

UNKRICH STADIUM OUTDOOR TRACK USE AGREEMENT

THIS AGREEMENT is made and entered into this 21st day of May, 2024, by and between the GALION CITY SCHOOLS (hereinafter referred to as School), with offices at 470 Portland Way North, Galion, Ohio 44833, and the CITY OF GALION, OHIO (hereinafter referred to as City), a municipal corporation organized and operating under the laws of the State of Ohio, with offices located at 301 Harding Way East, Galion, Ohio 44833.

WITNESSETH:

WHEREAS, School owns an outdoor track located in Unkrich Stadium in Heise Park; and

WHEREAS, School uses the track for track meets, practices, and various other events; and

WHEREAS, City has for many years used the track for Galion Fire Department training and its citizens have used the track for recreational purposes; and

WHEREAS, City desires to continue using the track for public recreational purposes and for training purposes; and

WHEREAS, the track is in need of repair and certain grant funds can be made available for this purpose with this Agreement in place;

WHEREAS, both School and City believe that continuation of this shared use will benefit both the School and the citizens of Galion, and this agreement provides a suitable use for the track.

In consideration of the matters described above and of the mutual benefits and obligations set forth in this Agreement, the parties hereto agree as follows:

- 1. Grant of Use.** School hereby grants to City and City accepts from School the right and privilege of using the outdoor track in Unkrich Stadium. Parking lots adjoining the track are jointly owned by School and city and shall be available for use by both parties. Use by City as a "City facility" can involve general recreational purposes and training purposes and such other events as may be approved by School in advance. The School reserves full right and authority to control the use of said track and all other School facilities within Unkrich Stadium and Heise Park. Use by School of the track for any school sponsored or school related activities shall have first priority. Any use which interferes with use by School shall not be permitted and such use will cease immediately upon request by School.

- 2. Condition of Premises.** City acknowledges that the track is currently in serviceable condition. School and City intend to rejuvenate the track as soon as funds are available to do so. By entering into this agreement for long-term shared use of the track, City can apply for certain grant funds to use to rejuvenate the track and agrees to immediately pursue these funds. City has had the opportunity to examine the track and finds same to be in serviceable condition and accepts it in its present "AS IS" condition, with the School not being required to make any alterations or repairs thereto until and unless School and/or City acquire sufficient funds to do so, and City shall return same to School upon the expiration or earlier termination of this Agreement in the same or better condition as received, except for ordinary wear and tear.
- 3. Term.** The term of this Agreement shall commence on June 1, 2024, and expire on May 31, 2034, or until track replacement, whichever occurs first, unless earlier terminated under the terms of this Agreement or by mutual consent of the parties. If City is interested in continuing to use these facilities from and after May 31, 2034, the Safety-Service Director or her authorized representative should notify the Superintendent or his authorized representative on or before April 30, 2034.
- 4. Use of Premises.** City shall have the right to use the track during the term of this agreement. School shall have the right to allow others to use the track in the sole discretion of School for any lawful purpose. City's use must be covered by its insurance or through a named insured clause on the City's insurance policy, and its use must be consistent with the use of the track. City shall not use the track for purposes other than set out herein without the prior written consent of the Superintendent or his authorized representative. Since the track is open to the citizens of Galion, City is prohibited from charging any fees for use of or admission to the track unless approved by School in advance.
- 5. Equipment provided by School.** School will provide no equipment.
- 6. Maintenance.** School shall provide all maintenance for the track, including without limitation, surface repairs and upkeep and maintenance of any fencing, excepting that by reason of City's involvement in this Agreement thereby making it in essence partially a "City facility", City will immediately proceed to make application for grant funds for rejuvenation of the track as may be desired or necessary. City shall also be required to repair, or cause to be repaired, any damage that is a result of its use.

