INTERGOVERNMENTAL AGREEMENT

This intergovernmental agreement ("Agreement") is made and entered into this 25th day of September, 2018, by and between the City of Scottsdale, an Arizona municipal corporation ("City") and Scottsdale Unified School District No. 48 of Maricopa County, Arizona ("District"), collectively referred to in this Agreement as the "Parties."

RECITALS

A. Arizona Revised Statutes Sections 11-951, et seq. provide that public agencies, including cities and school districts, may enter into intergovernmental agreements for the provision of services, or joint or cooperative action.

B. Article 1, section 3-1 of the city charter of the City of Scottsdale authorizes the City to enter into intergovernmental agreements with various public agencies, including political subdivisions of the state and school districts.

C. On or about April 30, 2001, the Parties entered into an intergovernmental agreement, entitled "Master Agreement" ("Master Agreement"), City Contract No. 2000-043-COS, in which the Parties agreed to work cooperatively in many areas of common interest, to the mutual benefit of both the City and the District.

D. In the Master Agreement, the Parties agreed to coordinate closely to facilitate efforts in delivering various services and programs and to share facilities when to do so would promote the general welfare, allow for a more efficient expenditure of public funds and maximize service to the public.

E. In furtherance of the goals of the Master Agreement, the Parties have previously entered into additional intergovernmental agreements pursuant to which the City has provided the District with assistance of various kinds, including limited, periodic maintenance and financial assistance to maintain and rehabilitate school sports fields that are heavily used by community youth sports programs, as well as District schools, at a higher level.

F. The Parties believe that it is in their mutual best interests and the community for the City to continue to assist the District by providing limited, periodic maintenance and financial assistance for the maintenance and rehabilitation of District sports fields, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, the Parties agree as follows:

TERMS

1.0. Recitals. The forgoing recitals are incorporated in this Agreement by this reference.

2.0. General. In the performance of this Agreement, the following general provisions will apply.
a. The Parties will work together collaboratively and cooperatively, as provided in this Agreement, on issues relating to the maintenance and improvement of the sports fields at certain District schools, which are used by both the schools and the public. The maintenance and improvements may include, but are not limited to, turf care and repair, mowing, fertilizing, irrigating, field preparation, litter and trash control, inspections, restroom servicing and drinking fountain cleaning/sanitizing, application of pre-emergent herbicides, aeration, topdressing, infield mix and field geometry (collectively "School Field Maintenance"). School Field Maintenance will conform to school field maintenance performance standards ("School Field Maintenance Performance Standards"), which are attached as Exhibit A.

b. School Field Maintenance will be performed in the locations at the District schools indicated on Exhibits B-K to this Agreement, which relate to the following schools ("Schools"), by Exhibit designation: Supai Middle School ("B"), Pima Elementary School ("C"), Mohave Middle School ("D"), Cochise Elementary School ("E"), Laguna Elementary School ("F"), Cocopah Middle School ("G"), Navajo Elementary School ("H"), Pueblo Elementary School ("I"), Hohokam Elementary School ("J") and Cholla Complex ("K"). The designated areas on the Exhibits B-K represent the fields ("Fields"), which will be subject to School Field Maintenance.

c. The City will assess the need for School Field Maintenance on the Fields. School Field Maintenance proposed by the City shall be subject to the prior approval of the District. The times and manner of School Field Maintenance shall be as mutually agreed by the Parties. In general, School Field Maintenance will occur during the period of District calendared breaks, before school begins in the fall, on weekends and after school ends in the summer, unless otherwise mutually agreed by the Parties, in writing. The anticipated schedule for 2018 and 2019 are attached hereto as Exhibit L. When performing School Field Maintenance, the City will use its best efforts to minimize impact to normal school activities.

d. This Agreement shall not be construed to affect any agreement existing between the Parties at the time of the execution of this Agreement, relating to the maintenance of school sites, including grass cutting, maintenance of irrigation, drainage, electric and water lines, not specifically covered by the terms of this Agreement, and other City-maintained equipment and facilities.

