

INTERGOVERNMENTAL AGREEMENT FOR
FACILITY USE AND DEVELOPMENT PROCESSING
BETWEEN PEORIA UNIFIED SCHOOL DISTRICT NO. 11
AND CITY OF PEORIA

I. PARTIES

This Agreement is entered into on this ____ of _____ 2021, 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")

(individually, "a Party" and collectively, "the Parties").

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 various Intergovernmental Agreements over time addressing many areas of joint cooperation.
- 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, the City and District may enter into agreements for the construction, development, cooperative maintenance, operation and use of fields, parks, swimming pools, structures and other recreational facilities (collectively referred to herein as the "Facilities") on property owned or operated by each other.

- D. WHEREAS, it is the desire of the City to allow the District to use certain Facilities at no charge, excepting Out of Pocket Costs, and it is the desire of the District to allow the City to use certain Facilities at no charge, excepting Out of Pocket Costs, to benefit the community and its citizens generally.
- E. WHEREAS, it is the desire of the City to provide development review, inspection, and permitting services to the District at no charge, excepting Out of Pocket Costs and Mandatory Charges, for new and existing facilities in exchange for the use of District Facilities as described herein.
- F. WHEREAS, the City and the District intend for this Agreement to cover the Facilities identified in Addendums, which the parties agree may be amended from time to time as necessary.

IV. DEFINITIONS

- A. "Mandatory Charge" means a City impact fee or charge not prohibited by A.R.S. § 9-500.18 as amended and which the City by City Charter statute, contract, bond indenture, or code is required to charge the District.
 - 1. In consideration of District providing community facilities, fields and structures to City at no charge, excepting Out of Pocket Costs, for use in City's programs, the City shall charge District only the following Mandatory Charges:
 - a. Wastewater Expansion Fee.
 - b. Water Expansion Fee.
 - c. To the extent permitted by state law, 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.
 - 2. The Mandatory Charges do not include any of the following charges:
 - a. Building Permit Fees.
 - b. Plan Review Fees.

- c. Any subsequently enacted Impact Fees, other than those pertaining to Utilities and/or Streets and applicable to all Schools Funded under the State Students First Plan.
 - d. Grading/Drainage Inspection Fees.
 - e. Off-site Improvement Fees.
 - f. Conditional Use Permit Application Fees.
 - g. Site Plan Application Fees.
3. 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.

B. "Out of Pocket Costs" shall include those direct costs incurred by the City or District, over and above normal operating costs, resulting from performance under this Agreement. Examples of such costs would include without limitation:

- 1. The cost to the District for custodial time, outside their regularly scheduled hours, 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 buses used by the City based on adopted schedules of the District.
- 4. The cost of utilities as established by the District Governing Board's approved utility rate for use of all property that does not occur during the identified normal operating hours.
- 5. The cost to the District or City for staff time related directly to services provided for the other party.
- 6. The cost of repair or refurbishment to a Facility resulting from damages caused by the other party.

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 at no charge, excepting Out of Pocket Costs and Mandatory Charges, 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 at no charge, excepting Out of Pocket Costs and Mandatory Charges, 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. The 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 at no charge, excepting Out of Pocket Costs and Mandatory Charges, 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 at no charge, excepting Out of Pocket Costs and Mandatory Charges, 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.
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.
7. City shall permit District to use at no charge, excepting Out of Pocket Costs, City Buildings and Facilities for District-wide functions as determined by City, subject to City Council's 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. District recognizes that City may limit use of buildings and facilities due to committed bookings, commitments or contracts.

8. City shall be solely responsible for all repair and maintenance of City Facilities. City and District agree that the decisions on maintenance and repair of City Facilities are non-delegable decisions of the City. However, District shall be responsible for the costs of any repairs that are necessary due to its use of City Facilities. City agrees that it will give the District written notice and an opportunity to inspect and object to any damage(s) it alleges were caused by District before the repair(s) are made.

