



**INTERGOVERNMENTAL AGREEMENT  
EXTENSION LETTER**

February 15, 2023

Pendergast Elementary School District No. 92  
ATTN TO: Joanne Fimbres  
SENT VIA EMAIL: [jfimbres@pesd92.org](mailto:jfimbres@pesd92.org)  
3802 N 91<sup>st</sup> Avenue  
Phoenix, AZ 85037

**Subject:** Contract Extension 1 of 3 for Contract No. C18-0447 (City Clerk Number)  
Contract Title: Intergovernmental Agreement regarding the use of the Desert Mirage Joint Park Site between the City of Glendale and the Pendergast Elementary School District No. 92

Dear Ms. Fimbres,

The current term of the Intergovernmental Agreement for the use of the Desert Mirage Joint Park Site (“IGA”) is expiring on April 3, 2023. Under Section 6 of the IGA, the Parties may extend the term of the IGA on conditions acceptable to both City of Glendale and Pendergast Elementary School District No. 92. The City wishes to exercise the right to extend the contract for a five-year period from April 3, 2023 through April 3, 2028, with no change(s) to the existing terms and conditions in the IGA. This letter provides a five-year extension only. There are two extensions remaining. The City will inform you at a later date whether it wishes to exercise the options to extend the term of the IGA further.

Please send a signed copy of the updated insurance certificate or certificate of self-insurance for the extension term to the address or email below before the new extension starts.

Sincerely,

\_\_\_\_\_  
Kevin R. Phelps  
City Manager

Public Facilities, Recreation and Special Events  
C/O Diane Williams, Program Manager  
5959 W. Brown Street, 2<sup>nd</sup> Floor  
Glendale, AZ 85302  
[dwilliams@glendaleaz.com](mailto:dwilliams@glendaleaz.com)

Pendergast Elementary School District No. 92

\_\_\_\_\_  
Signature Above  
Joanne Fimbres, Chief Financial Officer

\_\_\_\_\_  
**City Department Director Approval**

**PROCUREMENT REVIEW: \_\_\_\_\_ (initials)**

\_\_\_\_\_  
**Julie K. Bower, City Clerk**  
City of Glendale

When Recorded Return to:  
City of Glendale  
5850 W Glendale Ave  
Glendale, AZ 85301

**INTERGOVERNMENTAL AGREEMENT**

regarding the use of the

**DESERT MIRAGE JOINT PARK SITE**

between the

**CITY OF GLENDALE**

and the

**PENDERGAST ELEMENTARY SCHOOL DISTRICT. NO. 92**

THIS INTERGOVERNMENTAL AGREEMENT REGARDING THE USE OF THE JOINT PARK SITE is made and entered into this 3 day of April, 2018 by and between the CITY OF GLENDALE, a municipal corporation, hereinafter referred to as "City," and the PENDERGAST ELEMENTARY SCHOOL DISTRICT NO. 92, hereinafter referred to as "District" (individually a party and collectively the parties).

**BACKGROUND**

WHEREAS, the parties desire to enter into an agreement by which the District Park Site (a portion of APN 102-04-038D, located at 87<sup>th</sup> Avenue and Maryland Avenue, excluding the parking lot and community building with adjacent basketball court) and the City Park Site (a portion of APN 102-04-038C, located at 87<sup>th</sup> Avenue and Maryland, excluding the parking lot entrance) will be used as a joint park site. Hereinafter, the District Park Site and the City Park Site will be referred to collectively as the "Joint Park Site" (as depicted in Exhibit A, attached hereto and incorporated herein); and

WHEREAS, the District and the City are authorized to enter into intergovernmental agreements for services or for the exercise of joint or common powers pursuant to A.R.S. §§ 11-951 et seq.; and

WHEREAS, the District is further authorized to enter into this Agreement pursuant to the provisions of A.R.S. §§ 15-342 (13), 15-363 and 15-364; and

WHEREAS, the City is further authorized to enter into this Agreement pursuant to the provisions contained in Article I of the City Charter.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and agreements of the parties herein contained, it is agreed as follows:

## TERMS OF AGREEMENT

### 1. USE OF JOINT PARK SITE

1.1 Ownership. The District shall remain the sole fee simple owner of the District Park Site, and the City shall remain the sole fee simple owner of the City Park Site.

