

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: _____
Amend No. _____

Date prepared: March 2, 2010

Council Meeting Date: April 6, 2010

TO: Carl Swenson, City Manager
THROUGH: Susan J. Daluddung, Deputy City Manager 
FROM: J.P. de la Montaigne, Community Services Director 
SUBJECT: Intergovernmental Agreement with Peoria Unified School District for the Swimming Pools

RECOMMENDATION:

Discussion and possible action to authorize the City to enter into an Intergovernmental Agreement (IGA) with the Peoria Unified School District (PUSD) to operate and maintain the City swimming pools.

SUMMARY:

The City has had an Intergovernmental Agreement (IGA) with the Peoria Unified School District (PUSD) since the Peoria Pool was built in 1973. The IGA was updated in the year 2000 when Centennial Pool was built and then again in 2004 when Sunrise Pool opened. The IGA term expired in 2009 and needs to be renewed.

There are no substantial changes to this agreement. Staff has reviewed with PUSD staff and all agree to continue as currently construed. This new agreement is proposed to extend for an additional five years.

The City offers a wide selection of Red Cross certified swim lessons, swim teams and open swim. In the 2009 season, we had 7,353 participants in swim lessons, 602 swimmers on swim team which serves an average of 189 people daily during open swim. When there is available time, the pools are rented out for private parties. City programs operate from mid-March to Labor Day. All three pools are heated and the gas cost is incurred by the agency using the pool. In FY '09 the gas costs for all 3 pools was \$37,000 with PUSD paying approximately 60% and the City 40% which is based on the use of the pool when it is heated.

PUSD offers Physical Education classes in the pools in the fall and spring. High school swim and dive teams operate from August to November.

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# _____ LIC. # _____
Action Date: _____

The City of Peoria is responsible for scheduling, operating and maintaining the pools year-round for the public and for PUSD. PUSD is billed bi-annually for the operation and maintenance costs of the pools. Direct costs such as staffing and supplies are fully paid by each of the respective parties.

The City Attorney has reviewed the IGA and found it acceptable as written.

FISCAL NOTE: (not applicable)

ATTACHMENT:

1. Intergovernmental Agreement

PREPARED BY: Brenda Rehnke, Recreation Manager

**INTERGOVERNMENTAL AGREEMENT
FOR
SHARED JOINT USE FACILITIES (SWIMMING POOLS)**

I. PARTIES

This Agreement is entered into this ____ day of _____ 2010, pursuant to A.R.S. § 11-951, *et seq.* between the following entities for the joint exercise of powers common to the parties:

CITY OF PEORIA
An Arizona municipal corporation
organized under the constitution and statutes of the State of Arizona
(hereinafter, "CITY"),

And

PEORIA UNIFIED SCHOOL DISTRICT NO. 11
A political subdivision of the State of Arizona
(hereinafter, "School District")

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. § 15-342(13);

A.R.S. § 15-364;

and

PEORIA CITY CHARTER, ARTICLE 1, Sec. 3.

III. RECITALS

A. **WHEREAS**, cities and school districts may enter into agreements for the construction, development, cooperative maintenance, operation and use of recreation facilities, parks, swimming pools (hereinafter "Pools"), and other pool related facilities (collectively referred to herein as the "Facilities") on property used for school purposes and under the control of such school districts; and

- B. **WHEREAS**, the primary purpose of the Facilities shall be to equally serve the educational and recreational needs of the students, faculty and general public using the Facilities and to provide for related secondary activities and Facilities by agreement of the CITY and the School District which would allow for more efficient and effective use of public resources while improving the quality of services offered; and
- C. **WHEREAS**, the CITY and the School District have previously entered into agreements to construct and operate Pools and Facilities on school property for both CITY and School District use and wish to continue this arrangement for the convenience of the CITY and the School District; and
- D. **WHEREAS**, the CITY and the School District intend for this Agreement to cover the existing Pools and Facilities located at Peoria High School, Centennial High School, Sunrise Mountain High School and all future Pools and Facilities as agreed upon by the CITY and the School District.

NOW THEREFORE, the Parties to this Agreement, in consideration of the mutual covenants and stipulations set forth herein, agree between the respective governmental entities, as follows:

IV. COVENANTS

- A. Joint Covenants
 - 1. Nothing contained herein shall be construed as to alter the nature or extent of the easement granted to the CITY by the School District in the original agreement referred to in Section III (C) above. Said easement shall continue in full force and effect according to the terms and conditions set forth in the original agreement, with both the School District and the CITY having the right to use the swimming pool and the City having the right of owner and operator of such pools.
 - 2. The CITY and the School District shall establish a management group to facilitate use, scheduling and billing for the Pools and Facilities. The management group shall meet at least once annually to jointly establish the use schedule of the Pools and Facilities and for any other matters arising out of the CITY's or School District's use of the Pools and Facilities. The management group shall consist of two (2) representatives from the CITY designated by the City Manager or his designee, and two (2) representatives from the School District designated by the Superintendent of the School District or his designee.
 - 3. Both the CITY and the School District shall have the right to plan, promote, and hold aquatic events, charge admission fees for programs and events scheduled by that respective Party, and sell concessions and programs. All School District

aquatic events for high school students must be approved by the School's athletic director or designee prior to occurring. All funds acquired from any such events shall be the property of the Party holding the event.