3.0. City Responsibilities. For the term of this Agreement, unless otherwise expressly provided herein, the City shall be responsible for the following in respect to the Fields:

a. Coordinate the type of maintenance and schedules with a designated District official, specifying maintenance tasks and schedules of when maintenance is to be performed. The Parties shall also meet, as necessary for coordination of the School Field Maintenance work, prior to work being scheduled and implemented.

b. Perform aeration, topdressing, infield mix and field geometry on Fields, as necessary and appropriate, subject to the availability of resources to perform the work.

c. Perform regular performance audits at each of the Fields to review progress in attaining compliance with School Field Maintenance Performance Standards (Exhibit A).

d. Comply with all District policies in regard to maintenance activities on school grounds.

e. Schedule public uses, during the hours of non-school use, through the Parks and Recreation Department of the City. This will include the scheduling of uses by youth sports
groups, which will be accomplished in accordance with the City of Scottsdale Youth Sports Field Allocation Policy ("Policy"), as it may be amended from time to time, or any successor policy on the same topic. A copy of the Policy is attached as Exhibit M and is incorporated herein by this reference. The City will schedule uses that do not conflict with the District's use of the Fields, as provided in section 6.0, below.

f. Provide the District Grounds Team Lead, on a semi-annual basis, a schedule of uses of the Fields for non-school hours at each respective school. The City will provide the information required by this subsection promptly after receiving the District's requests for uses, during non-school hours, as provided in subsection 6.0.c, below, and finalizing each semi-annual schedule. The City will also update such schedules to reflect any changes in a timely manner.

g. Provide consultation and expertise to the District as it relates to School Field Maintenance.

h. Communicate with District staff on a regular basis to coordinate the work provided for in the Agreement. Communicate with user groups, including community youth sports groups and organizations, regarding the status of School Field Maintenance.

i. Perform an annual review of the scheduled uses on the Fields. Upon completion, the City will share the results with the District and user groups. The review may result in a determination by the City to reduce its usage of certain Fields, at certain times of year, in the interest of maintaining the desired level of maintenance.

j. Provide financial assistance to the District, which will be used by the District to perform its responsibilities under this Agreement, as indicated in section 4.0, below. For the purposes stated in this Agreement, the City shall grant to the District the total sum of $98,262.00, during fiscal year 2018-19. The District shall submit invoices to the City for the following amounts by the following dates, and the City shall pay the invoices within 30 days of receipt:

- $24,565.50 by October 31, 2018*
- $24,565.50 by December 31, 2018
- $24,565.50 by March 31, 2019
- $24,565.50 by May 13, 2019

*or as soon thereafter as the invoice can be processed, following the Effective Date of this Agreement.

k. Financial assistance by the City to the District in future years during the term of this Agreement, and the amount of such assistance, will be submitted to the City Council annually for its consideration during the City's budget process. In 2020 and 2022 while this Agreement is in effect, City staff will meet with District staff prior to the development of their Budget Proposal to review available funding and needs to determine necessary fiscal support. The amount of any such assistance and the dates upon which the District's invoices shall be submitted to the City and the payments shall be made to the District will be set forth in a written document that will be signed by the contract administrators for the City and the District (section 9.0, below). In accordance with section 14.0 below, the City may terminate this Agreement if the City Council does not appropriate funds for the purposes provided for in this Agreement.
4.0. **District Responsibilities.** For the term of this Agreement unless otherwise expressly provided herein, the District shall be responsible for the following in respect to the Fields:

a. Provide basic maintenance to each Field including, but not limited to, regular scheduled mowing, grass cutting, maintenance of irrigation systems, drainage, water and electric service lines to the Fields, fencing and any other equipment, related to the Fields. Maintenance required to be performed by the District under this subsection, including grass cutting, shall be performed at times that do not conflict with times of scheduled public uses and coordinated with City maintenance staff.

