

RESOLUTION NO. 11-951

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, COUNTY OF YAVAPAI, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF CHINO VALLEY AND CHINO VALLEY UNIFIED SCHOOL DISTRICT FOR USE OF RECREATIONAL FACILITIES

WHEREAS, the Town of Chino Valley (“Town”) and Chino Valley Unified School District (“CVUSD”) enter into this Intergovernmental Agreement pursuant to A.R.S. § 11–952; and

WHEREAS, the respective parties desire to share the use of sports and recreation facilities for mutual benefit;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, COUNTY OF YAVAPAI, ARIZONA:

That the Town of Chino Valley is authorized to enter into the Intergovernmental Agreement with CVUSD for use of recreational facilities.

PASSED AND ADOPTED by the Mayor and Common Council of the Town of Chino Valley, Arizona this 8th day of February, 2011.

Jim Bunker, Mayor

ATTEST:

APPROVED AS TO FORM:

Jami C. Lewis, Town Clerk

Musgrove Drutz & Kack, P.C.
Town Attorney

EXHIBIT A

(To Intergovernmental Agreement Between the Town of Chino Valley and the Chino Valley Unified School District)

1. Site Supervision: Each time a facility(ies) is used by either party a site coordinator will be assigned by that user group. The name and contact number of said coordinator will be provided to each of the parties prior to the event(s).
2. Condition of Facilities: The owner of the facility ("Owner") will be responsible for the general maintenance of said facility(ies). The facility(ies) will be clean, safe and secure prior to each use by the other party. The site coordinator must report sub-standard conditions to the Owner prior to each scheduled use.
3. Access to Facilities: The Owner will provide access to the facility(ies) prior to each use by the other party through the site coordinator. If keys are needed, the Owner will assign said keys to the site coordinator in a manner consistent with their individual policy(ies),
4. Cleanliness: Each facility(ies) will be cleaned by the using group following each event. The Owner will develop a written cleaning standard for each facility, and provide the site supervisor with said cleaning standard prior to each use.

Intergovernmental Agreement
Between the Town of Chino Valley and
Chino Valley Unified School District
For Use of Recreational Facilities

This Agreement is made this **8th day of February, 2011**, by and between the Town of Chino Valley, an Arizona municipal corporation, (hereinafter referred to as "the Town") and the Chino Valley Unified School District, an Arizona School District, (hereinafter referred to as "CVUSD").

RECITALS

The Town and CVUSD enter into this Intergovernmental Agreement pursuant to A.R.S. § 11 – 952. The purpose of this Intergovernmental Agreement is to allow the Town and CVUSD to share the use of sports and recreation facilities for mutual benefit.

In order to accomplish their goals, and in consideration of the mutual undertakings of the Town and CVUSD, the parties agree as follows:

AGREEMENT

1. CONSIDERATION.

1.1 CVUSD will make available to the Town the facilities located at Del Rio Elementary School, Territorial Elementary School, Heritage Middle School and Chino Valley High School. The Town will be entitled to use the facilities and fields at those school sites set forth in Paragraph 2 below without any additional consideration being due CVUSD.

1.2 Town will make available to CVUSD the facilities as set forth in Paragraph 3 below without any additional compensation being due the Town.

2. UNDERTAKINGS BY CVUSD.

2.1 The Town will be entitled to reserve existing CVUSD facilities and new facilities that may become available in the future on a first come, first serve basis. In addition to its normal duties as a landowner, CVUSD shall be responsible for normal, reasonable and customary maintenance of fields, fencing and facilities, as set forth in **Exhibit A** attached hereto. The Town will be responsible for field markings for Town sponsored events. Whichever party is using the field on a particular day will be responsible for general clean up and maintenance, which includes trash removal. It is the responsibility of the party using the field to insure that the facility is returned in good usable condition. The Town will be entitled to use all CVUSD gymnasiums and multi-purpose rooms when they are available and not being used for school or other community purposes. When said gymnasiums and multi-purpose rooms are used by the Town, the Town will be responsible for general clean up after said use. Once CVUSD has confirmed the Town's reservation for a facility, said reservation will not be cancelled except upon five (5) business days' notice, or in the case of an emergency. The Town shall provide adequate supervision whenever programs sponsored by the Town are held on any and all CVUSD premises.

2.2 The CVUSD shall carry during the term of this Agreement comprehensive general liability insurance, with a minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for personal bodily injury and accidental death; and One Million Dollars (\$1,000,000) per occurrence and aggregate for broad form property damage; with blanket contractual coverage, including, but not limited to, the liability assumed under the indemnification provisions of this Agreement to cover the activities outlined in this Agreement. CVUSD shall hold the Town harmless and indemnify the Town, its employees and agents for, from and against any and all claims, liabilities, expenses or lawsuits which may result from the acts or omissions of the CVUSD, its employees or agents. Said insurance policy shall name the Town as an insured, and CVUSD shall provide the Town with proof of said insurance policy within thirty (30) days from the date of execution of this Agreement.

