



**GOVERNING BOARD AGENDA ITEM**  
**AMPHITHEATER UNIFIED SCHOOL DISTRICT NO. 10**

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**DATE OF MEETING:**     **June 18, 2013**

**TITLE:**   **Approval of Intergovernmental Agreement for the Shared Use of Reciprocal Parking Facilities Between the District and the Town of Oro Valley.**

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**BACKGROUND:**

For several months, District staff and representatives from the Town of Oro Valley have identified and discussed areas of mutual concern. One such item is the need to access additional parking facilities to accommodate the public needs for major events held by each entity. Accordingly, an Intergovernmental Agreement was drafted to address the District's use of parking facilities located on Town property, and vice versa.

Pursuant to the IGA, the District would have access to parking facilities at James D. Kriegh Park and the Oro Valley Aquatic Center for such events as graduation ceremonies and swimming meets; the Town would have overflow parking at Canyon del Oro High School for its events at both facilities.

The term of the IGA is five years from the date of approval, which the Town Council approved on June 5<sup>th</sup>.

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**RECOMMENDATION:**

The Administration recommends approval of the attached Intergovernmental Agreement.

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**INITIATED BY:**

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Todd A. Jaeger, Associate to the Superintendent

Date: June 11, 2013

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Patrick Nelson, Superintendent

**INTERGOVERNMENTAL AGREEMENT  
FOR THE SHARED USE OF PARKING FACILITIES BETWEEN THE TOWN OF  
ORO VALLEY AND AMPHITHEATER UNIFIED SCHOOL DISTRICT NO. 10 OF  
PIMA COUNTY**

This Intergovernmental Agreement is entered into pursuant to Arizona Revised Statutes, § 11-951 between the Town of Oro Valley, a political subdivision of the State of Arizona, hereinafter referred to as the "Town" and the Amphitheater School District No 10 of Pima County, Arizona, a political subdivision of the State of Arizona, hereinafter referred to as the "District", collectively the "Parties".

**RECITALS**

**WHEREAS**, the Town and the District have determined that it is in the best interests of each to enter into this Agreement;

**WHEREAS**, the District and the Town serve and share a substantial number of common constituents and taxpayers;

**WHEREAS**, the Town and the District possess and operate neighboring properties – the District's Canyon Del Oro High School and the Town's James D. Kriegh Park and Oro Valley Aquatic Center (collectively, "the neighboring properties");

**WHEREAS**, the parties' neighboring properties include automobile parking facilities, but the Town presently lacks sufficient facilities to provide parking for major events held by the Town at James D. Kriegh Park and the Oro Valley Aquatic Center;

**WHEREAS**, the Town also lacks sufficient facilities to provide parking for major events held by the Town at other locations in the Town;

**WHEREAS**, on some occasions, the District also lacks sufficient parking capacity to meet public needs for major events held by the District;

**WHEREAS**, it is to the benefit of the common taxpayers and citizens of the Amphitheater and Oro Valley communities that Town and District parking facilities be made available to their common taxpayers and citizens when necessary and appropriate, thereby maximizing the value of the investment in both Town and School facilities;

**WHEREAS**, pursuant to A.R.S. § 11-951 *et seq.*, governmental entities are empowered to jointly exercise any power common to the contracting parties and may enter into agreements with one another for joint or cooperative action;

**WHEREAS**, pursuant to A.R.S. §§ 15-341, 15-363 *et seq.*, and 15-1101 *et seq.*, the District may operate school buildings and grounds for the purpose of providing public play and recreational activities;

**WHEREAS**, pursuant to A.R.S. § 11-932, the Town may operate, maintain and improve public parks and may enter into contracts for purposes of the same;

**WHEREAS**, the District has long made its school facilities available to a broad array of civic, recreation and school related groups for their use in providing programs and services of benefit to District students and the general public; and

**WHEREAS**, pursuant to A.R.S. § 15-364, counties, cities and schools may enter into agreements for the construction, development, cooperative maintenance, operation and use of parks and recreational facilities on properties used for public school purposes and under control of school districts;

**NOW THEREFORE**, the Town and the District, in consideration of these covenants and conditions hereinafter stated, and the faithful performance thereof, do mutually agree as follows:

### **Section I. Purpose**

The purpose of this Agreement is to set forth in writing the agreement for additional shared parking in the Amphitheater and Oro Valley communities, and to set forth the rights and responsibilities of the parties relating to the use of one another's parking facilities.

