

INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF COTTONWOOD AND
MINGUS UNION HIGH SCHOOL
(Cottonwood Outdoor Aquatics Center)

This Intergovernmental Agreement (“Agreement”) is made and entered into this 6th day of September, 2016, between CITY OF COTTONWOOD, an Arizona municipal corporation (“City”), and MINGUS UNION HIGH SCHOOL DISTRICT of YAVAPAI COUNTY, ARIZONA, a political subdivision of the State of Arizona (“School District”), hereinafter collectively referred to as the “parties”.

RECITALS:

- A. Pursuant to A.R.S. § 11-951 *et seq.*, City and School District may contract for services or jointly exercise any powers common to the contracting parties and may enter into intergovernmental agreements with one another for joint or cooperative action.
- B. City is authorized by A.R.S. §§ 9-240 and 9-276, to enter into this Agreement.
- C. School District is authorized by A.R.S. § 15-364 to enter into this Agreement.
- D. City upgraded and expanded its outdoor aquatics facility (“Aquatics Facility”) in July, 2010, and desires to make that facility available to School District for its use from a varying, agreed-upon date in August of each year this Agreement is in effect through a varying, agreed-upon date in November of each such year, under the terms and conditions set forth herein, which terms and conditions shall include the School District’s payment of a share of the costs of utilities (APS, UNS Gas, Water and Sewer Utilities), chemicals, and labor (*i.e.*, lifeguards, pool maintenance, and custodial service) required and used to operate the facility during the months of use for each year that this Agreement is in effect.

NOW, THEREFORE, in consideration of the above recitals and mutual promises set forth below, City and School District agree as follows:

- 1. City Grant of License to Use Aquatics Facility. City hereby grants to School District a limited license subject to School District control pursuant to this Agreement to use the Aquatics Facility to provide physical education classes, lap swim programs, and extracurricular athletic activities at the Aquatics Facility for the benefit of students at Mingus Union High School, and to use the parking area of the Aquatics Facility for benefit of students and members of the public attending Mingus Union High School athletic events.
 - 1.1. The license granted to School District is subject to the terms and conditions stated in this Agreement.
 - 1.2. The license granted shall commence upon an agreed-upon date in August and last through an agreed upon date in November of each year which will be deemed the normal use period for High School Use of Outdoor Pool facilities by the City.
- 2. Scheduling and Use of Aquatics Facility by School District. On or before August 1 of each year that this Agreement is in effect, the parties shall develop a schedule for the School District’s use of the Aquatics Facility for the upcoming season, including classes and other educational programs;

practices; meets/tournaments; and other events and activities for which the School District anticipates a need to use the Aquatics Facility, including any use of the Aquatics Facility by third-parties associated with School District. All proposed uses shall be subject to City review and approval.

3. Aquatics Facility Operations & Maintenance. City shall provide all management of facilities for use of the Aquatics Facility involving pool mechanical operations, cleaning and overall maintenance and upkeep to keep facilities attractive and safe for all School District users. This will include all pool vacuuming, chemical feeding, monitoring of chemical feed systems, and management of pool pumps, motors and apparatus. City will make available all bath-house changing rooms/restroom/shower facilities for use and year-round deck space for a 12' x 16' storage shed area.
4. School District Operation/Ownership of Scoreboard and Electronic Touchpad Systems. City will authorize the School District's construction and installation of scoreboard/timing and underground electronic control systems at the Aquatics Facility. City will not be responsible for loss, damage or vandalism of the systems nor will City be responsible for the upgrades, maintenance, or repairs to such systems on City property at any time, unless damage is incurred by the negligence of City staff, or damages occur during the course of normal operating hours during a City program/event. (See Section 10).
5. School District Payment. Within 30 days of the date this Agreement is approved by both parties, the District shall pay the City the sum of nine thousand, five hundred dollars (\$9,500.00) as the District's agreed-upon share of the cost of operating the pool in FY 2016-2017. In subsequent years, the City shall notify the District of its proportional share of the cost of operating the pool in July of that year, and the District shall pay that sum to the City within 30 days of the date of the agreement.
6. Scope of School District Use:
 - 6.1. School District shall have use of the Aquatics Facility for all athletic competitions, practice and educational activities benefiting students at Mingus Union High School from 3:00 p.m. to 6:00 p.m. Monday through Friday, 7:00 a.m. to 10:00 a.m. on Saturdays, or as dictated by events or scheduling activities identified to City Recreation Center staff.
 - 6.2. School District shall be able to use the Aquatics Facility for school-related activities or other activities as authorized by City, whereby School District shall supervise all activities as scheduled.
 - 6.3. School District shall have the right to use any available parking spaces in the parking area for the benefit of students and members of the public attending any event, activity or program as scheduled.
7. City Responsibilities.
 - 7.1. City shall have general responsibility for operation and maintenance of the Aquatics Facility. Without limiting the generality of the foregoing, City shall:
 - a. Provide for American Red Cross certified lifeguards necessary for supervising safe use of the pool and the facility where necessary when School District does not have personnel available with these credentials. City shall charge School District for such staff and labor at normal City pay rates for personnel, not to exceed \$15.00 per hour

per guard or supervisor.

