

**INTERGOVERNMENTAL AGREEMENT  
FOR  
JOINT USE AQUATIC FACILITIES**

**I. PARTIES**

This Agreement is entered into this 11<sup>th</sup> day of October 2011, 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 GLENDALE  
An Arizona municipal corporation  
organized under the constitution and statutes of the State of Arizona  
(Hereinafter, "CITY"),

And

PEORIA UNIFIED SCHOOL DISTRICT  
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. § 11-952, *et seq.*  
A.R.S. § 15-342(13)  
A.R.S. § 15-364  
and  
Glendale City Charter, Article I, Sec. 3

**III. RECITALS**

A. **WHEREAS**, cities and school districts may enter into agreements for the construction, development, cooperative maintenance, operation and use of parks, swimming pools, and other recreational 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 intend for this Agreement to cover the existing pool facilities located at Ironwood High School and Cactus High School
- D. **WHEREAS**, the Parties are authorized, pursuant to A.R.S. § 11-952 *et seq.* and their city charters to enter into this Agreement.

**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. The City and the School District shall establish a management group to facilitate use, scheduling and billing for the aquatic facilities. The management group shall meet at least once annually to discuss matters arising out of the City's or School District's use of the 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.
  - 2. 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 to sell concessions and programs. All funds thus acquired shall be the property of the party holding the event.
  - 3. Both the City and School District shall agree, in writing signed by both parties, on the annual funding requirements for the capital improvement needs. Notification of all capital projects will be shared in a timely fashion prior to the commencement of any construction or modification projects.
  - 4. This agreement may be modified in writing at any time by mutual agreement of the parties hereto. No modification of this document 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 school and aquatics facility to address items unique to the school and aquatics facility.

5. The Parks and Recreation Department and the School District's Administration will administer the IGA. Any unresolved issues will be given to the City Manager and School District Superintendent.
6. Both parties agree that the term "FACILITY" represents the pool, pool deck, associated pool equipment, wading pool, pool rest rooms, pool locker rooms, pool offices, and pool shower areas.
7. The School District shall have FACILITY scheduling priority on all days between the first day of fall term classes, and the last day of Spring term classes. The City shall have FACILITY scheduling priority on all other days. Each party may request use of the facility from the other party if outside of its respective scheduling priority time period. These requests will be honored by both parties anytime reasonably possible.
8. During each party's respective period of scheduling priority, that party will have responsibility for the security of the entire facility, as well as custodial care, inspection and regular cleaning of the following facility areas: locker rooms, rest rooms, showers, pool offices, and pool deck.
9. Regardless of which party has scheduling authority on a given date, all pool activities by the City and by the School District will be scheduled with the City's Parks and Recreation department a minimum of 7 days in advance to allow for proper planning of pool chemistry and maintenance. Reservations within the 7 day window are not guaranteed, but will be accommodated whenever possible.
10. Prior to each seasonal turnover, a facility inspection will be conducted with representation from both parties present to identify damage and other concerns prior to the turnover. Repairs shall be made in a reasonable amount of time agreed to and understood by both parties.
11. Each party shall bear the repair costs for any damage caused to the facility during the time the facilities are in use by that party, with normal wear and tear excepted.
12. Both parties agree to abide by the guidelines outlined in the Lifeguard/Operation Plan that was approved by Maricopa County Environmental Services Water and Waste Management Division on June 21, 2011.

B. City Covenants

1. The City shall have complete control over the aquatic 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 the pool operations shall include, but are not limited to the following: scheduling pool usage; hiring and firing employees needed to operate or maintain the facilities; 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 Facilities. The High School Principal or designee can request from the City representative to use the pool's amplification equipment. The District shall be responsible for payment to the City for theft or damage to equipment while in District possession.

The City shall be responsible for all necessary maintenance of the aquatic facilities including pool chemicals, pool maintenance staffing, and repair/replacement of necessary pool equipment. The City shall furnish the District with documentary proof of any expenditure upon written request by the School District.