1.2 Use. The District shall have the exclusive right to use, control and scheduling of the Joint Park Site from 12:00 a.m. to 4:00 p.m. on Monday – Friday, excluding school holidays and vacations, during the Districts approved governing board school calendar, which is anticipated to be from approximately September 1, through May 31. At all other times, the City shall have the exclusive right to the use, control and scheduling of the Joint Park Site unless the District obtains the City's permission to use the Joint Park Site during such times.

### 2. MAINTENANCE AND IMPROVEMENTS

2.1 Improvements. Unless otherwise set forth in this Agreement or agreed to in writing:

- a. Neither party shall make any improvements to the Joint Park Site without the prior written consent of the other party;
- b. In the event that either party makes any improvements to the Joint Park Site without the prior written consent of the other party, the party making such improvements shall be solely responsible for the costs of the improvements and/or the removal of the same.
- c. Notwithstanding anything herein to the contrary, the parties agree to split the cost of normal elementary school playground equipment and such other equipment as the parties may mutually agree to purchase (collectively referred to as the "Equipment"), only with each party's written approval and consent given in accordance with the following procedure: Should either party desire for the other party to split the cost of the Equipment, the party desiring such purchase shall provide written notice of its purchase of the Equipment or intent to purchase the Equipment, together with such other supporting documentation, invoices and purchase orders. The party receiving such notice as supporting documentation shall have fifteen (15) days to review the notice and supporting documentation and to determine, in its sole discretion, whether to consent to splitting the cost with the other party. Failure of the party receiving the notice to give its consent within such fifteen-day period shall be deemed to be such party's disapproval thereof.

2.2 Liens. Neither party shall cause or permit any mechanic's lien to be filed against the Joint Park Site for work claimed to have been done for or for materials claimed to have been supplied to such party. If any such lien is filed against the Joint Park Site, the party for whom it is claimed work was done or to whom it is claimed materials were supplied shall, at its sole expense, cause such lien to be discharged within thirty (30) days. The party contracting for improvements to the Joint Park Site shall ensure that the contractor(s) procures and maintains appropriate payment and performance bonds.

2.3 Ownership; Compensation. Any improvements to the Districts Park Site shall become the property of the District and any improvements to the City Park Site shall become the property of the City;

provided that in the event this Agreement expires or is terminated, compensation shall be paid as follows:

- a. The difference between the fair market value of all improvements jointly funded during the term of this agreement to the District Park Site and the fair market value of all improvements jointly funded during the term of this agreement to the City Park Site shall be determined; improvements funded by only one party shall not be included in the determination;
- b. If the value of the jointly funded improvements to the District Park Site exceed the value of the jointly funded improvements to the City Park Site, the District shall pay the City the sum of one-half of such difference; and
- c. If the value of the jointly funded improvements to the City Park Site exceed the value of the jointly funded improvements to the District Park Site, the City shall pay the District the sum of one-half of such difference.

#### 2.4 Maintenance.

- a. The City shall maintain and keep the Joint Park Site and all improvements thereon in a clean, safe and useable condition, including necessary landscaping, grass cutting, fertilization and maintenance of a sprinkler system, sports courts, and playground equipment.
- b. The District shall pick up any litter left during its use of the Joint Park Site. The District is responsible for inspecting the Joint Park Site prior to use each day and reporting any unsafe conditions observed.
- c. All costs of repairing and maintaining the Joint Park Site, including Salt River Project water assessments for the Joint Park Site, shall be split evenly between the District and the City. The City shall invoice the District annually by June 30<sup>th</sup> of each year for reimbursement of the District's share of the Joint Park Site maintenance for that year ending June 30<sup>th</sup> and the District shall remit payment to the City on or before August 31<sup>st</sup> of each year. All ordinary personnel costs to the District and the City for ordinary maintenance of the Joint Park Site pursuant to this Section shall be borne solely by the party responsible for performing such maintenance.
- d. In the event that either party incurs extraordinary personnel expenses for maintaining the Joint Park site resulting from the other party's use of the Joint Park Site, the party whose use of the Joint Park Site necessitates the extraordinary expenses shall be responsible for reimbursing the other party for the extraordinary expenses.

### 3. SINKING FUND.

The parties shall establish a sinking fund (the "Fund") for the purchase, repair and replacement of Equipment and other agreed upon expenditures. The Fund may be used to purchase signs calling out priority use for the District at the Joint Park Site during the District use times. The Fund shall be maintained in a City Trust Account and all expenditures shall be made on purchase orders authorized by the City Manager or his or her designee. Each party shall annually, on or before July 1, deposit \$1,500.00 in the Fund until the Fund reaches a total of \$15,000.00. At such time, the District and the City shall cease making annual deposits until the Fund is expended below \$3,000.00, at which time both parties shall recommence annual deposits until the Fund again reaches \$15,000.00.