2.3 CVUSD acknowledges and agrees that all participants and spectators attending activities on Town property sponsored by CVUSD shall be subject to all applicable local, state and federal laws governing the Town.

3. UNDERTAKINGS BY THE TOWN.

3.1 With the exception of the Town's Aquatic Center located at 1615 N. Rd. 1 East, Chino Valley, AZ 86323, CVUSD will be entitled to reserve existing Town parks and recreation facilities and new facilities that may become available in the future for its athletic programs and other school sponsored activities. CVUSD acknowledges and agrees that the Aquatic Center facility is not subject to this Agreement. The specific facilities, and the times they can be used, will be determined by mutual agreement between the authorized representative for the CVUSD and the Town of Chino Valley. When Town facilities are used by CVUSD, CVUSD will be responsible for general clean up after said use. The CVUSD shall provide adequate adult supervision for all activities sponsored by the CVUSD on any and all Town property.

3.2 The Town shall carry during the term of this Agreement comprehensive general liability insurance, with a minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for personal bodily injury and accidental death; and One Million Dollars (\$1,000,000) per occurrence and aggregate for broad form property damage; with blanket contractual coverage, including, but not limited to, the liability assumed under the indemnification provisions of this Agreement to cover the activities outlined in this Agreement. The Town shall hold the CVUSD harmless and indemnify the CVUSD, its employees and agents for, from and against any and all claims, liabilities, expenses or lawsuits which may result from the acts or omissions of the Town, its employees or agents. Said insurance policy shall name the CVUSD as an insured, and the Town shall provide the CVUSD with proof of said insurance policy within thirty (30) days from the date of execution of this Agreement.

3.3 The Town acknowledges and agrees that all participants and spectators attending activities on CVUSD property sponsored by the Town shall be subject to all local, state and federal laws governing CVUSD. Specifically, the consumption of alcohol and the use of all tobacco products on school premises are strictly prohibited.

4. MUTUAL UNDERTAKINGS.

4.1 Whenever one party to this Agreement damages property which is the subject of this Agreement beyond ordinary wear and tear, notwithstanding the responsibility outlined in Paragraphs 2 and 3 herein above, that party shall be solely responsible for repairs and replacement. The foregoing shall not require the party to make or perform major repairs or replacements that would be considered capital improvements or repairs, unless damaged by such party's misuse or negligence.

4.2 Notwithstanding anything to the contrary herein, the parties hereby acknowledge that certain improvements have been made to both CVUSD property and Town property as a result of grant monies. With respect to any and all such improvements, the parties hereto agree that any conditions and obligations incurred as a result of the receipt of and use of those grant monies will remain an obligation of the respective parties hereto.

4.3 With respect to all outdoor field lighting, water and septic services, which are currently in existence, or shall be brought into operation through improvements or development, each party agrees to remain responsible for the costs involved in the operation and maintenance of said systems belonging to each respective party.

4.4 With respect to the parties' responsibility to fertilize and maintain fields, each party agrees to remain responsible for the costs involved in the operation and maintenance of said fields belonging to that party.

4.5 There shall be no monetary charge to either party for use of the facilities as described in Paragraphs 2 and 3 above, except that consideration as set forth in this Agreement between CVUSD and the Town of Chino Valley. The owner of the specific facility will be responsible for providing access (either in the form of personnel who can provide access, or by providing the other party with a key, and said key shall not be duplicated.)

5. TERM.

The term of this Agreement shall be for a period of 2 years beginning on the Effective Date as defined in Paragraph 8 below.

6. DEFAULT.

In the event of the failure of either party to perform its duties within a reasonable period of time, the party requesting said performance may undertake to perform said duties (but shall not be required to do so), and may be entitled to be compensated by the defaulting party for the reasonable value of said services. In the event either party fails to perform its obligations under this Agreement in a timely manner, the parties agree to nonbinding mediation of any dispute or claim arising out of this Agreement which shall be held in Yavapai County, Arizona. All mediation costs shall be paid equally by the parties. If mediation does not resolve all disputes or claims, either party shall have the right to all legal remedies available under the law. The parties expressly covenant and agree that in the event of a dispute arising from this Agreement, each of the parties waive any right to a trial by jury. In the event of litigation, the parties agree to submit to a trial before the Court. Should any proceeding or litigation be commenced between the parties concerning the terms of this Agreement, or the rights and duties of the parties, the prevailing party in such proceeding

or litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for the prevailing party's attorneys' fees.