4. The City shall be wholly responsible for the annual water and sewer costs of the FACILITY.

C. School District Covenants

1. The District shall pay to the City one-half of the cost of all capital improvement costs incurred by the City. Both parties must agree in writing upon capital improvements and capital costs before expenditures are approved.
2. The District shall pay to the City one-half of the cost of, all necessary maintenance of the aquatic facilities including pool chemicals, pool maintenance staffing, and repair/replacement of necessary pool equipment. The maintenance costs 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 District within 30 days after the period ends. The District shall pay the City within 30 days of receiving the bill.
3. The District shall be wholly responsible for the annual electricity and natural gas costs pertaining to the use of the FACILITY. Additionally, the District is wholly responsible for all costs associated with existing or future pool heaters, including purchase, installation, maintenance, and utilities.



**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. 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 broad form contractual liability, with limits of at least \$1,000,000 per occurrence combined single limit. Each party shall retain the option of discharging this obligation by means of funded self-insurance or a trust pool. 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. Each party shall name the other party as "additionally insured" on their respective insurance protection and provide the other party a certificate of insurance reflecting compliance with the above provisions. Contractors retained to provide work or service required by the Agreement will maintain statutory worker's compensation; commercial general liability and automobile liability insurance 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 occurrence. Coverage shall include but not limited to operations, broad form contractual and products/completed operations. The Contractor shall name the contracting party as an additional insured on liability insurance policy(ies) and provide a certificate of insurance reflecting compliance with the above provisions.
- B. The School District shall 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 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 either or both School District or City, the parties to this agreement agree the entity operating the pool at the time of the event shall be primary in regard to payment of any loss and any associated claim and defense costs.
- 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 the Indemnification Section.

## **XI. INDEMNIFICATION**

To the extent permissible under Arizona law, the Parties shall defend, indemnify, and hold harmless the other, its agents, representatives, officers, director, officials, employees, and volunteers relating to, arising out of, resulting from or alleged to have resulted from the performance of the Work. The Parties duty to defend, indemnify to the extent permissible under Arizona law, and hold harmless the other, its agents, representatives, officers, directors, officials, employees, and volunteers shall arise in connection with any claim, damage, loss or expense (including, but not limited to attorney's fees, court costs, and the cost of appellate proceedings) that is attributable to personal or bodily injury, sickness, disease, death, injury to, impairment or destruction of property including the loss of use resulting therefrom, caused by any act or omission of the Party, their subcontractors, anyone directly or indirectly employed by them or anyone for whose negligent acts they may be liable arising out of the use of the 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.

## **XII. MISCELLANEOUS PROVISIONS**

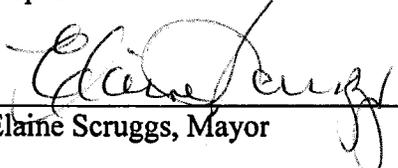
- A. **Assignability.** This Agreement is nonassignable in whole or in part by either party hereto without the written consent of all the Parties.
- B. **Authority of Signatory.** Each individual executing this Agreement warrants that they are duly authorized to execute and deliver this Agreement.

- C. **Cancellation/Conflict of Interest.** This Agreement is subject to cancellation for conflict of interest without penalty or further obligation as provided by A.R.S. § 38-511.
- D. **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.
- E. **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.
- F. **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.
- G. **General Compliance with Laws.** All Parties are required to comply with all applicable federal and state laws and local ordinances and regulations.
- H. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Arizona.
- I. **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.
- J. **Incorporation of Documents.** All documents referred to in this Agreement are hereby incorporated by reference into the Agreement.
- K. **Preparation of Agreement.** This Agreement has been prepared by the combined efforts of the Parties and is not to be construed against any Party.
- L. **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.

- M. **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.
- N. **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.

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

City of Glendale, an Arizona municipal corporation

  
Elaine Scruggs, Mayor

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

  
Denton Santarelli, Ed. D., Superintendent

ATTEST:

  
Pam Hanna, City Clerk

#### INTERGOVERNMENTAL AGREEMENT DETERMINATION

This Agreement has been reviewed by the Office of the City Attorney as legal counsel for the City of Glendale, 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 Glendale.

DATED this 12 day of October, 2011.

OFFICE OF THE CITY ATTORNEY

  
Craig Tindall, City Attorney  
5850 W. Glendale Ave  
Suite 450  
Glendale, AZ 85301

**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 8<sup>th</sup> day of August, 2011



April Hamilton, Esq.

CALDERON LAW OFFICES, P.L.C.

2020 N. Central Avenue, Suite 1110

Phoenix, Arizona 85004