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2/12/20

When recorded return to:

Richard Joel Stern, Esq.
Apache Junction City Attorney
300 East Superstition Blvd.
Apache Junction, AZ 85119

**INTERGOVERNMENTAL FACILITIES USE AGREEMENT BETWEEN THE CITY OF
APACHE JUNCTION AND APACHE JUNCTION UNIFIED SCHOOL DISTRICT #43**

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THIS INTERGOVERNMENTAL FACILITIES USE AGREEMENT (the “Agreement” or this “IGA”) is made as of the ____ day of _____ 2020, (“Effective Date”) by and between CITY OF APACHE JUNCTION, ARIZONA, an Arizona municipal corporation (the “City”) and APACHE JUNCTION UNIFIED SCHOOL DISTRICT #43, (the “District”), collectively from time to time referred to as the “Parties”, or individually as a “Party”.

RECITALS

A. Pursuant to A.R.S. §§ 11-952, 15-342(13) and 15-364, local municipalities and school districts may enter into intergovernmental agreements for common goals, including but not limited to development, cooperative maintenance, operation and use of parks and recreational facilities on properties used for school purposes and under the control of school districts.

B. The Parties historically entered into cooperative use, construction, and maintenance agreements for recreational and educational facilities (the “Facilities”) and activities (August 1979, October 1981, May 1983, May 1989, April 1991, February 2001 and May 14, 2015 (expiring on May 14, 2020)).

C. District is the owner of certain real property located at 1091 West Southern Avenue, Apache Junction, Arizona, and related athletic and recreational facilities as set forth in Exhibit A hereto (the “Superstition Shadows Facilities”).

D. District is the owner of certain real property located at 550 South Ironwood Drive, Apache Junction, Arizona, and related athletic and recreational facilities as set forth in Exhibit B hereto (the “Superstition Mountain Facilities”).

E. District and City desire to achieve cost savings and serve the public interest within their respective boundaries by providing recreational, educational and athletic facilities for use by District’s students and City’s residents consistent with the mutual responsibilities of the Parties.

F. The Parties intend, concurrent with this IGA, to enter into good faith negotiations to finalize an arrangement which provides for other City/District partnerships, thereby resulting in taxpayer savings and extending recreational and education-related services and programs for years to come.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual promises and covenants set forth herein, the Parties agree as follows:

1. **ACCURACY OF THE RECITALS:** The Parties hereby confirm the accuracy of the Recitals as set forth above, which are incorporated herein by this reference.

2. **PURPOSE OF THIS AGREEMENT:** The purpose of this Agreement is to set forth the services, programs and facilities common to the Parties for the benefit of the community.

3. **FACILITIES:** The applicable Facilities and Parties' obligations and rights include:

A. With respect to the Superstition Shadows Facilities:

- i. **District Duties:** On July 1st of each year that this Agreement is in effect, District shall pay City \$25,000.00 for its proportionate share of maintenance and utilities. District shall purchase and maintain throughout the Term of this Agreement public liability and property damage insurance and shall provide to City proof of such insurance no later than July 1st each year that this Agreement is in effect and shall provide a certificate of insurance which names City, its elected officials, appointees and employees as additional insured parties.
- ii. **District Rights:** With non-conflicting advanced scheduling and approval from City staff, District may utilize City-managed portions of the Superstition Shadows Facilities free of charge. District shall retain title and all related rights to the Superstition Shadows Facilities except as modified by this Agreement.
- iii. **City Duties:** City shall manage and maintain the Superstition Shadows facilities year-round while this Agreement is in effect. City shall manage scheduling of use of the facilities for the benefit of District and its students and employees, City athletic leagues, and other members of the public. City shall be listed as the responsible named party on all utility accounts and shall pay all utility bills for the Superstition Shadows Facilities. City shall purchase and maintain throughout the Term of this Agreement public liability and property damage insurance and shall provide to District proof of such insurance no later than July 1st each year this Agreement is in effect and shall provide District a certificate of insurance which names District, its elected officials, appointees and employees as additional insured parties.

- iv. City Rights: City may operate concession stands and retain all realized profits; place signage as necessary on the property; and utilize all areas for public recreational purposes.

