

ATTACHMENT A
INTERGOVERNMENTAL AGREEMENT
BETWEEN
CITY OF PHOENIX
AND
LAVEEN ELEMENTARY SCHOOL DISTRICT NO. 59
FOR
JOINT USE AND MAINTENANCE OF A SCHOOL/PARK SITE

This INTERGOVERNMENTAL AGREEMENT is made and entered into this ____ day of _____ 2017 by and between the CITY OF PHOENIX, a municipal corporation of the State of Arizona, hereinafter referred to as "CITY" and the LAVEEN ELEMENTARY SCHOOL DISTRICT NO. 59, hereinafter referred to as "DISTRICT" for the use and maintenance of a 17.8-acre joint school/park site located at the northeast corner of 55th Avenue and Carver Road in Phoenix, Arizona.

WHEREAS, through a Development Plan, Taylor Morrison Home Builders has obtained approval for a master planned mixed use community Planned Community District (PCD) known as Tierra Montana in 2005 and;

WHEREAS, Tierra Montana's approved uses included single and multi-family residential, a park, two school sites, and places of worship and;

WHEREAS, Taylor Morrison Home Builders wishes to modify the approved Development Plan to eliminate one of the required school sites and to combine the remaining school site with the park site, and;

WHEREAS, the CITY and the DISTRICT are amenable to the development of a joint school/park site on property dedicated to the DISTRICT by Taylor Morrison Home Builders.

NOW THEREFORE, the DISTRICT and the CITY in consideration of the foregoing and of the mutual undertakings contained herein, hereby agree as follows:

I. PURPOSE

The purpose of this Agreement is to set forth requirements for joint use and maintenance of the park/school site ("SITE") owned and operated by the DISTRICT on behalf of the City.

II. DURATION

This Agreement shall commence when it has been executed by both parties. This Agreement shall remain in effect through September 30, 2042 unless it is terminated sooner pursuant to its terms. This Agreement may be renewed with a written notice sent to the other party a minimum of thirty (30) calendar days prior to the expiration of this Agreement or prior to the expiration of any duly authorized renewal of this Agreement. Any such renewal shall be in writing and may be signed on behalf of the DISTRICT by its Superintendent and on behalf of the CITY by its Parks and Recreation Director.

III. The DISTRICT agrees to:

- A. Construct an elementary school on a portion of the SITE (9.3 acres more or less) as depicted on Exhibit A.
- B. Work in partnership with the CITY and Taylor Morrison Home Builders to plan, design and construct the neighborhood park that will share the SITE with the elementary school. A preliminary site plan is depicted in Exhibit B.
- C. Pay for any DISTRICT-desired upgrades to the neighborhood park, should any portion of the equipment to be installed by the CITY not meet the standards required by the DISTRICT.
- D. Provide parking and public access to all areas of the neighborhood park when not being used by the DISTRICT during school hours or for afterschool activities.
- E. Provide the CITY with an annual schedule of afterschool activities by August 31st of each year. Afterschool activities are limited to those activities directly administered by the DISTRICT.
- F. For the term of this Agreement, maintain landscaping and irrigation on the SITE to DISTRICT standards.
- G. For the term of this Agreement, repair or replace all recreational amenities, park infrastructure and park furniture on the SITE that are located within the school secure (fenced) area as needed and in consultation with the CITY. The DISTRICT will not maintain, repair or replace sports lighting anywhere on the SITE.
 - i. Recreational amenities include but are not limited to playgrounds, picnic ramadas, sport courts, and soccer goals.
 - ii. Park infrastructure includes but is not limited to: irrigation system, turf, trees and other landscape, walkways, fencing and parking lots.
 - iii. Park furniture includes but is not limited to: picnic tables, drinking fountains, benches, signage.
- H. For the term of this Agreement, place water utilities in the DISTRICT's name and pay water bills associated with the SITE.
- I. Upon completion of construction of the elementary school or upon completion of the neighborhood park, whichever comes first, appoint a liaison representative to coordinate use of the park with school operations.

IV. The CITY agrees to:

- A. Construct or cause to be constructed neighborhood park facilities on a portion of the SITE (8.5 acres more or less) as depicted on Exhibit A.