- b. Reserve use of facilities, as necessary, for use by School District.
- c. Provide all necessary equipment for the operation of the Aquatics Facility safely and efficiently and ensure that City staff operate said the mechanical systems and pumps for proper facility operations.
- d. Provide proper supervision to ensure that the Aquatics Facility, including without limitation, diving structures, lane lines, and pool equipment, are properly used and that pool users follow established rules and regulations of the City's Aquatics Facility Manual in regards to safe use of the pool and outlying facilities.
- e. Provide all custodial maintenance operations for bathhouse and restroom facilities at City cost during the School District's use of the Aquatics Facility from the agreed-upon date in August through November 15 of each year. Custodial services will be provided three times a week with a local company in order to keep the facilities clean and sanitized for School District use.
- f. Have the right to operate or contract to have operated a concession stand at the Aquatics Facility, and any profits, fees or charges in connection therewith being retained by City.
- g. Not charge admission fees or charges to the public; however it will allow School District to do so, should School District authorize such fees for program activities.
- h. Contact School District Athletic Director (or designee) in the event of any power outage or other condition which would prompt the shut-down of the Aquatics Facility pending power restoration or repairs.

7.2. Except as stated in Section 8.1(a) below, City shall have responsibility for general maintenance and upkeep of the Facility, including without limitation, maintenance of the pool equipment, heaters, diving structure, supplies, water chemistry, vacuuming and cleaning.

7.3. A cleaning and vacuuming schedule shall be coordinated with School District pursuant to which City shall be allowed three (3) days each week, for a minimum of four (4) hours per day, to maintain proper cleaning and maintenance of the Aquatics Facility.

7.4. At all times, City shall oversee routine maintenance, including but not limited to, backwashing, daily equipment checks and/or adjustments, equipment repairs and/or replacement.

7.5. At all times, City shall have responsibility for the condition of the equipment and water chemistry of the Aquatics Facility. Periodically, City shall evaluate pool conditions for safe swimming, and shall have the authority to close the pool at any time when it determines that pool conditions are unsafe, subject to any ruling or determination made by the Yavapai County Health Department and regulations as specified.

8. School District Responsibilities.

8.1. While the School District is exercising its license to use the Aquatics Facility, School District shall:

- a. Be responsible for safe pool use and for hosing off the pool deck, trash pick-up and supervision of students, swim teams, or other persons using the Aquatics Facility for education, athletic or competition purposes. School District shall also be responsible for maintaining its storage area in a clean and orderly manner.
- b. Provide supervision to ensure that the pool facility, including without limitation, diving structures, lane lines, and pool equipment, are properly used and that pool users follow established rules and regulations of the City's Aquatics Facility Manual in regard to safe use of pool facilities. School District personnel **MUST KEEP POOL GATES AND DOORS LOCKED AT ALL TIMES**. School District personnel should also take proper action with students who abuse pool rules, equipment and diving structures in order to ensure a safe aquatic environment. School District personnel should provide adequate training on use of equipment and use of facilities.
- c. Provide American Red Cross certified lifeguards necessary for supervising safe use of the pool and Aquatics Facility. School District personnel supervising any activity must hold current American Red Cross life-saving certification to avoid the assignment of City staff to supervise the activity. If assistance of City staff is needed for any School District sponsored activity or function, School District shall reimburse City for the time and labor of City staff needed for the activity.
- d. Be responsible for training system, kick boards and other equipment associated with, and used by, swim teams.
- e. Pay in a timely manner the invoices submitted to it by the City on a monthly basis, as more fully described in Section 5.

9. Coordination of Use.

9.1. School District shall cooperate with City to coordinate use and scheduling of the Aquatics Facility through Cottonwood Community Services Department, Aquatics Division, whose mailing address and phone number are, respectively: 827 North Main Street, Cottonwood, Arizona 86326; (928) 639-3200.

9.2. Pool heaters on site at the Aquatics Facility shall be used as necessary for the School District. School District may require the use of such heaters during its use of the pool facility. In such event, City shall start, monitor, operate and turn off the pool heaters, as required. The heaters shall be operated at a "set" temperature mutually agreed upon by the parties. School District personnel shall not operate pool heaters.

9.3. City shall notify School District when maintenance or repairs will require the water to be shut off in and around the pool areas during any time period that the School District has a right to or is otherwise scheduled to use the Aquatics Facility.

9.4. City and School District shall mutually establish rules, regulations and policies, where necessary, including so called "pool rules," pertaining to the safe use of the pool and the Aquatics Facility in a cooperative manner. All formal pool rules shall be in accordance with the City's Aquatics Facility Manual, whereby it shall be in the best interest of both parties to

cooperate with each other in effectively operating and maintaining the Facility.

10. Reimbursements and Capital Repairs.

10.1. City shall reimburse School District for any repair or replacement of School District property, or the School District storage area or equipment damaged by City or damaged during the use of the Aquatics Facility by City or during City sponsored or approved activities. School District shall reimburse City for any repair or replacement of City property, equipment or fixtures damaged by School District or damaged during the School District's use of the Aquatics Facility or during use of the Aquatics Facility for any School District sponsored activity at the Aquatics Facility.