4. Both the CITY and School District shall agree, in a writing signed by both Parties, on the financing, design, and construction of any additional joint use Pool and Facilities.
5. This Agreement may be modified in writing at any time by mutual agreement of the Parties hereto. No modification of this Agreement shall be effective until signed by both Parties. The CITY and School District may execute an attachment signed by both Parties pertaining to a particular Pool and Facilities to address unique items.
6. The CITY's Community Services Department and the School District's Administration for Support Services will administer the IGA. Any unresolved issues will be given to the City Manager and School District Superintendent.
7. Both the City and School District will work together to research and implement "green" energy alternatives such as solar energy, LED lights, etc. Upon agreement, the cost and savings will be shared equally between both Parties.

B. CITY Covenants

1. The CITY shall control the Pools and Facilities subject only to those rights and privileges reserved by the School District set forth in this Agreement. The powers of the CITY, with respect to Pool and Facilities operations shall include, but are not limited to: coordinating schedules for Pool usage; hiring and firing employees needed to operate or maintain the Pools and Facilities; and setting salaries of said employees and payment of those salaries.
2. The CITY shall have the right to install and use amplification equipment in connection with its operation of the Pools and Facilities. The High School Principal or designee can request from the CITY representative to use the Pool's amplification equipment.
3. The CITY shall be responsible for all necessary maintenance of the Pools and Facilities, including maintenance and replacement of equipment. The CITY shall be responsible for all operational costs of the Pools and Facilities including chemicals, water, electricity, and any labor costs associated with such duties. The CITY shall maintain the Pools and Facilities in good condition at all times.
4. The CITY shall furnish the School District with documentary proof of any expenditure upon written request by the School District.

5. The CITY will make the men's and women's changing rooms and shower Facilities at the Pools available to the School District during such times as the School District is in operation of the Centennial and Sunrise Pools and any additional Pools and Facilities built pursuant joint agreements of the Parties.
6. The CITY shall permit the School District to make use of the Pools and Facilities according to the following schedule:
 - a. During the regular school year, the Pools and Facilities shall be available for the School District. The schedule of the Pools' use for the School District's high school students shall be filed by the High School Principal or designee with the CITY Aquatics Supervisor prior to such use in order to coordinate a master schedule of operation and maintenance and to meet the required codes set forth by the Maricopa County Environmental Services Department. The CITY may make any reasonable restriction (e.g., chemical or mechanical problems, health related issues that are governed by Maricopa County, etc.) as to time and duration of use for school activities and may require reasonable notice of any proposed special use by the School District.
 - b. The CITY shall make the Pools and Facilities available for special School District use during the summer when programs sponsored by the CITY are not in progress.
 - c. The CITY shall have use of the Pools and associated locker room Facilities when there exists no conflict with the schools scheduling of the Pools and Facilities.
7. The CITY shall be responsible for handling all reservations and use of the Pools and Facilities with anyone other than the School District. The CITY shall ensure that the appropriate required certified staff is used and proof of insurance is obtained.

C. School District Covenants

1. The School District shall bear the repair costs for any damage caused to the facilities during the time the Pool and Facilities are in use by the School District, with normal wear and tear excepted.
2. The School District shall pay to the CITY one-half of the cost of operation, capital improvements, and maintenance of the Pools and associated locker room Facilities. The School District will pay for one half (1/2) of the cost of the operation and maintenance of the restroom located on the south side of the

Sunrise Family Center. The Family Center will be the CITY's sole responsibility. The School District shall fully pay for heaters and their installation where heaters did not previously exist prior to the signing of this Agreement. Both Parties must agree in writing upon capital improvements and capital costs, before any expenditures are approved or incurred. The CITY shall not bill the School District for any costs incurred by the CITY for seasonal staff to operate the Pools and Facilities for the public. Costs to the School District under this Agreement will be billed on a biannual basis beginning on July 1. The billing periods will be from July – December and January – June. The CITY will bill the School District within thirty (30) days after the period ends. The School District shall pay the CITY within thirty (30) days of receiving the bill.