b. Maintain the Fields in safe and usable condition, consistent with the general standards of other school sports fields in the District and as provided in the School Field Maintenance Performance Standards.

c. Repair, or cause to be repaired, immediately, any safety hazards in and around the Fields.

d. Communicate with the City Contract Administrator and City staff, as may be designated by the City Contract Administrator, on a regular basis to coordinate the work provided for in this Agreement. The District shall also communicate the terms of the Agreement to appropriate District staff, including principals and assistant principals.

e. Hire two (2), and if or when additional funds become available, hire up to a total of four (4), full-time sports field maintenance technicians ("Maintenance Technicians"), whose duties will be exclusively dedicated to the maintenance of the Fields, as provided in the School Field Maintenance Performance Standards. The District will initiate efforts to hire the Maintenance Technicians, or verify their current employment by the District, within ten (10) days of the Effective Date of this Agreement. The District shall be responsible for the payment of salaries and provision of employment benefits, including workers’ compensation insurance, for the Maintenance Technicians.

f. Purchase capital equipment needed to perform School Field Maintenance and to equip Maintenance Technicians, or provide verification of equipment in current inventory, within thirty (30) days of the Effective Date of this Agreement. The District will provide the Maintenance Technicians and others engaged in the performance of this Agreement with the resources necessary to meet School Field Maintenance Performance Standards.

g. Pay for additional turf irrigation of the Fields, including water and utility costs related to irrigating the Fields, as well as irrigation equipment repair and renovation, to conform to the standards set forth in the School Field Maintenance Performance Standards.

h. Coordinate with City staff and communicate the terms of the Agreement to appropriate District staff, including principals and assistant principals.

i. Provide the City with all applicable policies, rules, regulations and procedures as they may relate to the maintenance of school sports facilities.

j. Work in cooperation with the community youth sports groups and organizations that use District fields to define day-to-day maintenance responsibilities.
5.0. **Joint Responsibilities.** Each September that this Agreement is in effect, the City and District staff will meet to discuss matters of mutual concerns and interest, including without limitation: specific maintenance schedule for City maintenance, financial assistance, lifecycle of improvements and projected needs, and an annual status report ("Report") to be developed as follows. The Parties, with input from community youth sports groups and organizations, will develop the Report to submit to both the City of Scottsdale Parks and Recreation Department and the Scottsdale Unified School District to allow the governing bodies sufficient time to evaluate the programs and make decisions relating to School Field Maintenance for the remainder of the fiscal year. The Report will list all of the goals that were accomplished throughout the year, all of the challenges encountered, recommend any changes to the maintenance program, and report any other information relevant to this Agreement.

6.0. **School use.**

a. The District will have exclusive use and control of the Fields, during school hours, with the exception of those agreed-upon hours where maintenance activities may be taking place. "School hours" ("School Hours") means the following times, year-round, except holidays: 7:30 a.m. through 4:00 p.m., Mondays through Fridays, for elementary schools and 7:30 a.m. through 5:00 p.m., Mondays through Fridays, for middle schools. "Non-school hours" ("Non-school Hours") means all times other than School Hours and includes all school holidays and breaks, or such other times that are agreed upon by the City and school principal.

b. The District will be entitled to use the Fields during Non-school Hours when the District has a previously-approved event scheduled through the City’s Parks and Recreation Department, which shall be responsible for maintaining a schedule of use for each Field, and at such other times as are agreed upon by the City and the principal of each school.

c. The City will give priority to the District in scheduling Field uses during Non-school Hours provided that the District submits a list of its desired times of use to the City not later than June 1st of each year this Agreement is in effect, except that during the first year this Agreement is in effect, the District shall submit its list to the City twice: the first submission shall be due within 30 days following the Effective Date of this Agreement and the second submission shall be due not later than June 1st. The City will attempt in good faith to schedule any other requested use of the Fields, subsequently made by the District, during Non-school Hours, but if such requested use(s) conflicts with a use(s) previously scheduled by the City, the City will not be required to cancel the previously scheduled use(s).

d. The District’s use and priority rights for Non-school Hours apply only to District uses and not to the use by any tenant or assignee.

