

**INTERGOVERNMENTAL AGREEMENT
FOR FACILITIES SHARING AND COOPERATIVE SERVICES
BETWEEN THE CITY OF GLENDALE, ARIZONA,
AND GLENDALE ELEMENTARY SCHOOL DISTRICT NO. 40**

This intergovernmental agreement ("Agreement") is made and entered into this day 22nd of NOVEMBER, 2016 between Glendale Elementary School District No. 40 of Maricopa County, Arizona ("District" or "the District") and the City of Glendale, Arizona ("City" or "the City").

RECITALS

Arizona law encourages cities and school districts to cooperate in using facilities so as to serve the public better and more efficiently. The District's Governing Board and the City's Council wish to cooperate to ensure that City and District facilities may be shared to the extent feasible. The District and the City also wish to cooperate in exercising other powers when it would be efficient to do so.

PURPOSES OF AGREEMENT

Arizona law encourages cities and school districts to cooperate in using facilities so as to serve the public better and more efficiently. The District's Governing Board and the City's Council wish to cooperate to ensure that City and District facilities may be shared to the extent feasible. Now, therefore, pursuant to A.R.S. §§ 11-952, 15-363, 15-364, 15-1105 and other statutes, the City and District agree as follows:

AGREEMENT

Section 1. Definitions

1.1 "City Facilities" means all City-owned facilities, including any facilities that are constructed after this Agreement becomes effective.

1.2 "City Priority Uses" means City activities and includes scheduled maintenance of facilities and community group Activities.

1.3 "District Facilities" means all facilities owned or operated by the District within the City, including any facilities constructed after this Agreement becomes effective.

1.4 "District Priority Uses" means District activities and includes scheduled maintenance of facilities and District-sponsored Activities.

1.5 "Non-Instruction Periods" means those calendar days when school is not scheduled to be held, including Saturdays, Sundays, and District-designated holidays or vacation days.

1.6 "Non-School Hours" means those hours of each calendar day during instruction periods, beginning no later than forty-five (45) minutes after classes are dismissed.

1.7 "Out-of-Pocket Costs" means those direct costs incurred by City or District over and above normal operating costs as a result of the other's use of its facilities. The parties shall give each other reasonable notice of their charges for out-of-pocket costs in connection with uses of each other's facilities.

Section 2. Term.

2.1 The term of this Agreement will be for five years, beginning on the date set forth in the first paragraph of this Agreement.

Section 3. Scheduling and Coordination

3.1 Meetings and Scheduling. As often as may be necessary, designated representatives of District and City shall meet and/or confer to plan and review the scheduling of use of District Facilities during Non-Instruction Periods and Non-School Hours.

3.2 Construction of Facilities. District and City shall consult with each other regarding plans or proposals to construct new facilities that may be suitable for joint uses. Consideration shall be given during planning of such facilities to whether changes in design of a City or District facility might facilitate joint use. Consideration shall also be given to whether economies for the community might be achieved by constructing facilities in a manner that is conducive to joint use.

Section 4. Use of District Facilities by City

4.1 City Use. The City may request uses of District Facilities for City purposes during Non-School Hours or Non-Instruction Periods when the District is not using District Facilities for District Priority Uses. After scheduling for District Priority Uses, the District will give the City first priority for use of District Facilities. District may, in its discretion, decline to allow any City use of some District facilities. If the District agrees to uses of District Facilities, such uses shall be governed by the terms of this Agreement.

4.2 Fees for Use. The City agrees to pay District for the Out-of-Pocket Costs resulting from its use of District facilities. Invoices for Out-of-Pocket Costs owed by the City will be sent by District on a quarterly basis and payment will be made no later than sixty (60) days following the receipt of an invoice. The District waives any rental fee for the City's use of District Facilities.

4.3 Requests for Services and Equipment. Specific requests by the City for services or equipment may be provided, at direct charge, to the City. For example, if the City should request custodial services at a District facility at a time when a custodian is not normally scheduled in the building, the City would be assessed a direct charge for service hours provided.

4.4 Conflicts in Scheduled Use. The District will schedule the use of District Facilities in accordance with the priorities set forth in Section 4.1. In the event that a District use, within 48 hours of an activity, takes precedence over a scheduled City use, District will use its best efforts to find an alternative location to host the City use. The District and City agree that conflicts regarding the City's use of District Facilities will be resolved promptly, in good faith and in accordance with this Agreement by the District's designated Facilities Scheduler.

4.5 Compliance with Rules. The City's employees and invitees must comply with the applicable rules adopted by the District for the use of a District facility and any conditions imposed by the District on such use.

4.6 Uses of Facilities by Third Parties. This Agreement is intended to facilitate the use of District facilities by the City for City activities. City shall direct third parties who wish to use District facilities to contact the District regarding such potential use.