### **Section II. Acknowledgements of Fiscal Restraints of the Parties.**

- A. The Town acknowledges that the District's parking facilities were constructed for the primary purpose of meeting the educational needs of the children of the Amphitheater community and that funding received by the District from the State of Arizona is limited to meeting those educational needs and that the District receives no state funding for public recreational facilities.
- B. The District acknowledges that the Town's parking facilities were constructed for the primary purpose of meeting the recreational needs of the Oro Valley community and that improvements to Town facilities are subject to budgetary constraints of the Town.
- C. Each party to this agreement acknowledges the right of either party to terminate this agreement in accordance with terms set forth herein in the event that one party's use of the other's facilities negatively impacts or impairs the capacity of the other party to maintain its facilities for their primary purpose.

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## **Section II. Responsibilities of the Parties**

### **A. Town Responsibilities**

1. When the Town is planning a major event and requires additional parking, the Town will notify the District's Facilities Usage Department about the event as early as possible and will request reservation of appropriate District parking facilities.
2. When making a request to reserve District parking facilities, the Town will only request reservation of that amount of parking which the Town fully intends to utilize.
3. The Town shall only request use of the District's parking facilities for the purpose of providing additional event parking for Town events; the Town will not request District parking facilities pursuant to this agreement for third-party events.
4. The Town shall not charge a fee to any party for parking on District facilities.
5. The Town shall be responsible for making its own determinations as to the suitability of District parking facilities for Town purposes.
6. The Town shall notify the District immediately, in writing, if the Town observes or creates any safety hazards through its use of the District's facilities. This paragraph shall not, however, create any duty of the District to make any alteration or improvement to District facilities.
7. When Town uses of Town facilities permit, Town shall permit use of the Town's parking facilities located at James D. Kriegh Park and Oro Valley Aquatic Center by patrons and employees of the District, when use is requested pursuant to Section II(B) below. Such use shall be non-exclusive.

### **B. District Responsibilities**

1. When the District is planning a major event and requires additional parking at a Town facility, the District will notify the Town about the event as early as possible and will request reservation of appropriate Town parking facilities.
2. When making a request to reserve Town parking facilities, the District will only request reservation of that amount of parking which the District fully intends to utilize.

3. The District shall only request use of the Town's parking facilities for the purpose of providing additional event parking for District events; the District will not request Town parking facilities pursuant to this agreement for third-party events.
4. The District shall not charge a fee to any party for parking on Town facilities.
5. The District shall be responsible for making its own determinations as to the suitability of Town parking facilities for District purposes.
6. The District shall notify the Town immediately, in writing, if the District observes or creates any safety hazards through its use of the Town's facilities. This paragraph shall not, however, create any duty of the Town to make any alteration or improvement to Town facilities.
7. When District uses of District facilities permit, District shall permit use of the District's parking facilities by patrons and employees of the District, when use is requested pursuant to Section II(A) above. Such use shall be non-exclusive.

## **Section II. Term**

The term shall commence on the \_\_\_\_ day of \_\_\_\_\_, 2013, and the Agreement shall end on the \_\_\_\_ day of \_\_\_\_\_, 2018, unless otherwise extended by the parties.

## **Section III. Compensation**

The reciprocity in use of one another's parking facilities and the reciprocity in the provisions of this Agreement shall be the sole form of compensation under this Agreement, the sufficiency of which is fully acknowledged by the parties.

