

INTERGOVERNMENTAL AGREEMENT FOR
FACILITIES USE, MAINTENANCE, AND REPAIR
BETWEEN
THE CITY OF FLAGSTAFF
AND
FLAGSTAFF UNIFIED SCHOOL DISTRICT NO. 1

This Facilities Use Agreement (the “Agreement”) is made as of the ____ day of _____, 2025, by and between the City of Flagstaff (“City”), a municipal corporation duly organized and existing in the County of Coconino and State of Arizona, with offices at 211 West Aspen Avenue, Flagstaff, Arizona 86001, and Flagstaff Unified School District No. 1 (“District”), a political subdivision of the State of Arizona, with offices at 3285 East Sparrow Avenue, Flagstaff, Arizona, 86004, collectively referred to in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, both Parties own and operate several recreational and related-use facilities and sports fields; and

WHEREAS, District has facilities it is willing to share with City and the general public and City has facilities it is willing to share with District; and further, neither of the Parties use their facilities full-time, year-round, and the Parties desire to work closely to share facilities in order to promote the general welfare, to allow for a more efficient expenditure of public funds, and to maximize service to the community; and

WHEREAS, City electors voted in favor of expending amounts in excess of One Million Dollars (\$1,000,000) to improve certain of District’s school playing fields in a September 1996 special bond election, and City continues to fund ongoing maintenance for said fields; and further, the Parties have determined that it is also in their mutual interests for City to provide limited, periodic financial assistance to District for the purpose of maintaining District facilities used by City and the public that are covered by this Agreement; and

WHEREAS, City assesses fees to the general public for use of District-owned facilities; and

WHEREAS, the Parties wish to set forth their agreement regarding the joint and mutual use, operation, and maintenance of their respective recreational and related-use facilities, all on the terms and conditions hereinafter set forth; and

WHEREAS, City has determined that the consideration it will receive from District pursuant to the terms of this Agreement is adequate and that the Parties will receive roughly equivalent value as a result of this exchange; and

WHEREAS, District has determined that the consideration it will receive from City pursuant to the terms of this Agreement is adequate and that the Parties will receive roughly equivalent value as a result of this exchange; and

NOW, THEREFORE, pursuant to Arizona Revised Statutes Section 11-952, authorizing contracts between public agencies for joint or cooperative action, Arizona Revised Statutes Sections 15-341, 15-342, 15-363, and 15-364, authorizing school districts, *inter alia*, to manage, control, furnish, repair, and improve school property, to enter into intergovernmental agreements, and to contract with cities for the cooperative maintenance, operation, and use of recreational facilities, Article I, Section 3, of the Flagstaff City Charter, authorizing City to enter into contracts with political subdivisions of the state, and the inherent powers of City to provide for the health and welfare of its citizens; and in consideration of the promises and the mutual covenants contained herein, the Parties agree as follows:

AGREEMENT

The foregoing recitals are incorporated in this Agreement by this reference.

DEFINITIONS:

A. "Host Party" shall mean the Party to this Agreement who holds title to the Recreational Facility.

B. "Visiting Party" shall mean the Party to this Agreement who is requesting use of a Host-Party Facility as well as all invitees of the Visiting Party, which will sometimes include the general public.

C. "Recreational Facilities" shall mean playing fields, indoor recreational centers, gymnasiums, meeting rooms, classrooms, community centers, auditoriums and multi-use rooms, and all facilities appurtenant thereto or necessary for the use thereof, sometimes referred to herein simply as a "Facility" or "Facilities." Swimming pools, running tracks, administrative areas, libraries, public safety facilities, transportation facilities, maintenance facilities, warehouses, and similar facilities shall not be included within the meaning of the term "Recreational Facilities" as used herein and are not within the ambit or intended purpose of this Agreement. A list of the Recreational Facilities is attached as Exhibit A to this Agreement. The list indicates Facilities owned by District and used by City, Facilities owned by City and used by District, and Facilities owned by District and used by the general public. Additional Facilities may be added to or removed from Exhibit A upon the consent of both Parties informally by administrative action.