7.0. **Scheduled Recreational Use.** The District will permit the City to use and schedule the Fields, during Non-school Hours, for soccer, softball, baseball, lacrosse, youth football and similar activities for the use and benefit of members of the general public. The scheduling of the Fields shall be subject to the terms and conditions contained in this Agreement.

8.0. **Effective Date and Term.**

a. **Effective Date.** The effective date of this Agreement is October 19, 2018 ("Effective Date").

b. **Term.** The term of this Agreement shall be two (2) years from its Effective Date, subject to earlier termination in accordance with the terms and conditions of the Agreement.
The term of this Agreement may be extended for three (3) additional one-year periods. The Parties may extend the Agreement by written document signed by the contract administrators for the City and the District.

9.0. Contract Administrators. The contract administrator for the City ("City Contract Administrator") is the Parks and Recreation Director, who at the time of the execution of this Agreement is Reed Pryor, or designee. The contract administrator for the District ("District Contract Administrator") is the Superintendent, who at the time of the execution of this Agreement is Dr. John Kriekard. The City Contract Administrator and the District Contract Administrator will be the primary contacts for the respective Parties for matters relating to the performance of the Agreement.

10.0. Insurance. Each party will obtain such public liability insurance as is reasonably necessary to protect against claims, losses or judgments that might be occasioned by the negligent acts or omissions of the party, their employees and agents, during the time that the respective party has scheduled use of the Fields. The minimum amount of such coverage shall be in the amount of $1,000,000 for each occurrence, $1,000,000 Products and Completed Operations Annual Aggregate, and a $1,000,000 General Aggregate Limit and either or both Parties may be self-insured.

11.0. Indemnification. To the extent permitted by law, each party (as "Indemnitor") shall indemnify, defend and hold harmless, the other party and its officers, officials, employees, agents, volunteers and invitees (collectively, as "Indemnitee"), from and against all losses, damages, claims, liabilities, costs and expenses (including without limitation reasonable attorney's fees) (collectively, "Claims") arising from or out of bodily injury of any person (including death) or property damage, 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, its officers, officials, employees, agents, volunteers or invitees.

12.0. Termination. This Agreement may be terminated by either Party for any or no reason upon giving ninety (90) days' written notice to the other Party. Neither Party shall be entitled to damages of any kind as a result of the termination of this Agreement under this section. The Parties do not anticipate having to dispose of any property upon termination of this Agreement. However, to the extent that such disposition is necessary, property shall be returned to the original owner.

13.0. Notice. Any notice required or permitted to be given pursuant to this Agreement, unless otherwise expressly provided herein, shall be given in writing, either personally to the authorized representative of the other party, or by United States Postal Service certified mail, return receipt requested, as shown below or to such other street address(es) as may be designated by the respective parties in writing from time to time. The notice shall be deemed complete when received by the person receiving it or, when certified mail is used, five (5) days from the date of mailing, whichever occurs first.

Notice will be given as follows:

District to City:
City of Scottsdale
Community Services Office Manager
7447 E. Indian School Rd., Suite 300
Scottsdale, Arizona 85251
City to District:
School Superintendent
Scottsdale Unified School District No. 48 of Maricopa County, Arizona
3811 N. 44th Street
Phoenix, Arizona 85018

14.0. Non-appropriation of Funds. If, for any reason, funds are not appropriated by the City Council for the purposes provided for in this Agreement, the City may terminate this Agreement at the end of the current fiscal period. The City agrees to give written notice of termination to the District at least thirty (30) days prior to the end of its current fiscal year.