## **Section IV. Termination**

- A. This Intergovernmental Agreement may be terminated or suspended by the Town or District upon thirty (30) days written notice. Such termination shall not relieve either party from any liabilities or costs already incurred under this Intergovernmental Agreement.
- B. The parties understand that this Agreement is subject to cancellation pursuant to A.R.S. § 38-511 of Arizona Revised Statutes, without penalty or further obligation to either party, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of any party is, at any time while this Agreement or any extension hereof is in effect,

an employee or agent of the other party, in any capacity, or a consultant to the other party, with respect to the subject matter of this Agreement.

## **Section V. Insurance**

- A. Town agrees to procure, at its expense, and maintain during the term of this agreement, a policy of general liability insurance, against claims for bodily injury, death, and property damage arising from or occurring in connection with Town's use of any portion of the District's facilities and/or the District facilities' contents. Such insurance shall name District as an additional insured and be primary and noncontributing to any coverage maintained by or on behalf of District. Such insurance shall have minimum limits of \$1,000,000.00 per occurrence, and Town shall provide District with a certificate evidencing that such insurance coverage is in effect.
- B. District agrees to procure, at its expense, and maintain during the term of this agreement, a policy of general liability insurance, against claims for bodily injury, death, and property damage arising from or occurring in connection with District's use of any portion of the Town's facilities and/or the Town facilities' contents. Such insurance shall name Town as an additional insured and be primary and noncontributing to any coverage maintained by or on behalf of Town. Such insurance shall have minimum limits of \$1,000,000.00 per occurrence, and District shall provide Town with a certificate evidencing that such insurance coverage is in effect.
- C. To the fullest extent permitted by Arizona law, each party to this Agreement shall indemnify, defend, and hold the other party, its governing board or body, officers, departments, employees and agents harmless from and against any and all suits, actions, legal or administrative proceedings, claims, demands, losses, fines or penalties, damages, liability, interest, attorney's, consultant's and accountant's fees or costs and expenses of whatsoever kind and nature, resulting from or arising out of any act or omission of the indemnifying party, its agents, employees or anyone acting under its direction or control, whether intentional, negligent, grossly negligent, or amounting to a breach of contract, in connection with or incident to the performance of this Agreement.

## **Section VI. Indemnification**

- A. As a material part of the consideration to one another under this Agreement, Town hereby assumes all risk of damage to and loss or theft of property, as well as injury or death to persons, related in any way to Town's use or occupancy of any portion of District's facilities from any cause whatsoever, including when caused in whole or in part by Town, and Town hereby waives all claims in respect thereof against District. To the fullest extent permitted under Arizona law, Town shall indemnify, defend, and save harmless District, its governing board and officers, and all of its employees, agents, and

representatives from any and all claims, notices of claim(s), demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any attorney's fees and/or litigation expenses, which may be brought or made against or incurred by District, on account of loss of or damages to any property and/or for injuries to or the death of any person(s) arising in whole or in part out of any act or omission by Town or its employees, agents, representatives, invitees, or subcontractors, or arising in whole or in part out of its and/or their use of District facilities, or arising in whole or in part out of workers' compensation claims or unemployment disability compensation claims of employees of Town or out of claims under similar such laws.

- B. As a material part of the consideration to one another under this Agreement, District hereby assumes all risk of damage to and loss or theft of property, as well as injury or death to persons, related in any way to District's use or occupancy of any portion of Town's facilities from any cause whatsoever, including when caused in whole or in part by District, and District hereby waives all claims in respect thereof against Town. To the fullest extent permitted under Arizona law, District shall indemnify, defend, and save harmless Town, its governing board and officers, and all of its employees, agents, and representatives from any and all claims, notices of claim(s), demands, suits, actions, proceedings, loss, cost, and damages of every kind and description, including any attorney's fees and/or litigation expenses, which may be brought or made against or incurred by Town, on account of loss of or damages to any property and/or for injuries to or the death of any person(s) arising in whole or in part out of any act or omission by District or its employees, agents, representatives, invitees, or subcontractors, or arising in whole or in part out of its and/or their use of Town facilities, or arising in whole or in part out of workers' compensation claims or unemployment disability compensation claims of employees of District or out of claims under similar such laws.

