

INTERGOVERNMENTAL AGREEMENT FOR THE USE OF FACILITIES

THIS INTERGOVERNMENTAL AGREEMENT (“**Agreement**”) is made and effective this 19th day of May, 2020 by and between the **Palominas Elementary School District #49**, a political subdivision of the State of Arizona (hereinafter referred to as “**PSD**”) and **Cochise County**, a political subdivision of the State of Arizona (hereinafter referred to as the “**County**”).

RECITALS

WHEREAS, PSD owns a certain improved school property located at 10385 E. Hwy 92, Hereford, AZ 85615 (the “**School Property**”) on which PSD operates a school, known as Palominas Elementary School (the “**School**”); and

WHEREAS, the County owns 285 acres of vacant property adjacent to the School's northern and western boundaries and desires to use a portion of the School's parking area as public parking and trailhead for access to a contemplated trail system on the County's 285 acres;

WHEREAS, PSD recognizes the County's contemplated trail system as a benefit for the public and the school district for educational and recreational activities such as cross-country track, hiking, equestrian and other non-motorized events; and

WHEREAS, PSD and the County desire to enter into this Agreement to provide for joint support and maintenance of the County’s contemplated trail system.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, Cochise County and the Palominas School District agree to the following:

AGREEMENT

1. AGREEMENT FOR USE

PSD does hereby agree to allow County and the Public to enter and use that certain portion of the School Property designated by PSD, as depicted on **Exhibit “A”** attached hereto (the “**Public Parking Area**” or “**Trailhead**”). The Public or County use of the Public Parking Area will not impede any ingress or egress by PSD school vehicles or employees to the Bus Maintenance/Parking area depicted on Exhibit “A.”

Additionally, the County acknowledges and agrees that the Principal of the School (the

“Principal”) shall have and be able to assign for PSD-related purposes first priority for the use of the Public Parking Area on the School property superseding any scheduled or non-scheduled activity or event of the County during either the academic School year or non-academic School year if and as needed as a result of or due to any emergency, evacuation and/or any other unexpected event, activity and/or occurrence.

2. AGREEMENT FOR SUPPORT AND MAINTENANCE

The County hereby agrees to bear the responsibility and cost for the design, engineering and construction of any improvements for public access at the Public Parking Area/Trailhead on the School property including signage.

PSD does hereby agree to provide building and grounds support for the ongoing maintenance of the Public Parking Area/Trailhead on the School property including trash removal and maintenance of any future sanitary facilities the School chooses to locate on their property at the Trailhead. Moreover, PSD does hereby agree to provide building and grounds support for the ongoing maintenance of the Public Parking Area for the walking path located on the County’s Recharge Facility Property (**Exhibit “B”**) on Palominas Road east of the School, including trash removal and maintenance of any future sanitary facilities the School chooses to locate at this location with the County’s written permission. Additionally, PSD at their earliest convenience agrees to notify the County of any vandalism or violations of use of the Public Parking Area and/or contemplated trail system, as reported to the Principal by any employees or students of PSD or others. “Building and grounds support” and “ongoing maintenance” as used in this paragraph is reasonably conditioned upon School site’s remaining open and PSD’s availability of funds appropriated or allocated for the payment of such obligation. If School site closes or funds become unavailable for the continuance of the obligation, this Agreement may be terminated by either party’s providing written notification to the other party. No liability shall accrue to either party in the event this provision is exercised, and neither party shall be obligated or liable for any future obligation or for any damages as a result of termination under this paragraph.

3. TERM OR DURATION OF THE AGREEMENT

The agreement to use the PSD Public Parking Area for vehicle access to the Trailhead shall be in perpetuity so long as the County owns and maintains the contemplated trail system for public access, School site remains open and PSD has adequate funding available to fulfill its obligations.

4. INDEMNIFICATION

To the maximum extent permitted by law, each Party (as "**Indemnitor**") agrees to indemnify, defend and hold harmless the other Party, its officers, officials, agents, employees, or volunteers (as "**Indemnitee**") from and against any and all claims, losses, liability, costs or expenses to which any Indemnitee may become subject under any theory of liability whatsoever, including reasonable attorney's fees, court costs and the costs of appellate proceedings arising out of actions taken in performance of this Agreement (hereinafter collectively referred to as "**Claims**") to the extent that such Claims are caused by the acts, omissions, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Indemnitor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree.

5. FUNDING

As, under A.R.S. § 11-952(B)(3), each party must specify the manner in which it shall establish and maintain a budget for the undertakings set forth herein, PSD intends to initially use any available funding from its adjacent ways budget; however, it also intends to seek grants and donations when appropriate and available. The County will fund proposed improvements through its regular Flood Control budgeting process as well as grants and donations when appropriate.