3. The School District will make the men's and women's locker rooms and shower Facilities available at the Peoria High School Pool at no cost to the CITY during such times as the CITY is in operation of the Pool and Facilities. Cost of operation and maintenance of lockers and showers shall be borne entirely by the School District except that the CITY shall pay all costs for staff to operate and maintain said locker rooms during the period the CITY is using the Pool and Facilities. The CITY shall bear the repair costs for any damage caused to the Pool, locker room, or shower facilities during the time they are in use by the CITY, with normal wear and tear excepted.
4. The School District shall permit the CITY and its patrons to use existing parking lots at the Pools and Facilities and shall grant free ingress and egress to the parking lots and to the Pools and Facilities at all times the Pools and Facilities are scheduled for use by the CITY. The School District shall be fully responsible for maintenance and control of the parking lots.
5. The School District shall have a teacher or coach in attendance at all times while the Pools and Facilities are being used by the School District's high school students. The coaches and teachers are responsible for maintaining a clean and safe environment while they are using the Pools and Facilities.
6. All School District aquatic events for high school students not previously scheduled pursuant to IV. B. 6. a. must be approved by the School's athletic director or designee prior to use and the use will be coordinated with and conveyed to the CITY Aquatic Supervisor. School District groups, which include participants outside the high school or elementary school age range requesting to use the Pools and Facilities must be reserved with the CITY one (1) month prior to the use or as soon as practicable. The CITY will provide the appropriate number of Maricopa County Environmental Services required American Red Cross certified Lifeguards for the activity. The School District will be responsible for the cost of the certified Lifeguards.
7. Use of the slides or other special play features at the Pools is prohibited by Maricopa County Environmental Services Department regulations unless

American Red Cross certified Lifeguards are on duty that have been trained by the CITY on the pool facility functions. The School District will be responsible for the cost of the American Red Cross certified Lifeguards when being used by the School District.

- 8. The School District shall report accidents of a significant nature, incidents, vandalism and broken or non-functioning equipment to the CITY Aquatics Supervisor immediately.
- 9. The School District must keep all equipment and furniture in place at the Pools and Facilities as designated by the CITY unless approval is given by the CITY Aquatics Supervisor.
- 10. The Party who is using heaters at any of the Pools shall pay for the gas and costs to operate them. If both Parties are using the heaters, then the cost shall be split equally between the Parties. The School District's Athletic Director shall notify the CITY Aquatic's Supervisor at least one (1) week in advance, to when any pool heater needs to be turned on at a Pool for the School District's use.

V. 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 (e.g., Federal Express, DHL) or by mutually acknowledged facsimile transmission addressed as follows:

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

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

To CITY: Carl Swenson, City Manager
 CITY OF PEORIA
 8401 West Monroe
 Peoria, Arizona 85345

With a Copy To: Stephen M. Kemp, City Attorney
 8401 West Monroe
 Peoria, Arizona 85345

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

VI. TERM

This Agreement shall become effective on the date it is signed by both Parties and filed with the Maricopa County Recorder as required under A.R.S. 11-952(G), and shall continue for a term of five (5) years thereafter, unless earlier terminated as provided herein.

VII. NONDISCRIMINATION

During the performance of this Agreement, the Parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, nondiscrimination and affirmative action.

VIII. PURCHASING; ACQUISITION

The Parties shall comply with all applicable laws in purchasing property required to be provided by the parties to this Agreement.

IX. NON-APPROPRIATIONS

The Parties recognize that performance by either Party hereunder may be dependent upon the appropriation of funds to or by that Party. Should either Party fail to be appropriated or to appropriate the necessary funds, that Party may, by thirty days' prior written notice to the other Party, cancel this Agreement without further duty or obligation. Each Party agrees to notify the other within fifteen days after the unavailability of such funds comes to the Party's attention.

X. CONFLICTS OF INTEREST

This Agreement is cancelable pursuant to the provisions of A.R.S. § 38-511, the provisions of which are incorporated herein. In the event this Agreement is terminated in whole or in part because it is in violation of A.R.S. § 38-511, the party causing the Agreement to be canceled shall reimburse the other party for its costs and expenses incurred to date. Both parties will furnish all necessary reports of activities completed or in progress through the date of termination.

XI. INSURANCE

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 School District shall maintain self insurance coverage through Valley Schools Insurance Trust or shall secure and maintain 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 School District's Facilities. The School District and the CITY hereby mutually waive their respective rights of recovery against each other for any loss insured by property insurance coverage existing for the benefit of the respective parties up to the amount of loss paid for by insurance.
- C. All carriers or carriers contracted by the Valley Schools Insurance Trust 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 School District shall provide 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. In the event of any third party claim or legal action against both School District and CITY, the Parties agree to discuss and analyze the benefits of a common but mutual defense against such claim or legal action.
- E. The amount and type of insurance coverage set forth herein will in no way be construed as limiting the scope of the indemnity in Section XII of this Agreement.

