

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: 2/R
Amend No. _____

Date prepared: April 30, 2008

Council Meeting Date: May 20, 2008

TO: Terrence L. Ellis, City Manager
FROM: J.P. de la Montaigne, Community Services Director J.P.
THROUGH: Brenda Rehnke, Recreation Manager
PREPARED BY: Maria Traci, Management Analyst MT
SUBJECT: Intergovernmental Agreement with Peoria Unified School District

RECOMMENDATION:

That Mayor and Council give the City Manager authority to sign the updated Intergovernmental Agreement (IGA) with the Peoria Unified School District (PUSD) for development processing and general cooperation.

SUMMARY:

Since 1993, the City of Peoria and the Peoria Unified School District have had an intergovernmental agreement in place for common use of facilities, personnel, equipment and services to minimize expenses and provide enhanced resources to the community and its citizens. The updated IGA is essentially the same as previous agreements entered into by the City and PUSD.

The agreement allows for City usage of all school facilities for various recreation programs, events and activities. Currently, the City's after school program is held in 20 elementary schools everyday, the summer programs are held in all elementary and high schools, our sports programs are held in 7 schools almost every Saturday and our teen programs are held at the four Peoria High Schools.

Additionally, the City's sports programs utilize the school fields for various practices and games and schedule the usage for other City groups like Little League Baseball, AYSO Soccer and Pop Warner Football practices.

The City and Peoria Unified School District have had successful partnerships and IGAs for other purposes including joint usage for swimming pools, branch library, lighting of fields and all weather tracks.

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# 02299A LIC. # _____
Action Date: _____

The success of many of the City's recreation programs is in a large part due to the cooperation of PUSD and the allowed usage of their facilities, which were paramount during the City's high growth years, but also today in establishing neighborhood programs.

The City's obligations in this agreement are to provide prompt inspections and plans reviews for new and remodeled school projects while waiving legally allowed permit and review fees.

The attorneys for the City and Peoria Unified School District have reviewed this agreement. The Parks and Recreation Board has recommended to the City Council unanimously for approval and staff recommends the Mayor and Council authorize a 5 year extension to this agreement.

ATTACHMENT: Intergovernmental Agreement with PUSD

INTERGOVERNMENTAL AGREEMENT REGARDING
DEVELOPMENT PROCESSING AND GENERAL
COOPERATION

I. PARTIES

This Agreement is entered into on this _____ of _____ 2008, pursuant to A.R.S. §11-951, et seq., between the following entities for the joint exercise of their powers:

PEORIA UNIFIED SCHOOL DISTRICT NO. 11
A political subdivision of the State of Arizona
Hereinafter, "the District"

And

CITY OF PEORIA
An Arizona municipal corporation
(hereinafter, "the City")

II. STATUTORY AUTHORITY

The Parties to this Agreement are empowered to carry on activities included in this Agreement pursuant to:

A.R.S. § 11-951 et seq. A.R.S. § 11-952, A.R.S. §
15-342 (13), A.R.S. § 15-364, A.R.S. § 34-461 and PEORIA CITY
CHARTER, ARTICLE I, Sec. 3

III. RECITALS

- A. WHEREAS the parties hereto entered into an Intergovernmental Agreement in February 1999, that being the predecessor agreement that this IGA refines.
- B. WHEREAS, the City and District serve citizens and further the public interest by permitting common use of their facilities, personnel, equipment and services in order to minimize expense to their common citizens, improve service delivery and provide enhanced resources to the community for the benefit of their common citizens.
- C. WHEREAS, cities and school districts may enter into agreements to establish the responsibilities of the District to submit and the City to review plans and construction of new schools in order to issue various permits.

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- D. WHEREAS, it is the desire of the parties hereto that the City permit and inspect the construction of new schools and the remodeling of existing school facilities within the geographic limits of the City.
- E. WHEREAS, the District and the City desire to establish the responsibilities of both parties in the development review.
- F. WHEREAS, the District provides City use of District facilities at little or no charge as a benefit to the community and the City determines it is in the public interest to consider the benefit of such use in the imposition of fees by the City for development review and inspection of new schools and remodeling of existing facilities by the District.
- G. WHEREAS, it is the desire of the parties hereto recognizing that they serve the same citizens that they cooperate by charging each other only for those legally mandated costs and those direct out of pocket expenses while otherwise allowing City and District use of each other's facilities at no charge.