## **Section VII. Documents**

Unless other forms or persons are designated otherwise, all notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows, unless designated:

To Amphitheater School District:

Todd A. Jaeger, J.D.  
Assoc. to the Supt. & Gen. Counsel  
Amphitheater Unified School District  
701 W. Wetmore Rd.  
Tucson, AZ 85705

To Town of Oro Valley

Town Attorney  
Town of Oro Valley  
11000 N. La Canada Dr.  
Oro Valley, AZ 85737

Oro Valley Police Department  
11000 N. La Canada Dr.  
Oro Valley, AZ 85737

Town Manager  
Town of Oro Valley  
11000 N. La Canada Dr.  
Oro Valley, AZ 85737

#### **Section VIII. Waiver**

Waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed a waiver of any other term, covenant or condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

#### **Section IX. Arbitration**

In the event of a dispute hereunder, the parties agree to use arbitration insofar as required by Sections 12-1518 and 12-133, Arizona Revised Statutes, and rules promulgated thereunder. To the extent arbitration is not required under the above-referenced laws, and then the parties shall submit any dispute hereunder for adjudication by Arizona's state courts.

#### **Section X. Remedies**

Either party may pursue any remedies provided by law for the breach of this Agreement. No right or remedy is intended to be exclusive of any other right or remedy and each shall be cumulative and in addition to any other right or remedy existing at law or in equity or by virtue of this Agreement.

#### **Section XI. Non- Discrimination**

The parties shall comply with Executive Order 99-4 and all other applicable State and Federal employment laws, rules, and regulations, mandating that all persons shall have equal access to employment opportunities, and that no person shall be discriminated against due to race, creed, color, religion, sex, national origin or disability.

#### **Section XII. Applicable Law**

The Parties to this Agreement shall comply with all federal, state, and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within these parties, the performance of this Agreement and any disputes hereunder. Any



action relating to this Agreement shall be brought in an Arizona Court. The parties stipulate that this Agreement has been made and entered into, and shall be construed, enforced, and governed by the laws of the State of Arizona.

### **Section XIII. Miscellaneous**

- A. **Headings.** The titles or headings used in this Agreement are for general reference only and are not a part of the Agreement.
- B. **Entire Contract.** This instrument constitutes the entire agreement between the parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded and merged herein. The parties shall not be bound by or be liable for any statement or representation of any nature not set forth in this Agreement.
- C. **Amendment.** This agreement shall not be modified, amended, altered or changed except by written agreement signed by both parties.
- D. **Construction and Interpretation.** All provisions of this Agreement shall be construed to be consistent with the intention of the parties as expressed in the recitals hereof.
- E. **Waiver.** The failure of either party to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies provided by this Agreement or the party's delay in the exercise of any such rights or remedies available under this Agreement shall not release the other party from any of its responsibilities or obligations imposed by this Agreement and shall not be deemed a waiver of any right of either party to insist upon subsequent strict performance of this Agreement.
- F. **Severability.** In the event that any provision of this Agreement or the application thereof is declared invalid or void by statute or judicial decision, such action shall have no effect on other provisions and their application which can be given effect without the invalid or void provision or application, and to this extent the provisions of the Agreement are severable. In the event that any provision of this Agreement is declared invalid or void, the parties agree to meet promptly upon request of the other party in an attempt to reach an agreement on a substitute provision.
- G. **Non-Assignment.** Neither party may at any time assign this Agreement without the prior written consent of the other.
- H. **No Third Party Beneficiaries.** This Agreement is not intended to and shall not create any right in any person or entity as a third party beneficiary.