### 4. INDEMNIFICATION; NOTICE OF CLAIM

To the extent permitted by law, each party shall defend, indemnify and hold harmless the other party and its departments, officers, employees and agents from all losses, damages, claims, liabilities and expenses (including reasonable attorney's fees) for damages to property or for injury to or death of persons which relate to the performance of this Agreement and which result from any sole or negligent act of omission of the indemnifying party or its departments, officers, employees or agents.

## 5. INSURANCE

5.1 Coverage. Each party shall provide and maintain in full force while this Agreement is in effect:

- a) Public liability and property damage insurance from a reliable insurance company authorized to transact business in Arizona in the amount of not less than \$2,000,000 for bodily injury or death to more than one person, one occurrence; or
- b) An adequately funded self-insurance program for such liability and damage claims which complies with all applicable laws, rules and regulations.

Each party shall, in its sole discretion, make its own decision as to whether it will maintain said insurance through an insurance company or, alternatively, whether it will maintain said self-insurance program. Each party shall provide the other party with appropriate certificates of insurance showing the other party as an additional named insured or certificates of self-insurance.

5.2 Notice of Claims. Notice of any possible injury, loss or damage which may be covered by insurance or indemnification must be given immediately by the party aware of such an occurrence to the other party.

5.3 Determination of Primary Insurance and Defense. In the event that a claim is made against either or both parties to this Agreement, the primary insurance or self-insurance, and costs associated with the defense of the claim and any judgment, shall be that of the party who was assigned the use of the Joint Park Site, as provided in Section 1.2, at the time of the damage, injury or death, absent a showing that the damage to property or injury to or death of person(s) arose out of the sole act, omission or negligence of the other party or its departments, officers, employees and agents.

## 6. TERM.

The term of this Agreement shall be for five (5) years, commencing on the date of approval unless it is sooner terminated in accordance with Section 7 below. This agreement may be renewed for three (3) additional five-year periods at the end of each term only by the written consent of both parties.

## 7. TERMINATION.

7.1 Default. This Agreement may be terminated by either party for material cause one (1) year after written notice is given to the defaulting party specifying the cause if the default is not cured within said one-year period.

7.2 For Convenience. Either party may terminate this Agreement for any reason or for no reason, effective July 1<sup>st</sup> of any year, by giving the other party at least 90 days' notice.

7.3 Cancellation. Each party reserves all rights that it may cancel this Agreement for possible conflicts of interest under A.R.S. Sec. 38-511 as amended.

8. ASSIGNMENT

Neither party may assign, sublet, mortgage or encumber any right or interest under this Agreement without prior written consent of the other party, which either party may withhold in its absolute and sole discretion.

9. E-VERIFY, RECORDS, AND AUDITS.

To the extent applicable under A.R.S. § 41-4401, the parties and their respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The parties each retain the legal right to randomly inspect the papers and records of the other parties and the other parties' subcontractors who work under this Agreement to ensure that the other parties and their subcontractors are complying with the above-mentioned warranty. The parties warrant to keep their respective papers and records open for random inspection during normal business hours by the other parties. Each party and its respective subcontractors shall cooperate with the other parties' random inspections including granting the inspecting party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

10. WORKER'S COMPENSATION.

An employee of either party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for the purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits which may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-1022(E).

11. NON-DISCRIMINATION.

The parties agree to comply with all provisions of applicable, federal, state, and local laws and executive orders relating to non-discrimination and equal employment opportunity and not discriminate against any employee or applicant for employment, any student, parent, staff member, member of the public or contractor on the basis of race, color, religion, sex (including sexual preference/identity), age, disability, country of national origin, veteran's status, political affiliation, or genetic code.

12. APPROPRIATION OF FUNDS.

If either party's performance under this Agreement depends upon the appropriation of funds by the Arizona Legislature or the Glendale City Council, and if the Legislature or the City Council fails to appropriate the funds necessary for performance, then the affected party may provide written notice of this to the other party and cancel this Agreement without further obligation of the effected party. Appropriation is a legislative act and is beyond the control of either party.