B. With respect to the Superstition Mountain Facilities:

- i. District Duties: District shall allow City year-round unrestricted use of the Superstition Mountain Facilities each year this Agreement is in effect. District shall purchase and maintain throughout the Term of this Agreement public liability and property damage insurance and provide proof of such insurance to City no later than July 1st of each year this Agreement is in effect and shall provide a certificate of insurance which names City, its elected officials, appointees and employees as additional insured parties.
- ii. District Rights: With non-conflicting advanced scheduling and approval from City staff, District may utilize City-managed portions of the Superstition Mountain Facilities free of charge. District shall retain title and all related rights to the Superstition Mountain Facilities except as modified by this Agreement.
- iii. City Duties: City shall provide all maintenance and fully manage year-round the Superstition Mountain Facilities. City shall manage scheduling of use of the facilities for the benefit of District and its students and employees, City athletic leagues, and other members of the public. City shall be the responsible named party on all utility accounts and shall pay all utility bills for the Superstition Mountain Facilities. City shall purchase and maintain throughout the Term of this Agreement public liability and property damage insurance and shall provide proof of such insurance to District no later than July 1st of each year this Agreement is in effect and shall provide District a certificate of insurance which names District, its elected officials, appointees and employees as additional insured parties.
- iv. City Rights: City may operate concession stands and retain all realized profits and place signage as necessary on the property.

C. Other City/District Owned Shared Facilities

District and City Duties: Subject to the last sentence of this paragraph, each Party shall be provided access to other facilities owned by the other Party free of charge provided that a) the requesting Party provides advanced non-conflicting scheduling notice to the other and obtains appropriate approvals b) that such use does not interfere with the primary function and purpose of the Party providing access to such facilities and c) that such use is consistent with applicable state and federal laws governing safety and privacy of students. Facilities requiring staff will incur charges using a cost recovery model mutually agreed upon in writing by the school superintendent and city manager.

4. MISCELLANEOUS CITY/DISTRICT ACTIVITIES:

A. Use of Buses: Upon reasonable request by City, District shall provide buses for City-sponsored events subject to the following conditions:

- i. City will give District adequate notice of City's intent to use the District-provided buses. Adequate notice means sufficient time to allow District employees to coordinate use of buses with all relevant District departments, but in no case less than seven days.
- ii. District shall have priority use of buses, and if District requires use of buses for District activities, City shall have no right to such use.
- iii. City will pay District for actual costs of operating the buses and any staffing expenses within 30 days following use of District buses.

B. Marketing of City/District Programs: The Parties will promote and/or market appropriate programs to citizens, students and parents by posting the programs on their respective marquees. The Parties will provide promotional materials including but not limited to posters, flyers, and electronic communications regarding programs of interest to citizens, students and parents. The Party sponsoring such program shall incur the costs of producing promotional materials.

5. PARTNERED ACTIVITIES: District and City shall coordinate and work cooperatively on any and all programs and/or services determined to be mutually beneficial to both Parties.

6. INDEMNIFICATION: To the extent permitted by law, each Party covenants and agrees to fully indemnify, defend and hold harmless the other Party, its special districts, elected officials and appointed officers, employees,

and agents from and against any and all suits, actions, legal or administrative proceedings, claims, demands or damages of any kind or nature relating to this Agreement, including attorney and expert witness fees, which, are the result of any act or omission of the Parties, their elected officials, officers, employees, agents, and anyone acting under their direction or control, whether reckless, intentional or negligent, in connection with or incidental to this Agreement. If any action or claim shall be brought or asserted against either Party or their elected officials, appointed officers, agents, servants or employees for which indemnity may be sought from either Party, the Parties shall promptly notify one another in writing. The noticed Party shall, within ten working days of receiving such notice, assume the defense thereof and the payment of all expenses, including any attorney fees and all court costs which shall be paid as incurred. This section shall survive the expiration or early termination of this Agreement.

7. **INSURANCE:** It is understood and agreed that both Parties may elect to self-insure or obtain insurance through their pooling agreement with other governmental entities against any or all of the risks related to this Agreement and to meet the insurance requirements set forth in Sections 3 and 6 of this Agreement.