D. "School Hours" means 7:30 a.m. through 3:30 p.m., Monday through Friday, August through June, except school holidays and breaks. Elementary FACTS programming continues until 6:00 p.m. Monday through Friday, August through June, except during school holidays and breaks.

E. “Non-school Hours” means all times other than School Hours and includes all school holidays and breaks.

F. “Users” means all groups invited or otherwise permitted to use the Facilities by the Visiting Party.

SECTION 1: USE OF FACILITIES

A. For and during the term of this Agreement, the Host Party hereby grants the Visiting Party a non-exclusive license to use, operate, and maintain the Host Party’s Facility when the Visting Party is scheduled to use the Facility as described in Section 2 below, and for a reasonable time before and after the scheduled event to allow time for preparation of the Facility for use and for clean up after the scheduled use.

B. District shall have an exclusive license to use and control City’s Thorpe Duck Pond field during School Hours except that City may enter the Thorpe Duck Pond field for maintenance activities. The maintenance activities will occur at times agreed upon by the Parties.

C. This Agreement covers the use of all Recreational Facilities owned by the Parties provided:

1. That any desired or proposed use by the Visiting Party is not prohibited by the terms of any instrument granting the Host Party the right to use or occupy such facility;

2. That no desired or proposed use by the Visiting Party shall be any greater in scope than the use allowed to the Host Party; and

3. That the Visiting Party shall not take any action or perform any activity which may cause the loss, forfeiture, or defeasance of any right or privilege of the Host Party with respect to that facility.

SECTION 2: SCHEDULING AND PRIORITIES OF USE

A. The Host Party shall retain the right of first priority in the scheduling and use of its Facilities as if this Agreement did not exist, with the exception of City’s Thorpe Duck Pond field as described in Section 1, Paragraph B above, and shall grant the Visiting Party the next following priority.

B. Except for Jay Lively Activity Center (for which a reduced fee will be charged) and the Flagstaff Aquaplex, a Host Party shall not charge the Visiting Party for the use of Host Party Facilities unless expressly provided herein.

C. During Non-school Hours, City, through its Parks, Recreation, Open Space, and Events (PROSE) Division, is responsible for scheduling, allocating time, and assessing

fees, if any, for the use of all District fields by Users, except high school and Sinagua Middle School fields.

D. City's PROSE Director or designee shall be responsible for approving and maintaining the schedule of City's Facilities and shall ensure that District has access to the Facilities at the scheduled times.

E. District's Executive Director of Operation Services and Safety in charge of facilities (or designee) shall be responsible to approve and maintain the schedule of District's Facilities and shall ensure that City has access to the Facilities at the scheduled times.

F. Agents, employees, and contractors hired by each Party to provide supervisory, security, or other services at the Host Party's Facilities shall be and remain the agent or employee of the Party by whom the agent, employee, or contractor is hired. If no Host Party personnel are required for the Visiting Party's use of the Facilities, a Host Party may agree to provide keys to a Facility to the Visiting Party to provide access.

G. If an emergency prevents a scheduled use of a Facility by a Visiting Party, the Host Party shall notify the Visiting Party as soon as is practicable following discovery of the emergency situation, and the Host Party shall use all reasonable effort to accommodate the Visiting Party in rescheduling use of the Facility. As used herein, the term "emergency" shall mean (1) a condition of force majeure, (2) an unforeseeable human-caused event (such as vandalism or bombing), (3) extreme weather or unforeseen environmental impacts such as unsafe air quality, or (4) an unforeseeable (with the exercise of reasonable diligence) scheduling conflict with an essential (i) government function in the case of City, or (ii) a school function in the case of District.

H. District may ask City to postpone City's scheduled use of a Recreational Facility by giving City notice of such request not less than forty-eight (48) hours prior to the time that City's scheduled use of a District facility or field, thus enabling City time to reschedule or locate other facilities.

I. Each Party shall present to the other Party a list of the times during which the Party requests use of the other Party's Facilities. Such list shall project a minimum of three (3) months of time but should project as far into the coming fiscal year as is practicable. Subject to Section 2A herein, each of the Parties shall honor the other Party's request to the fullest extent possible.