B. District's Obligations. The District agrees to:

1. To the extent required by state law, District shall comply with the provisions of City's general plan and ensure that its construction meets minimum code standards, engineering and plan review codes, infrastructure guidelines, utility codes and development rules.
2. 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 use of its facilities takes precedence.
3. Excepting Out of Pocket Costs, District shall permit City to use at no charge District's Buildings and Facilities as determined by District, subject to District 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, minus ordinary wear and tear resulting from such use.
 - 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. District agrees that it will give the City written notice and an opportunity to inspect and object to any damage(s) it alleges were caused by the City before the repair occurs.

c. District shall provide its school buses to City for City use at mutually agreeable times. When City uses District buses, City shall employ bus drivers employed by District. District shall be solely responsible for all background checks and determining the bus driver's suitability to work with minors. 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 or as set forth above, within the sole responsibility of District. City shall pay the District for gas, bus maintenance, and any Out of Pocket Costs incurred by District while the City uses the buses. The cost will be determined by the District CFO and can change regularly as gas prices fluctuate.

4. Priority of Use of School Facilities: The District and City agree to work cooperatively to reserve school facilities. Both Parties agree that District use of school facilities shall have first priority. Second priority in the use of school facilities will be all City programs that are approved by the District.
5. The City of Peoria Parks, Recreation, and Community Facilities Department will reserve with each school with District approval, community facilities, fields and structures. Reservations will be made in June for the school year and in January for the summer.

VI. FINANCING AND BUDGET

The parties agree that costs and expenses incurred under this Agreement shall be allocated as detailed herein. To the extent a cost or expense is not addressed in this Agreement, it shall be borne by the party incurring such cost or expense. The parties further agree that a joint budget is not currently necessary and that they will work together cooperatively to develop a joint budget should one become necessary.

VII. 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. Jason Reynolds
Superintendent
PEORIA UNIFIED SCHOOL DISTRICT NO. 11
6330 West Thunderbird Road
Glendale, Arizona 85306

To City: Carl Swenson, 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.

VIII. TIME OF ESSENCE

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

IX. TERM, TERMINATION, AND DISPOSITION OF PROPERTY

- A. This Agreement shall become effective following execution by a duly authorized representative of both parties.
- 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 one (1) year.
- D. Either Party may terminate this Agreement for any reason following written notice to the other Party of intent to terminate delivered not less than (90) days prior to the intended date of termination.
- E. The Parties do not contemplate joint acquisition of any property pursuant to this Agreement. Unless otherwise provided by this Agreement, upon termination of this Agreement, any equipment or property shall be retained by the party that purchased or provided it. If property is jointly acquired by the parties pursuant to this Agreement, it shall be distributed equally upon termination.

X. INSURANCE AND INDEMNIFICATION

- A. Each Party shall secure and maintain during the term of this Agreement 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. 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 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 indemnify, provide a defense, and hold the District, including its officers, employees and volunteers, harmless, to the extent permitted by law, 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 indemnify, provide a defense, and hold the City, including its officers, employees and volunteers, harmless, to the extent permitted by law, 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.

XI. CANCELLATION, CONFLICT OF INTEREST

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. In the event the work under this Agreement is terminated in whole or in part, the Party causing the Agreement to be canceled shall reimburse the other party for its costs and expenses specified in such regulation. Both Parties will furnish all necessary reports of activities completed or in progress through the date of termination.

XII. 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.

XIII. 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 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.

XIV. 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.

XV. NONDISCRIMINATION

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

XVI. IMMIGRATION

To the extent required by Arizona law, each party agrees to adhere to A.R.S Section 414401 and A.R.S. Section 23-214(A).

XVII. PURCHASING; ACQUISITION

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

XVIII. NON-APPROPRIATIONS

The City and the School District 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, upon thirty (30) calendar days written notice to the other Party, cancel this Agreement without further duty or obligation. Each party agrees to provide written notice to the other within fifteen (15) calendar days after the unavailability of such funds or appropriation comes to the Party's attention.