15.0. Immigration Law Compliance. Each party to this Agreement shall comply with A.R.S. §§ 41-4401 and 23-214(A).

a. Each party to this Agreement retains the legal right to inspect the records of the other party's and any contractors' or subcontractors' employees performing work under this Agreement to verify compliance with A.R.S. §§ 41-4401 and 23-214(A).

b. Failure by either party to this Agreement to comply with A.R.S. §§ 41-4401 and 23-214(A) shall be deemed a breach of this Agreement and is subject to penalties up to and including termination of the Agreement.

16.0. Compliance with A.R.S. § 35-393 (Israel Boycott). Each party certifies that it is not currently engaged in, and for the duration of this Agreement agrees not to engage in, a boycott of Israel as defined in A.R.S. § 35-393.

17.0. Miscellaneous.

a. The terms of this Agreement shall control over the terms of the Master Agreement and any other Agreement between the Parties to the extent to which they may be in conflict.

b. All of the Exhibits identified in this Agreement are incorporated herein by this reference, as if fully set forth.

c. The District shall maintain all books, papers, documents, accounting records and other evidence pertaining to amounts billed and to costs incurred and shall make such materials available for audit by the City. District's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the City to substantiate charges and claims related to this Agreement shall be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the District or any of its payees pursuant to the execution of the Agreement. The City shall not be entitled to student cumulative records or to confidential student records. The City's authorized representative shall be afforded access, at reasonable times and places, to all of the District's records and personnel pursuant to the provisions of this article throughout the term of this Agreement and for a period of three years after last or final payment.

d. This Agreement may be modified only by a written agreement signed by the Parties.
e. This Agreement shall be construed and interpreted under the laws of the state of Arizona.

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

g. Each party acknowledges that the other has the statutory right for three years after the execution of this Agreement to cancel this Agreement without penalty or further obligation if, while this Agreement is in effect, any person significantly involved in initiating, negotiating, drafting, creating or securing this Agreement on behalf of a party is (i) an employee or agent of the other party in any capacity, or (ii) a consultant to the other party with respect to the subject matter of the Agreement; as provided in A.R.S. § 38-511.

h. Nothing in this Agreement or its performance, except as provided in A.R.S. § 23-1022(D), shall be construed to result in any person being the officer, agent, employee, or servant of either party when such person, absent this Agreement and the performance thereof, would not in law have such status. 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.

i. No person or entity shall be a third-party beneficiary to this Agreement.

j. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Agreement shall remain in full force and effect and such term or provision shall be deemed to be deleted. In accordance with the provisions of A.R.S. § 41-194.01, should the Attorney General give notice to the City that any provisions of this Agreement violates state law or the Arizona Constitution, or that it may violate a state statute or the Arizona Constitution, and the Attorney General submits the offending provision to the Arizona Supreme Court, the offending provision(s) shall be immediately severed and struck from the Agreement, and the City and District shall, within ten (10) calendar days after such notice, negotiate in good faith to resolve any issues related to the severed provision(s). If the Parties are unable to negotiate a resolution to any issues related to the severed provision(s), the City may terminate this Agreement immediately.
IN WITNESS WHEREOF, the Parties have executed this Agreement by signing their names on the day and date first written above.

CITY OF SCOTTSDALE, an Arizona municipal corporation

ATTEST:

____________________________
W. J. "Jim" Lane
Mayor

Carolyn Jagger
City Clerk

In accordance with A.R.S. Section 11-952, the undersigned, as legal counsel for the City of Scottsdale 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.

Bruce Washburn
City Attorney
By: Kimberly Campbell
Assistant City Attorney

REVIEWED BY:

____________________________
Katherine Callaway
Risk Management Director

____________________________
William B. Murphy
Executive Director, Community Services

SCOTTSDALE UNIFIED SCHOOL DISTRICT NO. 48 OF MARICOPA COUNTY, ARIZONA, a political subdivision of the State of Arizona

____________________________
Barbara Pulsipher
By: Barbara Pulsipher
Its: Governing Board President

In accordance with A.R.S. Section 11-952, the undersigned, as legal counsel for Scottsdale Unified School District No. 48 of Maricopa County, 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.