- B. Work in partnership with the DISTRICT and Taylor Morrison Home Builders to plan, design and construct the fields surrounding the elementary school that will share the SITE with the neighborhood park. A preliminary site plan is depicted in Exhibit B.
- C. Program and schedule use of the neighborhood park during non-school operating hours; and at any other time when the DISTRICT does not have scheduled use as provided by the annual schedule of afterschool activities.
- D. For the term of this Agreement, place electric utilities for sports lighting and any ramadas or other areas for non-school use in the CITY's name and pay all bills associated with operating the sports lights.
- E. Provide the DISTRICT with first priority scheduling of the athletic fields at no charge for after school activities, including but not limited to intramural sports based on the annual schedule of afterschool activities provided by the DISTRICT. The CITY may assess a fee in accordance with its fee schedule for sports lighting, and any additional out of pocket-costs, if applicable.
- F. For the term of this Agreement, repair or place all recreational amenities and park furniture on the SITE that are located outside the school secure (fenced) area as needed and in consultation with the DISTRICT. The CITY shall maintain, repair or replace all sports lighting at the SITE.
 - iv. Recreational amenities include but are not limited to playgrounds and picnic ramadas.
 - v. Park furniture includes but is not limited to picnic tables, drinking fountains, benches, and signage.
- G. Upon completion of construction of the elementary school or upon completion of the neighborhood park, whichever comes first, appoint a liaison representative to coordinate use of the park with school operations.

V. DEFAULT

If either party is at any time in default of any of the terms of this Agreement for a period greater than sixty (60) days after receiving written notice from either party, the Party in default shall have up to one hundred twenty (120) days to cure the default.

VI. TERMINATION

If any of the defaults cannot be cured within the specified time frame, the non-defaulting party may terminate this Agreement by providing the other party a thirty (30) calendar day written notice. Upon such termination, title to any CITY installed equipment located within school secure (fenced) area shall become the property of the DISTRICT.

VII. INSURANCE; INDEMNITY

Both parties shall carry adequate self-insurance and/or insurance to cover any claims and/or lawsuits which may arise out of the activities contemplated by this Agreement. The DISTRICT will carry liability and property damage insurance and include the CITY as an additional

insured. The CITY is self-insured up to its self-retained limits. The CITY has purchased insurance for claims over its self-retained limits. The CITY'S self-insurance and insurance covers public liability and property damage. Both parties will be liable for their respective employees' negligence, and will agree, to the extent permitted by law, to indemnify, defend and hold harmless the other party in any claims and/or lawsuits arising out of the activities contemplated by this Agreement when the damage or injury, including death, is due to the sole negligence of its employee(s).

VIII. GENERAL PROVISIONS

- A. Entire Agreement; Integration; Amendments. This Agreement constitutes the full and complete understanding and agreement of the Parties as to its subject matter. This Agreement supersedes any and all previous representations, understandings, and agreements relating to its subject matter. This Agreement may not be modified except in writing signed by both Parties.
- B. E-Verify, Records and Audits. To the extent applicable under A.R.S. § 23-214, the parties warrant their 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 party's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by either party under the terms of 'this Agreement. The parties each retain the legal right to randomly inspect the papers and records of the other party to ensure that the other party is 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 party. The parties shall cooperate with the other party's 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.
- C. Severability. This Agreement shall remain in full force and effect even if one or more of its terms or provisions have been held to be invalid or unenforceable, the term found invalid will be ineffective without invalidating the remaining terms and provisions of this Agreement.
- D. Termination for Conflict of Interest. The Parties acknowledge that this Agreement is subject to cancellation pursuant to A.R.S. § 38-511.
- E. Notices. Any notice required under this Agreement shall be delivered or sent via Certified Mail, Return Receipt Requested to the following persons and shall be effective upon delivery. The designated representatives for notice purposes may be changed by written notice to the other Party.

For the DISTRICT: Kevin Hegarty
Executive Director, Business and Operations
5001 West Dobbins
Laveen, Arizona 85339

For the CITY: Inger Erickson
Parks and Recreation Director.
200 West Washington Street, 16th Floor