10.2. In the event that damage to the Aquatics Facility requiring repair or replacement does not arise from the negligence or willful misconduct of either party, and is of a type that under generally accepted accounting principles is to be capitalized or depreciated, the parties shall equally share the cost of such repair or replacement. The parties shall mutually determine when the cost of such repair or replacement will be incurred.

11. Insurance.

11.1. Each of the parties shall secure and maintain during the life of this agreement: statutory worker's compensation insurance with employer's liability policy limits in the amount of \$1,000,000 for each incident for bodily injury, \$1,000,000 for bodily injury by disease, and \$1,000,000 for each employee for bodily injury by disease; commercial general liability insurance, including contractual liability for assumption of the tort liability under this agreement, and personal injury liability, with limits of not less than \$10,000,000 per occurrence; and commercial automobile liability insurance for any owned, hired or non-owned autos, with a limit of not less than \$1,000,000 each accident. Each party shall retain the option of discharging this obligation by means of funded self-insurance, or by membership and participation in a statutorily authorized public-entity insurance 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 not less than two (2) years.

11.2. City shall secure and maintain property insurance coverage protecting the Aquatics Facility, including the structural portion of the School District's storage area, and any City personal property at the Aquatics Facility against all risk of physical damage and loss for its full replacement cost. School District shall obtain similar coverage for the personal property it maintains in the Aquatics Facility. School District and 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 with the exception that City shall be entitled to any insurance proceeds received for damage loss to the swimming pool structure if the funds are not used to repair or rebuild the structure. City and School District shall provide at least thirty (30) days' notice of cancellation or material change in coverage. Each party shall list the other party as an additional insured on all applicable insurance policies. The parties agree to review annually the limits and types of insurance required herein and may, by mutual agreement, amend the requirements of this Section 11, as they deem necessary.

11.3. City's responsibility, whether by insurance or self-insurance, shall be primary or designated as primary in respect to the acts and omissions of its employees and its operation of the Aquatics Facility. School District's responsibility, whether by insurance or self-insurance, shall be primary or designated as primary in respect to the acts and omissions of its

employees and its operation or use of the Aquatics Facility.

12. Hold Harmless and Indemnification.

12.1. To extent permitted by law, City shall defend, indemnify and hold harmless School District, its officers, employees and agents, from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, for damages to property or injuries to or death of any person or persons, including employees or agents of School 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 officers, employees, agents, consultants, contractors or subcontractors. This paragraph 12.1 shall survive the termination of the Agreement.

12.2. To extent permitted by law, School District shall defend, indemnify and hold harmless City, its officers, employees and agents, from and against any and all claims, demands, suits, actions or proceedings of any kind or nature, for damages to property or injuries to or death of any person or persons, including employees or agents of City, 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 School District, its officers, employees, agents, students, guests, consultants, contractors or subcontractors. This paragraph 12.2 shall survive the termination of the Agreement.

12.3. In the event of any third party legal action against both School District and City, the parties agree to discuss and analyze the benefits of a common, mutual defense.

13. Expiration or Termination.

13.1. Unless renewed by mutual agreement of the parties, this Agreement and the license granted hereunder to School District to use the Aquatics Facility shall automatically terminate without further action required by either party on the yearly anniversary of the Commencement Date. However, if requested by City, School District shall execute and record an instrument evidencing the termination of the license granted under this Agreement.

13.2. In the event that the City fails to observe or perform any of the covenants, conditions and terms of this Agreement which are required to be observed or performed by City, where such failure shall continue for a period of thirty (30) days after written notice thereof from School District, then School District may terminate this Agreement within a 30-day period by any lawful means or proceed with whatever steps School District may deem necessary in order to enforce the rights and remedies available to School District under this Agreement, at law or equity, including, without limitation, the right of specific performance of this Agreement or the right to recover its damages from City.

13.3. In the event that School District fails to observe or perform any of the covenants, conditions and terms of this Agreement which are required to be observed or performed by School District, where such failure shall continue for a period of thirty (30) days after written notice thereof from City, then City may terminate this Agreement within a 30 day period by any lawful means or proceed with whatever steps City may deem necessary in order to enforce the rights and remedies available to City under this Agreement, at law or equity, including, without limitation, the right of specific performance of this Agreement of the right to recover its damages from School District.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

21. Conflict of Interest. This Agreement is subject to termination pursuant to A.R.S. § 38-511.

IN WITNESS WHEREOF, the parties have executed this Agreement by signing their names on the day and date first written above.

CITY OF COTTONWOOD

MINGUS UNION HIGH SCHOOL DISTRICT

By: _____
Mayor

By: _____
Board President

APPROVAL OF SCHOOL DISTRICT AND ATTORNEYS

The Undersigned hereby state that each has reviewed the proposed Intergovernmental Agreement between the City of Cottonwood and the Mingus Union High School District, and do declare the Agreement to be in proper form and within the powers and authority granted to their respective governing bodies under the law of the State of Arizona.

By:

By:

Cottonwood City Attorney

Attorney for Mingus Union High School District

Date

Date