Section 5. Use of City Facilities by District

5.1 District Use. District may request uses of City Facilities for District purposes when the City is not using City Facilities for City Priority Uses. After scheduling for City Priority Uses, the City will give the District first priority for use of City Facilities. Nothing herein shall be construed to require City to consent to uses of its facilities by District. City may, in its discretion, decline to allow any District use of some City facilities. If the City agrees to uses of City Facilities, such uses shall be governed by the terms of this Agreement.

5.2. Fees for Use. The District agrees to pay City for the Out-of-Pocket Costs resulting from its use of City facilities. Invoices for Out-of-Pocket Costs owed by the District will be sent by City on a quarterly basis and payment will be made no later than sixty (60) days following the receipt of an invoice. The City waives any rental fee for the District's use of City Facilities.

5.3. Requests for Services and Equipment. Specific requests by the District for services or equipment may be provided, at direct charge, to the District. For example, if the District should request custodial services at a City facility at a time when a custodian is not normally scheduled in the building, the District would be assessed a direct charge for service hours provided.

5.4 Conflicts in Scheduled Use. The City will schedule the use of City Facilities in accordance with the priorities set forth in Section 5.1. In the event that a City use, within 48 hours of an activity, takes precedence over a scheduled District use, City will use its best efforts to find an alternative location to host the District use. The District and City agree that conflicts regarding the District's use of City Facilities will be resolved promptly, in good faith and in accordance with this Agreement by the City's designated Community and Recreation Facilities Manager.

5.5 Compliance with Rules. The District's employees and invitees must comply with the applicable rules adopted by the City for the use of a City facility and any conditions imposed by the City on such use.

5.6 Uses of Facilities by Third Parties. This Agreement is intended to facilitate the use of City facilities by the District for District activities. District shall direct third parties who wish to use City facilities to contact the City regarding such potential use.

Section 6. Repair of Property Damage

6.1 Property Damage. The District will be responsible for the costs to repair any property damage caused by the District's use of City Facilities, and the City will be responsible for the costs to repair any property damage caused by the City's use of District Facilities.

6.2 Reporting Damage. The facility owner will notify the user of damage or loss promptly upon discovery of damage. The notification will identify the facility, the use that caused the damage, and the date of damage and will describe the damage and estimate the cost of repairs.

6.3 Repair of Facilities. Except as otherwise mutually agreed, repair of facilities will be the responsibility of the facility owner.

6.4. Reimbursement. The facility owner will invoice the facility user upon completion and payment of the cost of repairs. The invoice will itemize all work hours, equipment and materials with cost rates as applied to the repair work. If the repair is contracted, a copy of the contractor's itemized statement will be attached. Actual costs will be invoiced if less than estimated and/or fixed costs. Reimbursement shall be made within 30 days from receipt of such invoice.

6.5 Disagreements.

6.5.1 The facility user will retain the right to disagree with any and all items of damage to facilities, equipment or missing property, provided that this challenge is made within ten (10) working days after first notification. Where notice of disagreement is provided in a timely manner, the facility user may decline to pay a request for reimbursement until the matter is settled.

6.5.2 Disagreements must be made in writing to the facility owner and will clearly identify the reasons for refusing responsibility for damages to the facility or equipment.

6.5.3 Settlement of disagreements, after proper notification, will be made by an on-site investigation involving both the District and City Facility Managers or their designated representatives. If damage occurs as a result of shared use of a facility over time or during an undetermined time period, both the City and District will share equally in the cost(s) to repair the damage if the City and District mutually agree that the repair is necessary.

Section 7. Insurance and Indemnification

7.1 Indemnification. Each party (the "Indemnifying Party") shall, to the extent permitted by law, defend, indemnify and hold harmless, jointly and severally, the other party and each official, or employee thereof (any such person being referred to herein as an "Indemnified Party"). This indemnity applies to any and all losses, claims, damages, expenses (including reasonable attorney fees), or liabilities ("Liabilities"), joint or several, which the Indemnified Party may be subject to in law or in equity, but only to the extent that such Liabilities arise out of or are based upon the use of facilities by the Indemnifying Party or its employees and invitees, as provided in Sections 3 and 4 hereof. The obligations of the foregoing indemnification provision shall not apply to the extent that any such Liability is found to have resulted from the sole negligence or intentional misconduct of the Indemnified Party.

7.2 Insurance. Each party, at its cost, shall maintain comprehensive general liability insurance with limits of not less than \$1,000,000 per occurrence, insuring against all liability of said party and its authorized representatives arising out of and in connection with said party's use or occupancy of the facilities. Said insurance shall include broad form contractual liability covering, without limitation, the liability assumed under this Indemnification provisions of this Agreement. If the policy is to be written with an annual aggregate limit, that limit shall be not less than \$2,000,000. Comprehensive general liability shall name the other party to this Agreement as an additional insured. All insurance policies shall provide that the policies cannot be cancelled, not renewed, nor limited in scope of coverage or limits until and unless thirty (30) calendar days prior notice is given to the other party.