IV. DEFINITIONS

- A. "Mandatory Charge" means a City impact fee or charge not prohibited by A.R.S. § 9-500.16 as amended and which the City by statute, contract, bond indenture, or code is required to charge the District.
- B. "Out of Pocket Costs" shall include those direct costs incurred by City or District over and above normal operating costs budgeted for and expended by each party. The intent of this definition is to reimburse only those additional direct costs each party incurs from providing services or facilities to the other. Examples of such costs would include:
 - (1) The cost to the District for custodial time related directly to services provided for the City's needs.
 - (2) The cost to the City for contracting out expedited services related to District construction projects.
 - (3) The cost of fuel, maintenance and capital depreciation for District busses used by the City.
 - (4) The cost of utilities incurred by the District outside normal District use that is directly related to City services. Such utility costs shall not be considered "Out of Pocket Costs" as long as they remain approximately equal to the value of in-kind services provided by City to District pursuant to this Agreement. If at some point in the future the parties agree that the cost of utilities under this subparagraph exceeds the value of the in-kind services, then the parties shall determine mutually acceptable utility costs.

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V. COVENANTS

A. City's Obligations: The City recognizes that prompt inspections assist the District in performing its constitutionally and statutorily mandated duties. The City agrees to:

- (1) Provide all building, mechanical, electrical, plumbing, and Americans with Disabilities Act - related inspections, review and permitting services to District to enable District to comply with the provisions of A.R.S. § 34-461. The parties acknowledge that manufactured school buildings are not subject to City building code review.
- (2) Provide administrative site plan and land use review services to District to enable District to comply with the provisions of City's general plan, zoning ordinance and related land use ordinances, including landscaping and onsite parking requirements. The City, in providing such review, shall recognize the District's obligations under the Constitution of the State of Arizona to provide education to all children within its boundaries and shall not apply its zoning ordinance, site plan requirements and related land use ordinances in such a manner that would interfere with District's responsibility to meet its constitutional mandate. District is not required to obtain City approval for the location of District schools and other facilities or the size, configuration, or shape of District buildings.
- (3) Provide administrative plan review and engineering review services to District for fire and offsite improvements consisting of streets, drainage, and traffic control to comply with the provisions of City's development codes and infrastructure guidelines. Such plan review and engineering review services shall be promptly expedited to the extent permitted by City resources.
- (4) Provide administrative Utility Plans Review services to District to enable the District to comply with Chapter 25 of the Peoria City Code. City services shall consist of reviewing District's connections from its meter to City's utility lines, the construction of all offsite utility lines required to provide utility services consisting of Water and Wastewater to District schools and facilities, and the District's use of the City Reclaimed Water Distribution System where it is available for landscaping purposes.
- (5) Charge the District no fees or assessments related to building development or development impact and cooperate with District in permitting use of City facilities and services, as determined by City,

to the extent legally permissible at no cost other than Mandated Charges as set forth in this Agreement and direct Out of Pocket Costs incurred by City. District recognizes that the City may have certain facilities that may have limited use due to the City's governmental functions and responsibilities.

- (a) In consideration of District providing community facilities to City at no charge for use in City's programs, the City shall charge District only the following Mandatory Charges:
 - (i) Wastewater Expansion Fee.
 - (ii) Water Expansion Fee.
 - (iii) Any development/inspection fee that the City charges that is pursuant to an intergovernmental agreement between the City and a third political subdivision or party. Currently, these would include repayment zone fees for wastewater, which must be charged as an intergovernmental agreement with the Arizona Wastewater Management Revolving Fund, now the Arizona Water Infrastructure Financing Authority.

- (b) The Mandatory Charges may be modified by City from time to time upon written notice to the District in the manner required for the amendment of Development Fees by City pursuant to A.R.S. § 9-463.05. Such modified fees shall not be applicable to any project on file with the City on the date that the new fees become effective in the manner provided by A.R.S. § 9-463.05. For purposes of this provision, "Project" means a development application submitted by District to City proposing to construct a new school or District facility or to remodel an existing school or District facility.

- (c) The Mandatory Charges expressly do not include any of the following charges:
 - (i) Building Permit Fees.
 - (ii) Plan Review Fees.
 - (iii) Library Impact Fees.
 - (iv) Law Enforcement Impact Fees.
 - (v) Park Development Fees.
 - (vi) Fire Protection Impact Fees.
 - (vii) Any subsequently enacted Impact Fees, other than those pertaining to Utilities and applicable to all Schools Funded under the State Students First Plan.
 - (viii) Grading/Drainage Inspection Fees.
 - (ix) Off-site Improvement Fees.
 - (x) Conditional Use Permit Application Fees.

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(xi) Site Plan Application Fees.

- (6) City shall pay District all Out of Pocket Costs incurred by District in the performance of this Agreement which are properly billed by District to City.