7. ASSIGNMENT.

This Agreement may not be assigned by either party hereto.

8. EFFECTIVE DATE.

Upon execution by the parties, this intergovernmental agreement shall be promptly recorded with the Yavapai County Recorder and shall become effective upon the date recorded.

9. RECORDS.

All books, accounts, reports, files and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by either party for five (5) years after completion of the contract. All such documents shall be produced at such offices as designated by either party in writing to the other.

10. CANCELLATION.

Either party, after execution of this Agreement, may cancel this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of either party hereto, has, at anytime while the contract or any extension of the contract is in effect been an employee or agent of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract, pursuant to A.R.S. § 38-511 (A). All provisions of A.R.S § 38-511 are applicable to this Agreement.

11. NOTICE.

All notices or demands upon any party of this Agreement shall be in writing and shall be delivered in person or sent by certified or registered mail through the United States Postal Service, postage prepaid, with return receipt requested, addressed as follows:

Town: Attn: Town Manager
 Town of Chino Valley
 P.O. Box 406
 1020 W. Palomino Rd.
 Chino Valley, AZ 86323

Copy to: Musgrove, Drutz, Kack PC
 1135 W. Iron Springs Rd
 Prescott, AZ 86305

CVUSD: Duane Noggle
Superintendent
Chino Valley Unified School District
P.O. Box 225
650 E. Center St.
Chino Valley, AZ 86323

Copy to: Thomas Stoxen
Yavapai County Attorney
255 E. Gurley
Prescott, AZ 86301

Notice given by personal delivery shall be deemed to have been given upon delivery to the appropriate address (or upon refusal of acceptance), notice given by certified or registered U.S. mail shall be deemed have been given three (3) days after deposit in the U.S. mail. Each party may designate from time to time, another address in place of the address hereinabove set forth by notifying the other parties in the same manner as provided in this paragraph.

12. MISCELLANEOUS.

12.1 This Agreement is made in and shall be interpreted pursuant to the laws of the State of Arizona. Proper venue for any action arising from this Agreement shall be Yavapai County, Arizona. If any provision of this Agreement is rendered or declared illegal or unenforceable by reason of any existing or subsequently enacted statute, rule or regulation, or by order of or judgment of a court, all other terms and provisions of this Agreement shall remain in full force and effect as stated and set forth herein.

12.2 This Agreement constitutes the entire understanding of the parties and no representations, either oral or written, made prior to its execution shall vary or modify the terms thereof. This Agreement may only be modified by an instrument in writing signed by all of the parties hereto.

12.3 The parties acknowledge that time is of the essence.

12.4 The parties enter upon this Agreement and agree to exercise their good faith towards each other in accomplishing the goals of this Agreement.

12.5 The parties agree to execute such documents and instruments as may be necessary to effectuate the intent of this Agreement.

12.6 This Agreement is not intended to create any rights on behalf of any third parties.

12.7 This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all counterparts shall be construed together and constitute one and the same Agreement.

12.8 The parties acknowledge and agree that this Agreement shall not be construed for or against a party solely by virtue of all or any portion of the Agreement having been drafted by a party's attorney.

IN WITNESS hereof, the parties have executed the Agreement on the respective date appearing under each signature.

TOWN OF CHINO VALLEY

By: _____
Jim Bunker
Its: Mayor
Date: _____

ATTEST: _____

CHINO VALLEY UNIFIED SCHOOL DISTRICT

By: Duane Noggle
Its: Superintendent
Date: _____

APPROVAL OF THE CHINO VALLEY TOWN ATTORNEY

Re: IGA for Use of Recreational Facilities

I have reviewed the above referenced proposed intergovernmental agreement, between CHINO VALLEY UNIFIED SCHOOL DISTRICT and the TOWN OF CHINO VALLEY and declare this agreement to be in proper form and within the powers and authority granted to the Town under the laws of the State of Arizona.

DATED this _____ day of _____, 2011.

Musgrove Drutz & Kack, PC, Town Attorney

APPROVAL OF CHINO VALLEY UNIFIED SCHOOL DISTRICT

Re: IGA for Use of Recreational Facilities

I have reviewed the above referenced proposed intergovernmental agreement, between CHINO VALLEY UNIFIED SCHOOL DISTRICT and the TOWN OF CHINO VALLEY and declare this agreement to be in proper form and within the powers and authority granted to the Chino Valley Unified School District under the laws of the State of Arizona.

DATED this _____ day of _____, 2011.