XII. INDEMNIFICATION

To the extent permissible under Arizona law, the parties shall indemnify and hold harmless the other party, its directors, officers, governing board members, employees, and agents, for, from and against all claims, demands, suits and costs including, but not limited to, costs of defense, reasonable attorneys' fees, witness fees of any type, losses, damages, expenses and liabilities, whether direct or indirect, and whether to any person including, but not limited to, employees of the parties, or to property, to which the City or the School District, its directors, officers, governing board members, employees, or agents may be put or subject to by reason of (i) any act or omission by the other party, or any of its directors, officers, governing board members, employees, agents, or invitees; (ii) use of the Pool and Facilities or construction, maintenance, repair of the Pool and Facilities by any person or entity, including but not limited to the other party, their employees, agents, contractors, invitees, or customers; (iii) the use of the Pool and

Facilities by any person; or (iv) any failure on the part of a party, or any of its directors, officers, governing board members, employees, or agents to fulfill its obligations hereunder except to the extent that any loss, damage, expense, or liability is attributable to the negligence, responsibility or misconduct of the party, its directors, officers, employees and agents. The provisions of this Section shall survive revocation and/or termination of this IGA.

Nothing in this Section shall affect the City's right to seek payment, contribution or indemnification from the School District under the IGA should the School District fail to notify and/or inform the City of any broken or non-functioning equipment, Pool or Facilities when the School District has prior knowledge of such broken or non-functioning equipment, Pool and Facilities.

The amounts of insurance coverage requirements set forth above will in no way be construed as limiting the scope of the indemnity to the extent permissible under Arizona law, in these paragraphs.

XIII. MISCELLANEOUS PROVISIONS

- A. **Assignability.** This Agreement is nonassignable in whole or in part by either party hereto without the written consent of all the Parties.
- B. **Authority of Signatory.** Each individual executing this Agreement warrants that they are duly authorized to execute and deliver this Agreement.
- C. **Choice of Forum.** Any suit or action arising under this Agreement shall be commenced in the Superior Court of the State of Arizona in and for the County of Maricopa, Arizona.
- D. **Entire Agreement.** This written Agreement and attachments hereto constitutes the entire Agreement between the Parties with respect to the subject matter hereto. It may not be released, discharged, changed or modified, except by an instrument in writing, signed by a duly authorized representative of each of the Parties, except as expressly provided otherwise in this Agreement.
- E. **Execution in Counterparts.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- F. **General Compliance with Laws.** All Parties are required to comply with all applicable federal and state laws and local ordinances and regulations.
- G. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Arizona.

- H. **Headings.** The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraph or of this Agreement nor in any way affect this Agreement.
- I. **Incorporation of Documents.** All documents referred to in this Agreement are hereby incorporated by reference into the Agreement.
- J. **Preparation of Agreement.** This Agreement has been prepared by the combined efforts of the Parties and is not to be construed against any Party.
- K. **Retention of Records.** Pursuant to law, the Parties shall keep and maintain accurate books of records and account in accordance with generally accepted accounting principles of liabilities and obligations incurred under this Agreement and all paper, files, accounts, reports and all other material relating to work under this Agreement and shall make all such materials available at any reasonable time during the term of this Agreement and for five (5) years from the date of termination for audit, inspection and copying upon any Party's request.
- L. **Severability.** The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof.
- M. **Waiver.** Waiver, or the failure of any Party at any time to require performance by the other of any provision herein, shall in no way affect the Party's subsequent rights and obligations under that provision. Waiver by either Party of a breach of any provision herein shall not be taken or held to be a waiver of any succeeding breach of such provision or waiver of such provision itself.

[Signatures Appear on the Following Page]

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

CITY OF PEORIA, an Arizona municipal corporation

PEORIA UNIFIED SCHOOL DISTRICT,
a political subdivision of the State of Arizona

Bob Barrett, Mayor

Dr. Denton Santarelli, Superintendent

ATTEST:

Mary Jo Waddell, 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, who has 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 City of Peoria.

DATED this ____ day of _____, 2010

OFFICE OF THE CITY ATTORNEY

Stephen M. Kemp, City Attorney
8401 West Monroe Street
Peoria, Arizona 85345

INTERGOVERNMENTAL AGREEMENT DETERMINATION

This Agreement has been reviewed by the attorney for the Peoria Unified School District No. 11 and it is 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 _____, 2010

Shelley D. Cutts, Esq.
CALDERÓN LAW OFFICES, P.L.C.
2020 North Central Avenue, Suite 1110
Phoenix, Arizona 85004