SECTION 3: CONDITIONS OF USE

A. A Visiting Party's use of a Host Party's Recreational Facilities shall not interfere with the Host Party's use of its other facilities in the usual conduct of its business (i.e., governmental operations by City and school activities by District), nor be inconsistent with the intended and normal use of such Recreational Facilities (e.g., playing baseball in a gymnasium).

B. During a Visiting Party's use of the Host Party's Recreational Facilities, the Visiting Party shall:

1. provide all necessary and appropriate supervision and supplies for the activities conducted at such Recreational Facilities;

2. provide and maintain such supervision and security at such Recreational Facilities as may be necessary to ensure that all Users shall have proper access to the Recreational Facilities and shall not enter any part of the land, buildings, or improvements of the Host Party, other than the Recreational Facilities for the use of which authority is herein granted (e.g., a door propped open without being monitored by staff is a security concern and is not permitted);

i. Site Security: 1st violation is a written notice/warning; 2nd violation will result in a meeting request within two (2) business days to discuss security violation and plan for remedying identified violation; 3rd violation will result in suspension of access and a mandatory meeting prior to restoring access, which may be withheld by Host Party in its sole discretion.

3. be responsible for all expenses related to the supervision, security, and supplies required in conjunction with activities conducted at the Host Party's Recreational Facilities, and for the control, administration, and supervision of its personnel and of the programs and activities so conducted;

4. be responsible for (i) broom-cleaning and trash pick-up from both the playing surface and spectator seating areas, (ii) removal of trash and recycling from the Recreational Facilities at the end of each such use when receptacles are more than half full, (iii) returning the bleachers or equipment (such as basketball hoops) and/or seating areas to the condition in which they were found, and (iv) to the extent possible during or immediately following such use, repairing, replacing, remedying, and reporting any and all damage caused to or at such Recreational Facility by such Visiting Party's use;

5. maintain any and all records properly required for and associated with the conduct of such activities; and

6. inspect the Host Party's Recreational Facilities being used and all fixtures and equipment used therein, for safety conditions and for damage, at the beginning and end of each period of use and report any identified issues to the Host Party.

C. During a Visiting Party's use of a Host Party's Facilities hereunder, the Host Party shall provide all major equipment inherent to operation of intended use (e.g., scoreboards, basketball backboards, and volleyball standards/nets).

SECTION 4: MEETINGS

A. During the term of this Agreement, the Parties shall meet not less than three (3) times per year to discuss and determine:

1. the schedules for the use of Recreational Facilities and any projected closure dates;
2. any required maintenance or repair of the Recreational Facilities;
3. any proposed capital improvements to be made in the foreseeable future; and
4. any other matters concerning the Recreational Facilities that may arise.

SECTION 5: MAINTENANCE, REPAIRS, AND IMPROVEMENTS

A. Irrigation systems, including water scheduling, replacement of parts, drainage, electric, and water lines associated with the irrigation systems, for fields that were improved with City bond funds are the responsibility of City. The District is responsible for irrigation systems at all other District Recreational Facilities, as well as grass cutting of all fields including those previously improved with City bond funds. Repairs will be completed in a timely fashion, as soon as practical, and the schedule of repairs will be communicated quickly and updated often, including notifying District of known problems, such as ponding (so that the District is aware for school uses).

B. Neither Party shall make any repair or improvement to the Recreational Facilities or other property of the other without such other Party’s consent.

C. City shall continue to bear primary responsibility for the maintenance of the irrigation systems defined in paragraph A above at City-bond-improved Facilities that are owned by District and used by City and the general public to the standard or level to which the Facilities have been so improved. A list of City-bond-improved Facilities owned by District is attached as Exhibit B. Additional Facilities may be added to or removed from Exhibit B upon the consent of both Parties informally by administrative action.

D. City shall be responsible for an annual payment to District of twenty-five thousand dollars (\$25,000) for the maintenance and repair of District Recreational Facilities that are shared by City and the public (“Annual City Maintenance Payment”). This payment compensates District for the wear-and-tear to District Recreational Facilities due to use for City programs and use by the general public. Payments for Recreational Facility maintenance and repair shall be made at the start of each fiscal year. The Annual City Maintenance Payment may be adjusted by the Parties administratively to account for increased maintenance costs, subject to City Council appropriation. Any increases to the Annual City Maintenance Payment must be agreed to in writing by both Parties and will be attached to this Agreement as administrative addenda.