XIX. SUPERSEDE PRIOR AGREEMENTS

This Agreement shall supersede any previous Intergovernmental Agreements entered into between the Parties pertaining to the subjects addressed herein.

XX. MISCELLANEOUS PROVISIONS

- A. Assignability. This Agreement is non-assignable 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, if any, 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 a written amendment executed by a duly authorized representative of each of the Parties, or 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. 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.
- H. Incorporation of Documents. All documents referred to in this Agreement are hereby incorporated by reference into the Agreement.
- I. Preparation of Agreement. This Agreement has been negotiated and prepared by the combined efforts of the Parties and is not to be construed against any Party.
- J. 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.
- K. 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.
- L. 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 the date and year first specified above.

CITY OF PEORIA

PEORIA UNIFIED SCHOOL DISTRICT

By: _____
Its: City Manager

By: _____
Its: Superintendent

ATTEST:

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

DATED this _____ day of _____ 2021.

OFFICE OF THE CITY ATTORNEY

Vanessa Hickman, Esq.
8401 West Monroe
Peoria, Arizona 85345

INTERGOVERNMENTAL AGREEMENT DETERMINATION

This Agreement has been reviewed by Cantelme & Brown, P.L.C. as legal counsel for the Peoria Unified School District No. 11, who have determined 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.

Clyde R. Dangerfield, Esq.

Dated this _____ day of _____ 2021

PEORIA UNIFIED SCHOOL DISTRICT
NO. 11
ADDENDUM A
SHARED JOINT FACILITIES — COURT LIGHTING SYSTEM

A. Locations.

The intent of this Agreement is to cover the existing basketball court lighting systems at Sundance Elementary, Ira Murphy Elementary, Oasis Elementary, Desert Harbor Elementary, Frontier Elementary, Lake Pleasant Elementary School and all future court lighting systems as agreed upon by the City and the School District.

B. City's Obligations.

1. The City shall maintain, service and operate the basketball court lighting system at its sole expense and pay all maintenance, service and operating costs.
2. The City shall have the exclusive right to operate the basketball court lighting system and basketball courts from June 1 through August 1 of each year during normal park hours as defined in Peoria City Code § 7-63(a).
3. The City shall have the right to operate the basketball court lighting system and basketball courts from August 2 through May 31 each year from school closing -10:30 PM, Monday-Friday and 6:00 a.m.-10:30 p.m., Saturday-Sunday. However, the City's right to operate the basketball court lighting system shall be subject to the provisions set forth in Section (C)(3) of this Agreement.
4. During the time that the City is operating the basketball court lighting system and basketball court, the City shall have the right, in its sole discretion, to assess admission fees and shall be permitted to retain all such admission fees.
5. The City agrees to provide Parks, Recreation, and Community Facilities staff to lock up the park/school access gate each day after 10:30 p.m.
6. Out of Pocket costs, as defined under Section IV(B) will apply during the City's hours of operation.

C. District's Obligations.

1. The District shall be responsible for maintaining the basketball courts including all repair costs.
2. The District shall have the exclusive right to operate the basketball court lighting system and basketball court on Monday-Friday from August 2-May 31 each year during school hours.
3. Notwithstanding Section (B)(3) of this Agreement, the District shall have the first right to operate the basketball court lighting system and basketball court (the "First

Right") from August 2-May 31 during the hours of 3:30 p.m.-10:30 p.m. for any school related activities. However, in order to exercise this First Right, the District shall give the City written notice ten (10) business days prior to the date on which the District wishes to exercise the First Right. The written notice shall be delivered to the City's Parks, Recreation, and Community Facilities Director and shall provide notice of the date(s) and time(s) on which the District wishes to exercise the First Right for its school related activities.