8. **MUTUAL REPRESENTATIONS:** The Parties represent and warrant to each other the following:

- A. Their execution and approval of this Agreement has been made in compliance with the procedural requirements of their respective codes, rules and statutory mandates.
- B. They will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement and evidence this Agreement.
- C. As of the date of this Agreement, the Parties know of no litigation, proceeding, initiative, referendum, or investigation contesting their powers or their officials with respect to this Agreement.
- D. The execution, delivery and performance of this Agreement by the Parties is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees involving the Parties.
- E. The Parties have been assisted by counsel of their own choosing in connection with the preparation and execution of this Agreement.

9. **TERM OF AGREEMENT/TERMINATION:** This Agreement shall be valid for a Term of eight years and shall automatically be renewed for two additional one-year periods. Before the eighth anniversary of the Effective Date of this Agreement, either Party may terminate this Agreement for any reason upon one-year written notice, sent to the other Party, by first class certified mail, postage prepaid. Either party may choose to non-renew this Agreement by sending written notice to the other Party at least 90 days before the effective date of automatic renewal of this Agreement.

10. **NOTICES:** Except as otherwise required by law, any notice required or permitted under this Agreement shall be in writing and shall be given by personal delivery, or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this section, or by telecopy or tele-facsimile machine, or by any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid:

If to City: Parks and Recreation Director
City of Apache Junction
300 E. Superstition Blvd.
Apache Junction, AZ 85119

And to: City Attorney
City of Apache Junction
300 E. Superstition Blvd.
Apache Junction, AZ 85119

If to District: Superintendent of Schools
Apache Junction Unified School District #43
1575 W. Southern Avenue, Suite 3
Apache Junction, AZ 85120

And to: District Counsel
[Udall Shumway, PLC]
[1138 North Alma School Road, Suite 101]
[Mesa, Arizona 85201]

10. **SEVERABILITY:** The Parties each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring either party to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect;

provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

11. GOVERNING LAW, VENUE AND ATTORNEY FEES: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either Party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, Arizona. The Parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either Party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including reasonable attorney fees to be determined by the court in such action.

12. SUCCESSORS, ASSIGNMENT & DELEGATION: The obligations and rights created in this Agreement are binding upon and shall inure to the benefit of the parties and their successors, assigns and legal representatives. Neither Party may assign, sublet or delegate the duties hereunder, without the prior written approval of the other Party. Such successor or assignee shall assume, in writing, all duties and obligations hereunder of the prior party and shall further agree to be bound by and to fully perform the terms of this Agreement.

13. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire Agreement between the Parties and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto. Written and signed amendments shall automatically become part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary. Notwithstanding the above, items deemed as "minor amendments" under this IGA must be such things that are administrative, ministerial or procedural in nature, not policy-related that typically require City Council/District Board approval. If a minor amendment is needed, a letter agreement signed by the City Manager and District Superintendent shall be executed and provided to their respective governing

bodies. No official action is required by the City Council or District Board to accept minor amendments.

14. **AVAILABILITY OF FUNDS:** The Parties' financial obligations under this Agreement are contingent upon the availability of budgeted and/or allocated funds from which payment for services, programs and equipment common to the Parties can be made. There is no legal liability on the part of the Parties to make any payment or payments until funds are available for the services, programs and equipment under this Agreement and until each Party receives from each other notice of such availability, to be confirmed in writing by the Parties' representatives.

15. **CONFLICT OF INTEREST:** This Agreement is subject to, and may be terminated by the Parties in accordance with the provisions of A.R.S. § 38-511.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

DISTRICT:

Apache Junction Unified School District
#43

By: _____
Its: Chairperson

ATTEST:

By: _____
_____, Board Secretary

CITY:

City of Apache Junction, Arizona,
an Arizona municipal corporation

By: Jeff Serdy
Its: Mayor

ATTEST:

By: _____
Jennifer Peña, City Clerk

COUNSEL APPROVAL AS TO FORM:

I have read this Agreement and have determined such Agreement is in proper form and is entered into within the powers of and authority granted under the laws of the State of Arizona.