B. District's Obligations:

- (1) District shall comply with the provisions of City's general plan but shall be exempt from the City's Zoning Ordinance and related Development Ordinances, unless State Statute or regulation has preempted City's review, and shall ensure that its construction meets minimum code standards. (An example of such preemption is the determination to install modular classroom facilities.)
- (2) District shall comply with the provisions of City's building codes, engineering and plan review codes, infrastructure guidelines, utility codes and development rules and/or the terms of this Agreement, in the same manner as any private party, subject to the preemption of City's review by State Statute or regulation.
- (3) District shall pay Mandatory Charges imposed by the City for performance of the services under the City Obligations section of this Agreement. In exchange for the City's waiver of all other charges imposed by the City for all related and expansion fees under the City Obligations section of this Agreement, the District shall waive facility rent for City use of District facilities pursuant to a schedule formulated annually. In all cases the District's own use of its facilities takes precedence.
- (4) District shall permit City to use at no charge District's Buildings and Facilities as determined by District, subject to District's Board adopted policies and use guidelines and in accordance with the terms of specific permits and agreements between City and District for the use of the buildings and facilities. City recognizes that District may limit use of sites due to school overcrowding, need, or function.
- (a) This permission specifically shall include certain outdoor District facilities, including tracks and athletic fields. If City uses a District outdoor facility pursuant to this Agreement, City shall provide adequate staffing, maintenance, and repair to ensure that such facility is in similar or better condition when City's use is completed.

- (b) District shall be solely responsible for all repair and maintenance of District Facilities. District and City agree that the decisions on maintenance and repair of District Facilities are non-delegable decisions of the District. However, City shall be responsible for the costs of any repairs that are necessary due to its use of District Facilities.
- (c) District shall provide its school buses to City for City use at mutually agreeable times. When City uses District buses, City shall employ one or more bus drivers employed by District. City shall have the authority, in consultation with District Administration, to determine which bus driver(s) to provide City service and such bus driver(s) shall be under City control. Accordingly, City shall be liable and shall indemnify and hold District harmless for all damages and injuries caused by a driver that is employed by the City, unless caused in whole or in part by the gross negligence or willful misconduct of District.

C. Priority of Use of School Facilities: The District and City work cooperatively together to reserve school facilities. Both parties agree that authorized school activities will have priority in the use of school facilities. Second priority in the use of school facilities will be all City programs that are approved by the District. The final priority in the use of school facilities will be other organizations, both profit and non-profit. This use must be approved by the execution of a District Contract for Rental of School Facilities.

The City of Peoria Community Services Department is responsible for reserving, with District approval, multi-purpose rooms, cafeterias, gymnasiums, classrooms and ball fields after school hours, weekends and summer months. To assist each school, requests by other organizations for continuous booking of use of school facilities can be made in three blocks of time during the year unless it is mutually agreed upon by the District and City that it is beneficial to book the dates, times and locations outside this time frame. The City will make requests at least 2 weeks before the outside reservations are taken.

| | |
|--|-----------------------------|
| <i>Reservation will be taken for outside organizations</i> | |
| <u>Beginning:</u> | <u>For the months:</u> |
| July 1 | September – December |
| November 1 | January – April |
| March 1 | May - August |

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VI. NOTICES

Notices required or permitted hereunder shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service (Federal Express, UPS, DHL) or by mutually acknowledged facsimile transmission addressed as follows:

To District: Dr. Denton Santarelli
Superintendent
PEORIA UNIFIED SCHOOL DISTRICT NO. 11
6330 West Thunderbird Road
Glendale, Arizona 85306

With a Copy To: Ernest Calderón, Esq.
CALDERÓN LAW OFFICES, P.L.C.
2020 North Central Avenue, Suite 1110
Phoenix, Arizona 85004

To City: Terrence L. Ellis, City Manager
CITY OF PEORIA
8401 West Monroe, Room 300
Peoria, Arizona 85345

With a Copy To: OFFICE OF THE CITY ATTORNEY
8401 West Monroe, Room 340
Peoria, Arizona 85345

Or at any other address designated by District or City in writing.

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VII. TIME OF ESSENCE

Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement.

VIII. TERM

- A. This Agreement shall become effective on or upon filing with the Maricopa County Recorder and the State Board of Education after having been approved by the City and the District, whichever occurs later.
- B. On or before the anniversary date of this Agreement, the District Superintendent or his designee and the City Manager or his designee shall meet and confer in good faith on the operation of the Agreement and suggest changes, if necessary, for consideration by governing bodies of District and City.
- C. The term of this Agreement shall commence on the date of this Agreement and continue for five (5) years.

