resources and Economic Development (DRED).
Three options were identified. The first stated the Town could break the lease, according to the Federal Government. If the lease were to be broken, the provisions for section 6(f) of the lease, which is the "in perpetuity" section of the responsibilities, remains in effect. The Town would then have to substitute public recreational property of equal or greater value. The new recreational amenity would have to go on land in Town that is not currently a designated park, open space or recreational area. The area leased from the School District would no longer be subject to any Land and Water Conservation Fund (LWCF) Program requirements and the protections in perpetuity would transfer to the new facility.

Another option would be for the Town to allow the current lease agreement to expire, at which time the provisions of section 6(f) would also expire, and the Town would no longer be federally required to provide perpetual public recreational property. The Town would be required to fulfill its obligations

until the end of the lease. The Town could formally request of the National Park Service to declare the facility obsolete, which the Park Services is prepared to do. The Town could then convert the piece of property to passive recreational use, which could be benches, a volleyball court, etc. The caveat to that is you could never sign a lease on that property again unless you wanted the obligations to move forward with the National Park Service. If the lease is extended, it would then apply to the whole property.

A third option was that the Town and School District could extend the current lease past the signed expiration date. If so, the provisions of section 6(f) would continue to be applicable and the Town would be responsible for program compliance through the term of the extension. In this instance, the perpetuity restrictions remain in place as a recreational space for the length of the new lease. This option would require the Town to replace the amenity.

Councilor Rothhaus questioned if all three components; skate park, ice rink, and tennis courts, are part of the grant, and was told the grant was for the skating rink and tennis courts only. Councilor Vaillancourt commented it is all part of the same parcel. You can't pick and choose what will be addressed. Whatever the Council decides to do impacts the entire parcel. Chairman Harrington stated her understanding if the lease expires all amenities revert to the School District.

Town Manager Cabanel stated what she spoke of is what the Town is able to do as far as the Federal Government is concerned. What Councilor Vaillancourt is talking about are the obligations under the lease with the School District (entire parcel).

Councilor Vaillancourt noted the language that states: "If no new lease is signed with the School District – the perpetuity restrictions disappear but they also would take over the entire parcel of land. (Basketball courts, Skateboard Park, etc.). MSD would regain legal control of their own property."

Councilor Dwyer stated his belief everyone would be in agreement this was a horrible deal back when, and was negotiated very badly when words like in perpetuity are used. From that day forward the whole thing has muddled to where it is today because the Town was always bound by countless pages of rules, etc. In the end, he is of the opinion the land should revert back to the School District. It is their land, and should be their land. That is the entrance to the school; they should have control of how it looks, how it functions, etc. He stated his support of option 2 as the cleanest way to get out of this really bad deal of the past. In the meantime, cooperate with the School Board in any way we can, but let them know that is the direction.

You could negotiate future arrangements, e.g., if the School Board wishes to keep the skate part and the basketball courts, they may say can the Town pick it up under the Parks & Recreational for maintenance, etc. Town Manager Cabanel stated that would be restricted. Councilor Dwyer responded he does not care about what Washington tells him regarding picking up trash at a streetlight. He is of the belief the Town can negotiate for itself.

Vice Chairman Mahon suggested the Town apply for the obsolescence designation. When meeting with the School Board, they could be made aware the Town does not intend to renew the lease, and in 2018 the property will revert to their possession.

Councilor Vaillancourt stated Councilor Dwyer does not speak for her; and when accepting grants there are stipulations, etc. She remarked this happened in the 1970s and resulted from the Town and the School District working together in obtaining a grant for recreational purposes for the people of the Town. She does not think it is horrible.

Councilor Dwyer commented for the last ten years the appearance of this property has been shameful. It has been a blighted piece of property. Councilor Vaillancourt reiterated Councilor Dwyer does not speak for her. She spoke of a document referenced in prior meeting minutes relative to the structural integrity of the property and a three-year warrantee. She questioned why the Town had not sent a structural engineer to look at the property and write a report. She is of the belief that would have been to the Town's advantage when not wanting to expend the funds. She stated she requested a copy of the report and it does not exist.

Councilor Vaillancourt noted when making a request for the obsolete designation, we would have to change the tennis court area to something that is passive recreational use. She is unsure if that is something the Council would negotiate with the School Board, but is something the Council should have an idea around ahead of the meeting with the School Board.

Councilor Rothhaus stated it was a bad deal; in perpetuity means when our country collapses for whatever reason it still goes on. It was a bad idea. The question is always asked; what are the consequences of accepting grant funding, what strings come with it. This one was unfortunate. He stated his surprise it is so simple to bail out, and his support of seeking a designation of obsolete. He feels badly as he believes the skateboard park accommodates a group of kids that aren't necessarily accommodated in other forms of recreation in Town. That is something he feels will have to be discussed in the future. He stated he was not willing to spend the money it would take to rehab the existing amenities; with or without the research on the foundation and footing.