6. INSURANCE

PSD agrees to take out and keep in force during the life of this Agreement, general liability insurance in such amounts as is necessary to protect against any liability incident to the duties of PSD under this Agreement. Likewise, the County agrees to take out and keep in force during the life of this Agreement, general liability insurance in such amounts as is necessary to protect against any liability incident to the duties of the County under this Agreement.

7. NOTICE

All notices required to be provided by this Agreement or arising from this Agreement shall be provided in writing to the following:

For the Palominas School District:

Sherri Rosalik, Superintendent
PO Box 38
Hereford, AZ 85615

For the COUNTY:

Jackie Watkins, Director
Engineering and Natural Resources
Cochise County
1415 Melody Lane, Building F
Bisbee, AZ 85603

8. CANCELLATION

This Agreement may be canceled pursuant to A.R.S. 38-511, the applicable provisions of which are incorporated herein by reference.

9. SEVERANCE

The Parties hereto shall comply with all applicable laws, rules, regulations and ordinances, as may be amended. If any provision of this Agreement or portion thereof is held invalid, illegal or unenforceable, such provision or portion thereof shall be severed from this Agreement and shall have no effect on the remaining provisions of this Agreement, which shall remain in full force and effect.

10. RIGHTS AND REMEDIES

No provision in this document shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim of default or breach of contract. The failure of any party to insist upon the strict performance of any term or condition of the Agreement or to exercise or delay the exercise of any right or remedy provided in the Agreement or by law, or the acceptance of materials or services, or the payment for materials or services, shall not release the other party from any responsibilities or obligations imposed by the Agreement or by law, and shall not be deemed a waiver of a right of a party to insist upon the strict performance of the Agreement.

11. GOVERNING LAW, JURISDICTION, VENUE

This Agreement shall be governed by the laws of the State of Arizona. The parties hereby agree that the venue for the resolution of any dispute under this Agreement shall be and shall remain in Cochise County.

12. IMMIGRATION LAWS

The parties hereby warrant that they will comply with all federal immigration laws applicable to the parties' employment of its employees, and with the requirements of A.R.S. § 23-

214(A) (together the "State and Federal Immigration Laws"). The parties shall further ensure that each sub-consultant who performs any work for the party under this Agreement likewise complies with the State and Federal Immigration Laws.

13. RECORDS

The parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agrees that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.

14. PUBLIC RECORD LAWS

Notwithstanding any other provision of the Agreement, the parties understand that they are public entities and, as such, are subject to Arizona's public records law, A.R.S. § 39-121 et. seq.

15. CONTRACT AMENDMENTS

This Agreement may be modified only by a written Amendment signed by persons duly authorized to act in this capacity on behalf of the parties.

16. ENTIRE AGREEMENT

This Agreement contains all the representations and the entire understanding and agreement between the parties pertaining to the occupancy and use of the subject property or any other matters connected therewith. All correspondence, memoranda, or oral or written agreements pertaining to the property or the parties hereto, which originated before the date of this Agreement are null, void and no longer in force and with no effect, and are replaced in total with this Agreement unless otherwise expressly stated in this Agreement. This License Agreement shall not be altered, amended, or modified except by a writing signed by authorized representatives of the parties.

17. ARBITRATION

To the extent required by A.R.S. §§ 12-133 and 12-1518(B), the parties agree to resolve any dispute arising out of this Agreement by arbitration.

18. NO JOINT VENTURE

It is not intended by this Agreement to, and nothing contained in this Agreement shall, be

construed to create any partnership, joint venture, or employment relationship between the parties or create any employer-employee relationship between the parties' employees. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other party, including, but without limitation, the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

19. NO THIRD-PARTY BENEFICIARIES

Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

20. REPRESENTATION BY LEGAL COUNSEL, WAIVER OF CONFLICT OF INTEREST

Pursuant to A.R.S. § 11-952(D), an attorney for each party must review this Agreement. Because PSD is represented by Anne Carl, who is currently with the Law Office of Anne Carl PLC, and who – up until 10 years ago – represented the County on other matters; because the Cochise County Attorney's Office used to represent PSD – up until 10 years ago – by and through Anne Carl and others who worked for that office; and because the Law Office of Anne Carl PLC reviewed and edited this Agreement, which was drafted by the Cochise County Attorney's Office for the County, parties understand that they must utilize their separate counsel to review the Agreement, and that these Firms utilized shall not share any information about the County with PSD and vice versa during the course of negotiating this Agreement. With these disclosures, parties further each give informed consent to waive the potential conflict of interest posed by the Firm negotiating this Agreement on behalf of itself even though the Firm has, in the past, through its representatives, represented the other Party on other matters.