4. In addition, the City and District may mutually agree, by written agreement, to grant the District additional dates and times for which the District may have the exclusive right to operate the basketball court lighting system and basketball court for school related activities.

5. Out of Pocket costs, as defined under Section IV(B) will apply during the District's hours of operation.

ADDENDUM B
SHARED JOINT FACILITIES — BALL FIELD LIGHTING

A. Locations.

The intent of this Agreement is to cover the existing ball field lighting systems at Cheyenne Elementary, Coyote Hills Elementary, Sunrise Mountain High School, Sunset Heights Elementary, and future ball field lighting systems as agreed upon by the City and the School District.

B. Prioritization. Both Parties must agree on the user groups for ball field lighting of shared joint facilities. In that regard the following is the priority order of scheduling:

1. District school use (i.e. functions covered by District liability insurance).
2. City use (i.e. functions covered by City liability insurance).
3. Other groups per the Districts discretion.

C. City's Obligations.

1. City shall maintain, service and operate the ball field lighting system at its expense and pay all maintenance, service, and operating costs.

2. Elementary Schools - City shall have the exclusive right to operate the ball field lighting system from June 1 through August 1 of each year. Further, when such scheduling does not conflict with school activities, the City shall have right to operate the ball field lighting system from August 2 through May 31 each year.

3. Sunrise High School — The large field shall be split in half with the dividing line running north to south and designated into the east field and west field. City shall have the right to operate the ball field lighting system and use the west field weekdays from 5:30pm — 10pm and the east and west fields all day on weekends from September — December. January — May the City shall have the right to operate the ball field lighting system and the east and west fields weekdays from 5:30pm — 10pm and weekends all day. For the months of June — August the City of Peoria will retain exclusive use of the east and west fields on Monday, Wednesday, Thursday, and Friday evenings (5:30pm to 10pm) for City programs. During the time that the City is operating the ball field lighting system, the City shall have the right to charge whatever admission fees it desires and shall be permitted to retain all such admission fees. Light fees will be charged to user groups, excluding the District who rent the facility.

4. That during the times that the City is, pursuant to this Agreement, operating such lighting system, the City agrees to carry public liability and property damage insurance issued by an entity in good standing with the Department of Insurance sufficient, and naming the District as an insured, to fully protect itself and the District.

5. City further agrees to hold the District harmless of any liability of any nature in connection with the operation of the lighting system during such hours, and will fully represent and defend the parties in any lawsuit arising out of these activities.

6. City shall program the lights through a City software system, based on the District submitted schedule and District approved rentals.

7. City shall provide to District a field usage schedule for review and approval by the District at the beginning of each calendar year. The schedule will be effective for the fiscal year.

8. Out of costs, as defined under Section IV(B) will apply during the City's hours of operation.

D. District's Obligations.

1. The District shall be responsible for maintaining the ball fields, including, without limitation, all watering, fertilizing and mowing of the ball fields.

2. The District in conjunction with the City shall establish field capacity limitations for all sports to be played, and practice sites to be designated on the ball fields.

3. The District in conjunction with the City shall approve the type of sports fields to be created and designated locations on the ball field area.

4. The City's Facility Lighting Request form must be filled out at least 2 weeks in advance of scheduled use and should be accompanied by a District-approved Facility Use Agreement.

5. Out of Pocket costs, as defined under Section IV(B) will apply during the District's hours of operation.

ADDENDUM C
DESERT HARBOR ELEMENTARY SCHOOL SHARED JOINT USE WITH CALIBRISA
PARK

A. District's Obligations.

1. The District shall allow City and citizen access and use of the east parking lot of the Desert Harbor Elementary School ("School") for park usage ("Facility") on a space available basis.

2. The District shall allow use of the School's open space and recreational facilities when School is not in session and/or not in conflict with school scheduled functions and events.

3. The District shall pay any utility costs solely associated with the habitat area of the Facility ("Habitat"); provide adequate security, provide appropriate maintenance and schedule use/operation of the Habitat area.