I. No Joint Venture. This Intergovernmental Agreement does not, and nothing contained in this Intergovernmental Agreement shall be construed to, create any partnership, joint venture or employment relationship between the parties or create any employer-employee relationship between the District and any Town employees, or between the Town and any District employees. Neither party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the other, including (without limitation) the other party's obligation to withhold Social Security and income taxes for itself or any of its employees.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first appearing.

TOWN OF ORO VALLEY

AMPHITHEATER UNIFIED SCHOOL  
DISTRICT NO. 10 OF PIMA COUNTY

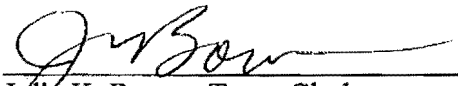
By:   
Mayor Dr. Satish I. Hifemath

By: \_\_\_\_\_  
Governing Board President

Date: 6/10/13

Date: \_\_\_\_\_

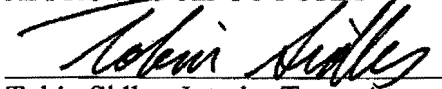
ATTEST

  
Julie K. Bower, Town Clerk

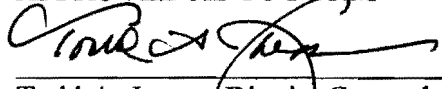
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\_\_\_\_\_  
Governing Board Vice President

APPROVED AS TO FORM

  
Tobin Sidles, Interim Town Attorney

APPROVED AS TO FORM

  
Todd A. Jaeger, District Counsel

**RESOLUTION NO. (R)13-43**

**A RESOLUTION OF THE MAYOR AND COUNCIL OF THE TOWN OF ORO VALLEY, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR THE SHARED USE OF PARKING FACILITIES BETWEEN THE TOWN OF ORO VALLEY AND AMPHITHEATER UNIFIED SCHOOL DISTRICT NO. 10 OF PIMA COUNTY**

**WHEREAS**, the Town of Oro Valley has the responsibility for the welfare of its citizens; and

**WHEREAS**, pursuant to A.R.S. § 11-951 et seq., governmental entities are empowered to jointly exercise any power common to the contracting parties and may enter into agreements with one another for joint or cooperative action;

**WHEREAS**, pursuant to A.R.S. § 11-932, the Town may operate, maintain and improve public parks and may enter into contracts for purposes of the same;

**WHEREAS**, it is to the benefit of the common taxpayers and citizens of the Amphitheater and Oro Valley communities that Town and District parking facilities be made available to their common taxpayers and citizens when necessary and appropriate, thereby maximizing the value of the investment in both Town and School facilities;

**WHEREAS**, pursuant to A.R.S. § 15-364, counties, cities and schools may enter into agreements for the construction, development, cooperative maintenance, operation and use of parks and recreational facilities on properties used for public school purposes and under control of school districts;

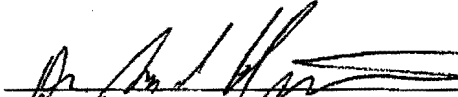
**WHEREAS**, this Intergovernmental Agreement will be in furtherance of the public health, safety and welfare of the citizens of the Town;

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and Council of the Town of Oro Valley, Arizona, that:

1. The Intergovernmental Agreement for the use of the shared parking facilities of Amphitheater School District, Pima County, by the Town of Oro Valley, attached as Exhibit A, is approved.
2. The Mayor of the Town of Oro Valley is authorized to execute the Agreement, and the Town Manager and other administrative officials are authorized to take such steps as are necessary to implement its terms.

**PASSED AND ADOPTED** by the Mayor and Town Council of the Town of Oro Valley, Arizona this 5<sup>th</sup> day of June, 2013.

**TOWN OF ORO VALLEY**

  
Dr. Satish I. Hiremath, Mayor


ATTEST:



Julie K. Bower, Town Clerk

Date: 6/7/13

APPROVED AS TO FORM:



Tobin Sidles, Legal Services Director

Date: 6/7/13