Section 9. Notices

9.1 Notices. All notices given, or to be given, by either party to the other, shall be given in writing, by registered mail, and shall be addressed to the Superintendent where notice is being given to the District or the City Manager where notice is being given to the City. All notices shall be deemed received upon actual receipt or three (3) business days after deposit in the United States mail, whichever date is earlier.

Section 10. General Provisions.

10.1 Schedule of Uses. Each party to this Agreement is encouraged to schedule planned uses of the other's facilities as far in advance as feasible, but not less than ten (10) working days prior to the planned event or activity in order for the other party to process the request.

10.2 Supervision of Programs. The City agrees that City activities in District Facilities shall be properly supervised by qualified personnel. The District agrees that District activities in City Facilities shall be properly supervised by qualified personnel. Both parties shall ensure that all staff will have been subject to appropriate fingerprinting and background checks.

10.3 Access to Storage. Wherever reasonably possible, a facility owner will make available storage space on site for joint use program equipment and supplies.

Section 11. Termination

11.1 Either party may terminate this Agreement at will by providing sixty (60) days' written notice that the Agreement is terminated.

11.2 Upon termination of this Agreement, the parties will disengage their cooperative efforts equitably and in such manner as to cause minimal disruption to the provision of educational or city services.

11.3 Upon termination of this Agreement, all property shall belong to the entity holding title to that property. If, upon termination of this Agreement, either party has paid a portion of the acquisition cost of property held in the name of another party, the party that does not hold title shall be entitled to reimbursement by the other party. Reimbursement shall be in an amount equal to the percentage of the then-current value of the asset that equals the percentage of the acquisition cost paid by the party that does not hold title.

12. Miscellaneous Provisions

12.1 Acknowledgements. The District and City acknowledge that:

12.1.1. This Agreement is intended to enhance and not interfere with the primary mission of City or District governance; and

12.1.2. The ultimate responsibility for the use of facility space will remain with the facility owner; and

12.1.2. This agreement is not intended to amend any existing leases or other property agreements between the parties.

12.2 Entire Agreement, Amendments. This Agreement represents the entire Agreement of the Parties with respect to its subject matter. This Agreement shall not be changed, modified, or rescinded, except through a writing signed by both parties.

12.3 Governing Law, Forum. This Agreement will be governed by the laws of the State of Arizona, both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof will be instituted only in the courts of the State of Arizona.

12.4 Headings Not Controlling. Headings used in this Agreement are intended for convenience or reference only and shall not control or affect the meaning or construction of any provision of this agreement.

12.5 Severability. In the event any term or provision of this Agreement is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and the

Agreement shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.

12.6 Conflicts of Interest. Under A.R.S. § 38-511, City or District may cancel any contract to which they are a party within three (3) years after execution of such contract and without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the party so canceling is, at any time while the contract or any extension thereof is in effect, an employee or agent of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract.

12.7 Nondiscrimination. City and District agree to take all actions necessary to ensure that everyone is treated fairly, courteously, and without bias so as to preserve human dignity and to respect cultural diversity. City and District agree to comply with all applicable provisions of federal, state, and local laws related to nondiscrimination and equal employment opportunity.

12.8 E-verify, Records and Audits. To the extent applicable under A.R.S. § 41-4401, the parties warrant their compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). A party's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by either party under the terms of this Agreement. The parties each retain the legal right to randomly inspect the papers and records of the other party to ensure that the other party is complying with the above-mentioned warranty. The parties warrant to keep their respective papers and records open for random inspection during normal business hours by the other party. The parties shall cooperate with the other party's random inspections including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

12.9 Compliance with Applicable Law. Neither party shall be responsible for acts, omissions or errors involving a failure to follow statutes, rules, policies or regulations that solely and specifically apply to the other party. Each party is responsible to insure that the services emanating from this Agreement comply with those statutes, rules, policies and regulations specific to that party.

12.10 Surviving Provisions. The obligations under Section 7 (Indemnification) and any other Section which reasonably should survive shall survive expiration or other termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

CITY OF GLENDALE, ARIZONA

GLENDALE ELEMENTARY
SCHOOL DISTRICT NO. 40

By: 3

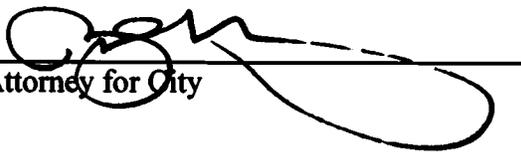
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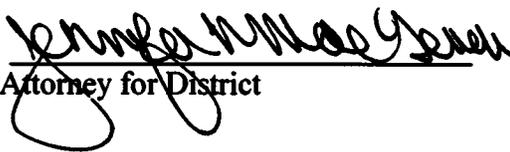
ATTESTED

By: 
Julie K. Bower, City Clerk

ATTORNEY CERTIFICATION

The undersigned certify that they have reviewed the foregoing Agreement and that said Agreement is in proper form and is within the powers and authority granted to the public body represented by the respective attorneys.


Attorney for City


Attorney for District