E. If, for any reason, funds are not appropriated by City to provide for maintenance of District facilities for the purposes provided in this Agreement, District may terminate the Agreement at the end of the fiscal period in which the last appropriation occurred. If District decides to continue the Agreement, despite City not making its Annual City Maintenance Payment, the missed payment(s) will not be considered a breach of this Agreement.

F. Except as otherwise provided herein, each Party shall be responsible for the maintenance and repair of its own Recreational Facilities in accordance with recreation industry standards generally, and with all health and/or safety standards, rules, regulations, and laws applicable to such Party.

G. Except as otherwise noted herein, each Party shall repair or replace any and all damage to its Recreational Facilities as soon as practicable, regardless of fault or of whose activities caused such damage. In the event that a Host Party has good cause to believe that use by the Visiting Party has caused damage, other than regular wear-and-tear, to one or more of its Recreational Facilities, then such Host Party shall, as soon as practicable, notify the Visiting Party of the nature and extent of such damage, the date and time it is believed to have been caused, the cost of repair or replacement (as necessary), and all other information available to the Host Party indicating the source or cause of such damage. Upon such notification, if the Visiting Party agrees that it or one of its approved Users caused the damage, it may either complete such repair or replacement with the consent of the Host Party, or agree to pay for the cost of such repair or replacement. The Visiting Party shall reimburse the Host Party for the cost of the repairs or replacement, within thirty (30) days of delivery of invoices showing the actual cost of repair or replacement, or complete the repairs or replacement within thirty (30) days of notification of the damage. If the Visiting Party does not agree that it or one of its approved Users caused the damage, the Parties shall attempt to resolve the matter as described in Section 12 of this Agreement.

SECTION 6: INDEMNIFICATION

To the extent allowed by Arizona law, each Party (as “Indemnitor”) agrees to indemnify, defend, and hold harmless the other Party (as “Indemnitee”) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney’s fees) (hereinafter collectively referred to as “Claims”) arising out of this Agreement, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor or its officers, officials, agents, employees, or volunteers.

SECTION 7: INSURANCE

Each Party to this Agreement shall procure and maintain for the duration of the Agreement, Commercial General Liability insurance against claims for injury to persons or damage to property which may arise from or in connection with this Agreement. Such policy shall

include broad form contractual coverage and shall name the other Party as an additional insured. Nothing in this Section shall be construed to prohibit a Party from being self-insured.

The minimum amount of Commercial General Liability coverage shall be in the amount of One Million Dollars (\$1,000,000) for each occurrence and a Two Million Dollar (\$2,000,000) General Aggregate Limit.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement.

SECTION 8: OWNERSHIP OF EQUIPMENT, FIXTURES, AND IMPROVEMENTS

All tangible personal property (such as equipment, supplies, and materials) brought to or used upon a Recreational Facility shall be and remain the property of the Party providing the personal property. All fixtures and improvements installed or affixed in or upon a Recreational Facility shall become the property of the Host Party at the time installed or affixed.

SECTION 9: AUTHORITY TO CONTRACT

Each Party represents and warrants that it has full power and authority to enter into this Agreement, to perform its obligations under this Agreement, and has taken all required acts or actions necessary to authorize the execution and performance of the Agreement. Each Party represents and warrants that the person signing this Agreement on that Party's behalf has been duly authorized by the Party to sign and bind the Party to this Agreement.

SECTION 10: NOTICES

Unless otherwise specified herein, any notice or other communication required or permitted to be given under this Agreement shall be in writing and sent to the address given below for the Party to be notified, or to such other address, notice of which is given in compliance with this Section:

If to the City:

Parks, Recreation, Open Space, and
Events Director
City of Flagstaff
211 West Aspen Avenue
Flagstaff, Arizona 86001

If to the Flagstaff Unified School District:

Superintendent
Flagstaff Unified School District No.1
3285 East Sparrow Avenue
Flagstaff, Arizona 86004

SECTION 11: EFFECTIVE DATE AND TERM

The term of this Agreement shall be five (5) years from its effective date, and is subject to automatic renewal one (1) successive five (5) year period unless either Party elects to terminate in accordance with the terms and conditions of this Agreement.