7. Alterations. In the event City desires to make alterations, additions or improvements to the track of any nature whatsoever, other than the initial rejuvenation planned by School, City must first obtain the written consent of the Superintendent or his authorized representative. All such alterations, additions or improvements authorized by School will be at City's sole expense, and in connection with such consent, the parties will at that time agree whether said alterations, additions or improvements will remain with the property upon the expiration or earlier termination of this Agreement or will be removable by the City. The initial planned rejuvenation of the track, once completed, shall be the sole property of School.

8. Indemnification. City shall defend and hold School free and harmless from and against any and all liability for injuries to or deaths of persons or damage to property arising from activities conducted by City or public use under this Agreement.

9. Assumption of Risk. All members of the general public and all City employees shall use the track at their own risk. School will post a sign or signs to the effect that all users of the track assume any and all risk of damage or injury associated with its use. School does not routinely monitor the use of the track, nor what persons are using the track.

10. Insurance and Financial Matters. Throughout the term of this Agreement, City shall acquire and maintain liability insurance coverage for activities covering the City and all participants, employees and public against claims for bodily injury, property damage and litigation costs to defend against such claims with minimum limits of \$1,000,000 per occurrence and \$2,000,000 general aggregate. School shall also be included as an additional insured thereunder. Said policy or policies shall be acquired from a reputable company authorized to do business in the State of Ohio. Proof of such insurance shall be provided to School prior to the term of this Agreement, upon each renewal of such policy or policies, and at any time upon request by School. Said policy or policies shall require that such coverage cannot be cancelled without at least thirty (30) days advance written notice to School. To the extent applicable, City shall provide Workers' Compensation coverage for all of its employees. City shall also make its financial records available to School for review upon reasonable notice.

11. Termination by School. If, in the sole judgment of School, the manner and use of the track does not meet the requirements of this Agreement or if damage above and beyond ordinary wear and tear is done to the track by citizens or City

employees, or if City is in default of any term of this Agreement, School shall give

City a written notice specifying the particulars of such default. If City fails or refuses to remedy the unsatisfactory performance within ten (10) days after receipt by City of the notice, School may terminate this Agreement. In addition, if School agrees to sell some or all of the real property occupied by the track, School may terminate this Agreement upon a thirty (30) day notice to City. The decision of School on any such matter shall be final.

12. **Contingency.** This use agreement is specifically contingent upon City obtaining grant funds in an amount not less than \$66,000.00 to be used for rejuvenation of the track. Should City be unable or unwilling to obtain these grant funds within a reasonable amount of time, not to exceed three (3) months from the date hereof, this agreement will immediately terminate and be void.

13. **Assignment.** City may not assign any right or privilege conferred by this Agreement without first obtaining the written consent of the Superintendent or his authorized representative. City has no right to permit other uses of the track not herein set out.

14. **Waiver of Breach.** The waiver by School of any breach of any term contained in this Agreement shall not be deemed to be a waiver of such term for any subsequent breach of the same or any other term.

15. **Material Terms.** Each term of this Agreement is material, and a breach by City of any one of the terms of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination of the entire Agreement by School.

16. **Headings.** Paragraph headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

17. **Modification.** Notwithstanding any provisions of this Agreement, the parties, by mutual consent, may agree to modifications or additions to it.

18. **Notices.** Any and all notices to be given by one party hereunder to the other shall be deemed given by depositing the same in the United States Mail, postage prepaid, and addressed to the party at the following addresses:

For City:

Nicole M. Ward, Safety Service Director
City of Galion, Ohio
301 Harding Way East
Galion, Ohio 44833

For School:

Jeffrey Hartmann, Superintendent
Galion City Schools
470 Portland Way North
Galion, Ohio 44833


Any change in said addresses shall be provided to the other party pursuant to this paragraph.

19. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and supersedes any prior discussions, negotiations, comments, notes and memoranda exchanged between them.

20. **Binding Effect.** This Agreement shall inure to the benefit of, and be binding against, the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, the parties hereto through their authorized representatives, and with the intent of being legally bound, have executed this Agreement upon the day and year first above written.

Galion City Schools

By 
Jeffrey Hartmann, Superintendent

City of Galion, Ohio

By _____
Nicole M. Ward, Safety-Service Director