Councilor Dwyer stated the report exists, and he is unsure of why Councilor Vaillancourt was not provided with it. When asked if he has a copy of it, he stated he did five years ago. He has seen it and read it many times. The Town already contracted with someone to have it done. Councilor Vaillancourt stated she has seen estimates, but no structural integrity report.

Councilor Dwyer stated the entire School Board was given a copy of it. Councilor Vaillancourt interjected, and stated they were not. Councilor Dwyer stated that to be his recollection. Councilor Vaillancourt stated the School Board was given estimates. Vice Chairman Mahon stated the School Board was provided with the estimate. There has been no other analysis. We're basing it on conversations that were had with the contractor as to what the problems were because those were the same issues that were brought in front of the Budget Committee in 1987 or 1988 when they were talking about the free money to put in the lights. He stated he was the only dissenter of 15 for the "free money", and the fact that even then when they resurfaced it, they would only give us a three-year warrantee. Even then they stated there was deficiency underneath. Councilor Dwyer stated he does not need to spend thousands of dollars on a consultant when he can see it with his own eyes. The ledge permeates that whole property site, and that is why the cracks exist on the tennis court. That is why it was going to cost so much, because they would have to blast so much ledge out of the site. Chairman Harrington stated that to have been a verbal discussion.

Councilor Vaillancourt questioned how the Council would handle an alternate proposal for the site. Chairman Harrington responded a discussion could take place after a motion is made and passed relative to which available option the Council would like to pursue.

Councilor Boyd stated it to be an eyesore and safety hazard. It has been like that for a long time. The times the Council has met with the School District to try and find a suitable alternative that would be amenable to both parties, the School District has always circled back and said we want a tennis court there. They have brought forward no different ideas as to how they could use that particular piece of

property to have it blend in with some of the other amenities that we have there. Based on the choices that have been stated, he agrees with the majority of his colleagues that the Council should declare it obsolete and explore terminating the lease as of 2018, and express gratitude and thanks to the School District.

Councilor Boyd remarked the Town has a skateboard park and skating rink there, and as part of the policy discussions, he imagines the Council will consider dismantling and moving those amenities to another area of Town should the School Board not want to accept the responsibility for those amenities.

Director Casparius commented on the number of phone calls and emails exchanged with the State on this issue over the past 6 months. If the tennis courts are declared obsolete, which they have indicated they will do, that fulfills the Park Services requirements through the end of our current lease. If we don't sign a new lease in three years, then the property reverts to the School District, but the perpetuity restrictions disappear. They can do what they want with it at that point. Whether they want to accept responsibility for the skateboard park or the rink is unknown.

Town Manager Cabanel stated the need for additional clarification on the rink as the rink was part of the grant, and they are not declaring that obsolete. Some thought needs to go into asking that question.

Chairman Harrington stated a desire for the Council to reach a decision with regard to which option to utilize, and then engage in a discussion, likely as part of the joint meeting with the School Board, of other considerations.

MOTION made by Councilor Boyd and seconded by Councilor Dwyer that the Town Council request that the tennis courts be deemed obsolete with the appropriate Federal jurisdiction, and furthermore that the Town Manager or her proxy be authorized to sign the letter necessary to be submitted to the jurisdiction to declare said obsolescence of said tennis court. MOTION CARRIED 5-1-0 *Councilor Vaillancourt voted in opposition.*

Chairman Harrington stated the need to discuss with the School Board the Council's desire to restore the area to passive recreation. It was explained that would entail the removal of the courts, the fence, and lights. Chairman Harrington stated it would be at the end of the lease (2018) that the amenities would be turned over to the School District. Decisions regarding those do not need to be made at this time. Councilor Vaillancourt stated her understanding if the Council requests the tennis courts be declared obsolete and then makes the changes, the Town would be in compliance until the lease expires in 2018.

Councilor Vaillancourt commented on how quickly two years will pass, and remarked she would be sad to see the skateboard park disappear completely from Town and the skating rink has an incredible group of volunteers that are dedicated to it. She stated her preference for the Council to start thinking of where those amenities could be relocated to. Councilor Dwyer questioned who would tell the Town that it cannot put the skate park where it wants to 2 or 5 years from today. Vice Chairman Mahon responded nobody. Councilor Vaillancourt the Town will need to commit to it because that site will no longer be available to the Town.

Councilor Dwyer suggested the School District could take it over, and was told they could. Councilor Dwyer remarked it is being made to sound as if it would be inevitable that it would have to be moved. Councilor Vaillancourt stated the School District does not run Parks and Recreation functions. Councilor Dwyer stated that would be their choice. He commented they run sports teams, etc. Chairman Harrington stated it to be a premature discussion.