21. CERTIFICATION PURSUANT TO A.R.S. § 35-393.01

Neither party to this Agreement may adopt a procurement, investment or other policy that has the effect of inducing or requiring a person or company to boycott Israel.

22. COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall constitute an original and together shall constitute the Agreement.

IN WITNESS HEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

APPROVED:
Palominas Elementary School District Governing Board

3/10/20
DATE

By: Martie R. Payne
Martie Payne, President

ATTEST:

3/15/20
Secretary

APPROVED AS TO FORM:

ACarl
Anne Carl
Law Office of Anne Carl PLC

APPROVED:
COCHISE COUNTY

DATE

By: _____
Thomas E. Borer, Chairman

ATTEST:

Kim Lemons
Clerk of the Board

APPROVED AS TO FORM:

B
Britt Hanson, Chief Civil Deputy
Cochise County Attorney's Office

Exhibit A

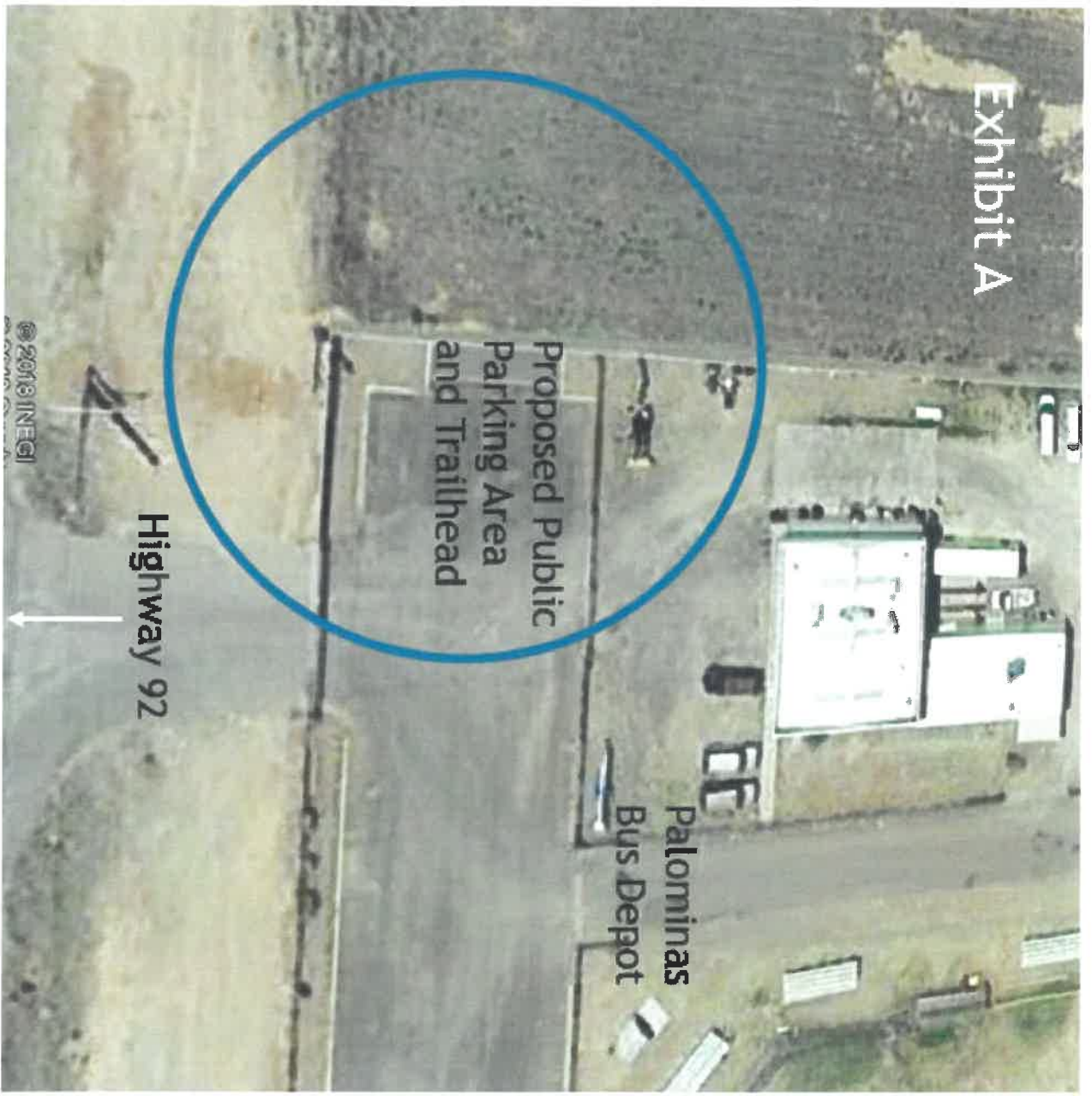


Exhibit B