IX. INSURANCE AND INDEMNIFICATION

- A. Each party shall secure and maintain during the life of this contract statutory worker's compensation and employer's liability insurance, commercial general liability and automobile liability insurance, including contractual liability, with limits of at least \$1,000,000. Each party shall retain the option of discharging this obligation by means of funded self-insurance. Should coverage be provided on a claims-made basis, the reporting period for claims shall be written so that it can be extended for two years. Contractors retained to provide work or service required by the Agreement will maintain Professional Liability Insurance covering acts, errors, mistakes, and omissions arising out of the work or service performed by the Contractor or any person employed by the Contractor, with limits of no less than \$1,000,000 per claim.
- B. The District shall secure and maintain property insurance coverage protecting its personal property against all risk of physical damage loss for their full replacement cost. The City shall obtain similar coverage for the personal property it maintains in District's Facilities pursuant to §_V(B)(4). Unless one of the party's personal property is damaged by the actions of the other party or its agents or invitees, the District and the City agree to rely on their property insurance coverage for all other personal property damages.
- C. All carriers shall be approved and shall be in good standing with the Arizona Department of Insurance and possess an A- or better A.M. Best rating. Prior to the commencement of this Agreement, the City and the District shall provide

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certificates of insurance evidencing coverage provisions. Each party's coverage shall be endorsed to provide at least thirty (30) days of notification of cancellation or material change in coverage.

- D. City shall hold the District harmless to the extent permitted by law, its officers, employees and volunteers; from and against any and all claims, demands, suits, actions, proceedings and expenses of any kind or nature, for damages to property or injuries to or death of any person or persons, including employees or agents of the District, and including, but not by way of limitation, worker's compensation claims, resulting from or arising out of the negligent or wrongful acts, errors or omissions of City, its employees or subcontractors.
- E. District shall hold the City harmless to the extent permitted by law, its officers, employees and volunteers, from and against any and all claims, demands, suits, actions, proceedings and expenses of any kind or nature, for damages to property or injuries to or death of a person or persons, including employees or agents of City, including, but not by way of limitation, worker's compensation claims, resulting from or arising out of the negligent or wrongful acts, errors or omissions of District, its employees or subcontractors.
- F. The amount and type of insurance coverage set forth herein will in no way be construed as limiting the scope of the indemnity in Paragraphs D and E.

X. CANCELLATION

To the extent applicable by provisions of law, the parties hereto acknowledge that this Agreement is subject to cancellation pursuant to A.R.S. §38-511, the provisions of which are incorporated herein.

XI. GOVERNING LAW

- A. This Agreement shall be construed in accordance with the laws of the State of Arizona.
- B. During the performance of this Agreement, City and District agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, nondiscrimination and affirmative action.

XII. REMEDY

Both parties agree to utilize good faith efforts to informally resolve disputes arising out of this Agreement. In the event of delays, exceptions or problems arising from

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this Agreement, the City Manager and the District Superintendent shall be immediately involved as the initial appellate authorities. In the event the City Manager and District Superintendent cannot agree on a remedy for the problem, they shall mutually agree upon a third individual, fully acceptable to the City and the District, to serve as a mediator on behalf of the parties. Within fifteen (15) days, the mediator shall provide a written report to both parties with a proposed recommendation to resolve the matter. The parties shall have fifteen (15) days to notify the other that they accept or reject the mediator's recommendations. If either party rejects the mediator's recommendations, they may exercise legal rights and remedies under the law of the State of Arizona that shall be applicable to this Agreement.

XIII. AMENDMENTS

Amendments to this Agreement shall be in writing, signed by all parties to the Agreement. Formal amendments shall not be needed to notify parties of address changes, changes in position titles, etc. Such information may be provided via correspondence between the Parties.

IN WITNESS WHEREOF, the parties enter into this Agreement the date and year first specified above.

CITY OF PEORIA

PEORIA UNIFIED SCHOOL DISTRICT

By: _____
Terrence L. Ellis, City Manager

By: _____
Its: Superintendent

ATTEST:

Mary Jo Kief, City Clerk

INTERGOVERNMENTAL AGREEMENT DETERMINATION

This Agreement has been reviewed by the Office of the City Attorney as legal counsel for the City of Peoria, that has determined that the Agreement is in the proper form and

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within the powers and authority granted under the laws of the State of Arizona to the City of Peoria.

DATED this _____ day of _____ 2008.

OFFICE OF THE CITY ATTORNEY

Stephen M. Kemp, Esq.
8401 West Monroe
Peoria, Arizona 85345

INTERGOVERNMENTAL AGREEMENT DETERMINATION

This Agreement has been reviewed by Calderón Law Offices, P.L.C. as legal counsel for the Peoria Unified School District No. 11, who have determined that the Agreement is in the proper form and within the powers and authority granted under the laws of the State of Arizona to the Peoria Unified School District No. 11.

DATED this _____ day of _____ 2008.

PEORIA UNIFIED SCHOOL DISTRICT NO. 11

Ernest Calderón, Esq.
CALDERÓN LAW OFFICES, P.L.C.
2020 North Central Avenue, Suite 1110
Phoenix, Arizona 85004

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