_____	_____
District Attorney	Date

I have read this Agreement and have determined such Agreement is in proper form and is entered into within the powers of and authority granted under the laws of the State of Arizona.

_____	_____
Richard J. Stern City Attorney	Date

EXHIBIT A

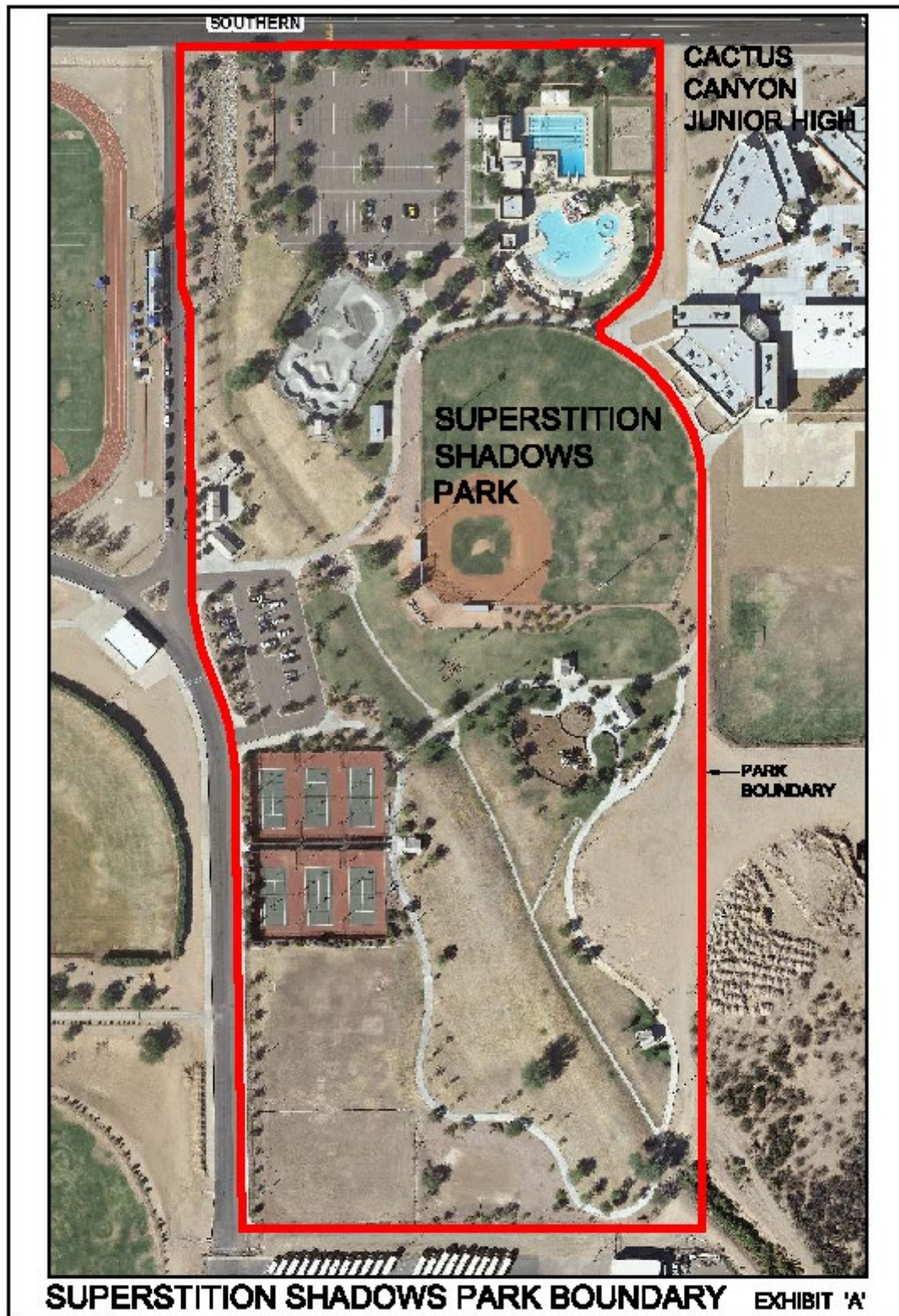


EXHIBIT B