SECTION 12: DISPUTE RESOLUTION

The Parties hereby covenant and agree to make all reasonable efforts to resolve any and all disputes arising under this Agreement by such informal method of dispute resolution as shall provide the most efficient, expeditious, fair, and inexpensive resolution of such matter.

SECTION 13: INTEGRATION

Each of the Parties acknowledges and agrees that it has not relied upon any statements, representations, agreements, or warranties, except as expressed herein, and that this Agreement constitutes the Parties' entire agreement with respect to the matters addressed in the Agreement. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are hereby superseded and merged in the Agreement.

SECTION 14: TERMINATION

This Agreement may be modified or amended only by written agreement executed by both of the Parties. Any such modification or amendment will become effective when executed by both Parties.

This Agreement may be terminated by either Party for any or no reason upon the terminating Party delivering notice of intent to terminate to the non-terminating Party not less than ninety (90) days prior to the effective date of such termination. If the Agreement is terminated by either Party, District will reimburse City a pro-rated amount of the Annual City Maintenance Payment based on the months remaining in the fiscal year for which the Annual City Maintenance Payment was made as of the date of termination.

Each Party acknowledges that this Agreement may be terminated as provided in Arizona Revised Statutes § 38-511.

SECTION 15: NO ASSIGNMENT; BINDING EFFECT

The benefits of this Agreement may not be assigned by either Party. The duties and obligations of this Agreement may be delegated by either Party and shall be binding upon the successors and delegees.

SECTION 16: SEVERABILITY

In the event that a court of competent jurisdiction shall hold any part or provision of this Agreement void or of no effect, the remaining provisions of this Agreement shall remain in full force and effect, to the extent that the continued enforcement of such remaining terms shall continue to reflect substantially the intent of the Parties hereto.

SECTION 17: WAIVER

No failure to enforce any condition or covenant of this Agreement shall imply or constitute a waiver of the right to insist upon performance of such condition or covenant, of or any other provision hereof, nor shall any waiver by either Party of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach hereunder.

SECTION 18: GOVERNING LAW

This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Arizona.

SECTION 19: COUNTERPARTS

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

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

CITY OF FLAGSTAFF, AN ARIZONA
MUNICIPAL CORPORATION

FLAGSTAFF UNIFIED SCHOOL
DISTRICT NO. 1 OF COCONINO
COUNTY ARIZONA, A POLITICAL
SUBDIVISION OF THE STATE OF
ARIZONA

By: _____
Mayor

By: _____
Superintendent

Attest: City Clerk

Attest:

In accordance with A.R.S. Section 11-952, the undersigned, as legal counsel for the City of Flagstaff, has reviewed the foregoing intergovernmental agreement and has determined that it is in appropriate form and is within the powers and authority granted to the City.

City Attorney's Office

In accordance with A.R.S. Section 11-952, the undersigned, as legal counsel for Flagstaff Unified School District No. 1, has reviewed the foregoing intergovernmental agreement and has determined that it is in appropriate form and is within the powers and authority granted to the DISTRICT.

MANGUM, WALL, STOOPS AND WARDEN, PLLC

Attorneys for Flagstaff Unified School District No. 1

Exhibit A

City Use of District Facilities

Mount Elden Middle School dome
Flagstaff High School gym and dome
Coconino High School gym
Sinagua Middle School gym

District Use of City Facilities

Thorpe senior baseball fields
Thorpe multipurpose field
Thorpe softball complex
Foxglenn baseball diamond, softball field, and soccer fields
Continental baseball fields numbers four and five
Thorpe Duck Pond field
Thorpe tennis courts numbers one through four
Hal Jensen Recreation Center tennis courts

Public Use of District Facilities arranged by City

Mount Elden Middle School field
Sechrist Elementary School field
Summit High School (formerly Christensen Elementary) field
DeMiguel Elementary School field
Cromer Elementary School field

Public Use of District Facilities arranged by District

Mount Elden Middle School gym

Exhibit B

Mount Elden Middle School multi-use field
Sechrist Elementary School, 2 multi-use fields
Thomas Elementary School multi-use field