- F. **Dispute Resolution.** In the event of a dispute between the parties to this Agreement regarding a provision of this Agreement, a party's performance of its obligations as stated in this Agreement or any other matter governed by the terms of this Agreement, the parties will meet in good faith to attempt to resolve the dispute. If such a meeting fails to resolve the dispute, then the parties agree that such dispute may be resolved through mediation, if mediation is agreed to by the parties. The parties shall mutually agree upon the services of one (1) mediator whose fees and expenses shall be borne equally by the parties. If the dispute is not resolved within a reasonable time, the parties shall be free to use other remedies available to them to resolve the dispute. In the event of any litigation or arbitration arising out of this Agreement, the substantially prevailing party in such litigation or arbitration shall be entitled to recover its attorney's fees, expert witness fees and other taxable costs of litigation.
- G. **Books and Records.** All books, accounts, reports, files, and other records relating to this Agreement shall be subject at all reasonable times to inspection by either party during the time this Agreement is in effect and for three (3) years after termination of this Agreement.
- H. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of Arizona as in effect from time to time, without giving effect to conflicts of law principles. Any litigation related to this Agreement shall be commenced in the courts of the State of Arizona.
- I. **Binding Agreement; No Assignment.** This Agreement shall be binding upon the successors and assigns of the Parties. The Parties may not assign this Agreement or any of its rights, or delegate any performance under this Agreement without the prior written consent of the other Party.
- J. **No Discrimination.** The parties shall not unlawfully discriminate, either in the provision of services or employment against any person on the basis of race, color, sex, gender identity, sexual orientation, religion, national origin, age, disability or veteran status.
- K. **No partnership, Employer or Joint Venture Relationship.** In forming this Agreement, the parties are exercising their respective separate powers. It is hereby expressly understood and agreed that this Agreement does not in any way or for any purpose create or intend to create the relationship of agent, servant, employee, partnership, joint venture or association as between the parties at any time during the term of this Agreement or any renewal thereof.
- L. **Adoption by Mayor and Council; Authority to Execute Minor Amendments.** This Agreement is subject to adoption by the Phoenix City Council. Upon execution of this Agreement, the Mayor and Council authorize the City Manager or designee to sign other documents or amendments, including renewals, of this Agreement as may be necessary to effectuate this Agreement and further authorize said City Manager or designee to act upon any other matters not presently contemplated but which may arise and require CITY action in order to effectuate the purpose of this Agreement.
- M. **Adoption by Governing Board of District.** This Agreement is subject to adoption by the District's Governing Board. Upon execution of this Agreement, the Governing Board authorizes the District's Superintendent or designee to sign other documents or

amendments, including renewals, of this Agreement as may be necessary to effectuate this Agreement and further authorize said Superintendent or designee to act upon any other matters not presently contemplated but which may arise and require DISTRICT action in order to effectuate the purpose of this Agreement.

- N. No Israel Boycott. By entering into this contract, the parties certify that they are not currently engaged in, and agree for the duration the Agreement to not engage in, a boycott of Israel.

SIGNATURES ON FOLLOWING PAGE

DRAFT

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first written above.

LAVEEN ELEMENTARY SCHOOL DISTRICT

BY _____
SCHOOL DISTRICT SUPERINTENDENT

CITY OF PHOENIX, a municipal corporation

BY _____
CITY MANAGER OR DESIGNEE

ATTEST

CITY CLERK

APPROVED AS TO FORM:

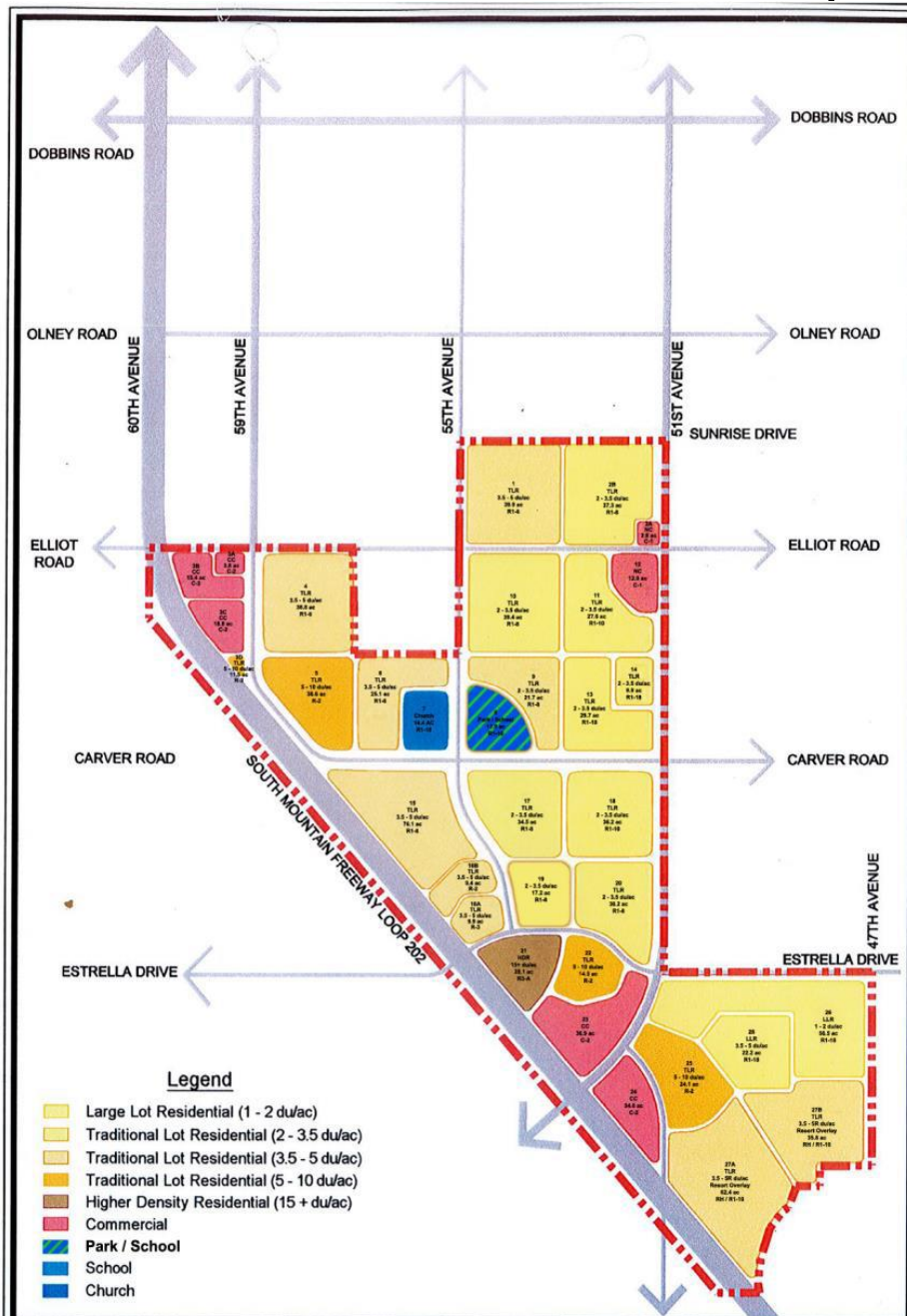
ACTING CITY ATTORNEY

APPROVED AS TO FORM:

LAVEEN ELEMENTARY SCHOOL
DISTRICT LEGAL COUNSEL

EXHIBIT A JOINT SCHOOL PARK SITE

COMBINED SCHOOL/PARK SITE



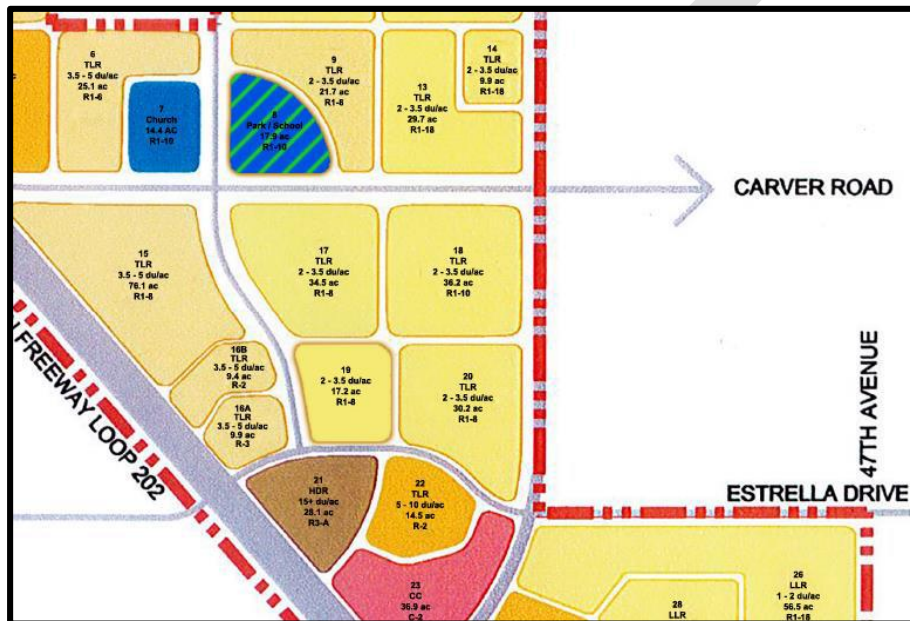


EXHIBIT B
PRELIMINARY PLAN FOR JOINT SCHOOL/PARK SITE



EXHIBIT C
LAVEEN SCHOOL DISTRICT MAINTENANCE STANDARDS

TO BE PROVIDED

DRAFT