13. ISRAEL



My Commission Expires: 10-31-19

CITY: Phoenix

CITY OF GLENDALE,  
an Arizona municipal Corporation

Kevin R. Phelps

By: Kevin R. Phelps  
Its: City Manager

ATTEST: Julie K. Bower  
Julie K. Bower  
City Clerk (seal)

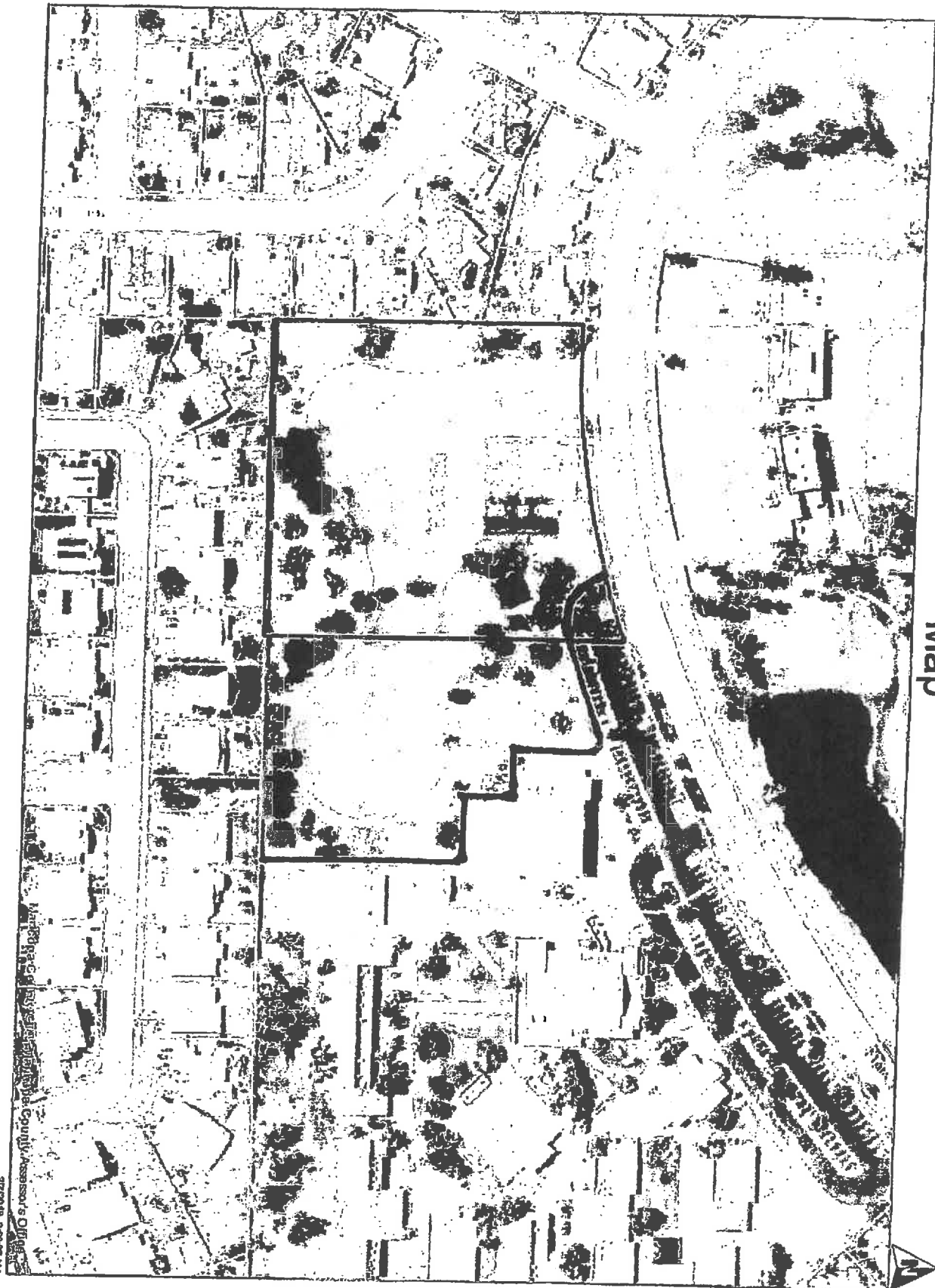
APPROVED AS TO FORM:  
Michael D. Bailey  
Michael D. Bailey  
City Attorney

Document to be recorded by City of Glendale.

**EXHIBIT A**  
**Joint Park Site Map**  
(see attached)



# Map



Map prepared by the Planning & Zoning Department  
27720118 9/20/17 AM