B. City's Obligations.

1. The City shall allow School use of south end of the property for operation of a wildlife habitat area for school educational training and enjoyment.

2. Use. The Facility and its ancillary facilities shall include the park, wildlife habitat, basketball courts, and east parking lot shall be open for use to District students, faculty and administrators and members of the general public, in accordance with the policies and procedures contained in this Agreement and such additional policies and procedures as may be developed pursuant to authority granted in this Agreement.

3. Operational Standards. Standards for the operation of the Facility shall be generally consistent with the standards established for the operation of other City parks. To the extent that the Facility is open to the general public, standards for the operation of the Facility during those times should be consistent with those adopted by City and District, including hours of operation and park rules and regulations.

4. Hours of Operation. The hours of operation of the Facility shall be in accordance with the hours of operation for City parks and school facilities. The Parties agree that initially the hours will be as defined in Peoria City Code § 7-63(a).

a. School: The east parking lot will be open to the public from school closing to 10:30 p.m. during school days and from 6:00 a.m. to 10:30 p.m. on weekends and during the period of June 1 to August 1 annually. Scheduled school district events take precedent for use.

b. Wildlife Habitat: This facility will be under the control of the District for scheduling, operation, management, and maintenance throughout the year.

C. Definitions. Unless otherwise required by the context or expressly provided in this Agreement, the following terms shall have the meanings to them as indicated herein:

1. "Ancillary facilities" means the habitat, basketball courts, east parking lot, and any facilities provided for use in conjunction with the park.

2. "Facility" means the joint use park facility.

D. Staffing. The Parties will be responsible for providing adequate and agreed upon staffing for the facility sufficient to perform their respective obligations under this Agreement.

E. Maintenance. The District shall be responsible for maintaining the wildlife habitat area and paying all utility costs solely associated with this area; providing adequate security and appropriate maintenance during construction and use of habitat area; schedule use and operation of the wildlife habitat area; and pay the entire cost associated with fencing the school site to allow public use of the basketball courts.

F. Ownership of Property and Materials. The City shall retain ownership of all land included in the park and wildlife habitat areas. Each of the parties shall own any and all personal property it either purchases or pays for pursuant to the terms of this Agreement. All such personal property shall be used in the performance of this Agreement. Upon the expiration of the term of this Agreement, or upon termination as provided in section VIII, each of the Parties shall be entitled to the exclusive possession and control of the personal property and may use or dispose of it as it sees fit.

G. Management, Operations and Procedures.

1. The school district designee shall coordinate operation, use, scheduling, and maintenance of the wildlife habitat area.

2. District personnel shall be responsible for the day-to-day operations of the habitat area. To the extent practicable, the wildlife habitat area shall be operated in accordance with the policies and procedures in effect in other parks operated by the City.

3. District's elementary school principal or designee shall be responsible for responding to complaints of the public pertaining to the operation of the wildlife habitat area, including responding to complaints concerning the physical premises, security and student behavior.

4. In addition to the general policies of the District that are made applicable to the joint park facility, the principal or designee may make such rules and regulations as are necessary for the safe, efficient and effective operation of the wildlife habitat area. These rules and regulations will take into account the City's established park hours and rules/regulations. A copy of rules and regulations, or any changes, will be forwarded to the City's Parks, Recreation, and Community Facilities Director or designee for review prior to enacting said rules or changes.

5. The School principal or designee shall make applicable to the students those rules and regulations as are deemed necessary to insure that students use the park and wildlife habitat in an appropriate manner.

H. Consultation. The Parties shall consult on matters of mutual interest and concern. Either party may submit such matters to the other for review. Subject to the provisions of this Agreement, City's Parks, Recreation, and Community Facilities Director or designee and the Support Services Administrator or designee, shall have mutual authority to determine issues concerning the operation of the joint park/wildlife habitat facility. Unresolved issues will be reviewed by the City Manager and District Superintendent.