____________________________
Michelle Marshall
Attorney for the District
IN WITNESS WHEREOF, the Parties have executed this Agreement by signing their names on the day and date first written above.

CITY OF SCOTTSDALE, an
Arizona municipal corporation

W. J. "Jim" Lane
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ATTEST:
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Bruce Washburn
City Attorney
By: Kimberly Campbell
Assistant City Attorney

William B. Murphy
Executive Director, Community Services

Katherine Callaway
Risk Management Director

REVIEWED BY:

SCOTTSDALE UNIFIED SCHOOL
DISTRICT NO. 48 OF MARICOPA
COUNTY, ARIZONA, a political subdivision
of the State of Arizona

By: ___________________________

Its: ___________________________

In accordance with A.R.S. Section 11-952, the undersigned, as legal counsel for Scottsdale Unified School District No. 48 of Maricopa County, 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.

Michelle Marshall
Attorney for the District
Exhibit A
(School Field Maintenance Performance Standards)

The following performance standards are used as the standard for typical public park facilities, including those parks with public sports fields. These standards have been slightly modified to apply to school sports fields. Some facilities such as drinking fountains or restrooms may not apply to certain fields.

- **Turf Care.** Reseeding or installing sod when areas are worn will occur when bermuda grass is seasonally ready. Weed control is precisely followed using both pre-emergent and post-emergent schedule as designated within the maintenance calendar (Section 3.0a). When weeds become visible, they will be reduced by spot spraying, or mechanically removed. At no time should weeds represent more than five (5) percent of the turf surface area of the sports field boundary. Fence lines will be sprayed with herbicide and temporary fence lines will be manually cut using a weed-eater.
  - **Mowing.** Infield turf shall be mowed to a level of 1 inch; outfield turf shall be mowed to a level of 1½ inches during prime baseball season*. All clippings shall be caught at the time of each mowing. Mowing shall occur at least once per week during April through October (32 weeks).

- **Fertilizer.** Adequate fertilizer should be applied seasonally to ensure that all plant material is healthy and growing vigorously. Application rates will ensure an even supply of nutrients for the entire growing season.

- **Irrigation.** Preventative maintenance shall occur weekly to ensure heads are adjusted for optimum coverage and are in good working condition. Irrigation repair shall occur within 48 working hours of reporting the issue. Watering programs shall be set according to seasonal requirements for high quality turf growth and adjusted to accommodate special events or as required to meet all water conservation efforts and Arizona Department of Water Resources allocations.

- **Field Preparation.** Field prep will consist of pitcher’s mound packing, home plate area prep, application of water (when available), and dragging of the infield once per day (Monday–Friday) during prime baseball season.

- **Litter and Trash Control.** Litter pick up shall occur a minimum of once per day, five (5) times per week. Extremely high visitation may increase the seasonal frequency. Trash receptacles will be lined and should be checked regularly to ensure trash is not over flowing at any time.

- **Inspections.** The following will be inspected on a daily basis, and any hazards found will be addressed immediately (same day):
  - Fencing
  - Player areas
  - Game equipment (soccer and lacrosse goals)
  - Trash receptacles
  - Bleachers, and any other “park furniture” present on the sports field facility
  - All areas that could pose a safety hazard to users

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Exhibit A
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- Gopher/vermin control will occur within 72 hours after reporting to ensure proper public notification.

- **Restrooms.** Shall receive once per day servicing. Where large numbers of people are present, restrooms may require servicing more frequently.

- **Drinking Fountains.** Shall be cleaned and sanitized daily.

*Prime baseball season: February - June*