

**INTERGOVERNMENTAL AGREEMENT BETWEEN  
THE BISBEE UNIFIED SCHOOL DISTRICT NO. 2  
& THE CITY OF BISBEE  
FOR JOINT USE OF  
PARK AREA AT MIDDLE SCHOOL**

This is an INTERGOVERNMENTAL AGREEMENT ("Agreement") between the City of Bisbee ("CITY") and the Bisbee Unified School District No. 2 ("DISTRICT") for the purpose of promoting and enhancing fitness, recreational and educational opportunities for the youth, their families and others in our community, by securing funding, developing and cooperatively sharing the use and responsibility for a park and recreation area at the district middle school property, located at 519 Melody Lane in Bisbee's San Jose area.

WHEREAS, DISTRICT is not currently using the district's middle school's outdoor grounds, which include outdoor restrooms accessible to those grounds. Said property shall be referred to herein as "PROPERTY"; and

WHEREAS, CITY and DISTRICT wish to secure funding, including grants, donations, private funding sources and public funding sources, in order to upgrade, develop and maintain the PROPERTY for recreational and/or civic group events and activities by, upgrading the existing baseball field and installing a soccer field, parking area and a playground / picnic area in a manner that is substantially similar to that set out in Exhibit A, (The "Proposed Recreational Development"), with the possibility that additional outdoor activity areas of the PROPERTY may be developed, operated and managed by the CITY; and

WHEREAS, pursuant to A.R.S. §§ 15-364(A) and (B), 15-341(A)(3), 15-342(13), 11-952, Ariz. Admin. Code R7-2-1191 *et seq* and Article 11 of the City Code, the DISTRICT and CITY are authorized to enter into an agreement with each other to provide for the construction, development, cooperative maintenance, operation and use of parks and other recreational facilities on the PROPERTY; and

WHEREAS, CITY and DISTRICT wish to better serve the recreational, educational and social needs of youth and their families and supporters throughout Bisbee by developing a park area with athletic fields and recreational activities on the PROPERTY,

THEREFORE, IT IS AGREED AS FOLLOWS:

1. CITY shall take the lead in securing funding to upgrade, develop and maintain the PROPERTY for recreational and/or civic group events and activities enhancement and shall upgrade, develop and maintain the property for those purposes if the necessary funding is secured, provided, however, that the CITY shall not implement any additional upgrades, or changes to the PROPERTY other than those in the proposed recreational development, without prior consultation and approval of the DISTRICT's Governing Board; provided further, and notwithstanding any other provision of this Agreement, the CITY shall not have any responsibility for or liability regarding the PROPERTY until and unless the CITY undertakes to upgrade, develop and maintain the PROPERTY. Subject to the foregoing, the following agreements represent the intent of the parties should the CITY, with consultation and approval of the DISTRICT's Governing Board, obtain and implement any such funding or otherwise upgrade, develop and maintain the PROPERTY for park and recreational purposes.

2. DISTRICT will grant to CITY the non-exclusive right to access, use and maintain the PROPERTY.

3. CITY will maintain the areas of PROPERTY that are developed for recreational and community use, although DISTRICT shall retain complete ownership authority, including but not limited to joint use.

4. DISTRICT makes no representation or warranty regarding the condition of PROPERTY nor regarding the suitability of PROPERTY for improving or constructing playing fields or for any other purpose facilitated by this Agreement.

5. CITY understands that no lighting is currently available for the PROPERTY, and that DISTRICT shall have no obligation to provide lighting under this Agreement unless or until CITY provides an adequate source of funding to develop and maintain it.

6. DISTRICT shall have no obligation for the payment of water, electric or other utilities for areas of the PROPERTY that CITY develops or for areas CITY otherwise utilizes on the PROPERTY unless or until CITY provides adequate funding to cover these expenses.

7. No grants, materials and/or services procured and/or provided by CITY for PROPERTY development and/or maintenance shall impair or interfere with the legitimate operations of DISTRICT.

8. Playing field development shall take into account the need for laying any necessary underground water and/or electric and/or sewer lines, and/or for avoiding damage to the same if it/they already exist; and for leveling and compacting soil according to building codes and best practices, so as to prevent flood damage to nearby buildings, address and avoid safety issues, and the like.

9. CITY and DISTRICT agree that each will perform all activities contemplated by this Agreement in a safe and responsible manner that considers DISTRICT and CITY needs and best interests.

10. PROPERTY shall be open to inspection by DISTRICT at all times.

11. CITY shall jointly utilize, with DISTRICT and with any other party the DISTRICT reasonably deems, in its sole discretion, acceptable, the PROPERTY for playing fields for the use of organized recreational sports such as boys' and girls' soccer, Little League, and other officially organized recreational groups and for such recreational, educational, social and/or civic events and activities as may be organized by civic groups and community organizations.

12. CITY and DISTRICT each agree to arrange for adequate liability insurance to cover the activities contemplated by this Agreement, to provide each other with proof of such insurance upon request and to promptly notify each other of any changes in said insurance policy.

13. CITY agrees to be responsible for any and all liability, losses, damages, costs, and expenses of any kind, for or on account of any and all suits, claims, actions or damages brought or sustained by any person or property by virtue of any alleged act, omission, fault, mistake or negligence of CITY, its employees, agents, representatives or subcontractors, and their employees, agents, representatives or subcontractors incident to the performance of this Agreement.

14. DISTRICT agrees to be responsible for any and all liability, loss, damages, costs and expenses of any kind, or on account of any and all suits, claims, actions or

damages brought or sustained by any person or property by virtue of any alleged act, omission, fault, mistake or negligence of DISTRICT, its employees, agents, representatives or subcontractors and their employees, agents, representatives or subcontractors incident to the performance of this Agreement.

15. CITY's liability policy must cover liability for general public use of the areas of PROPERTY developed by CITY, with or without considerable DISTRICT input, including the ingress and egress to those areas, unless limited by negligence of DISTRICT, its governing board members, employees, agents, representatives or subcontractors and their employees, agents, representatives or subcontractors incident to the performance of this Agreement.

16. An employee of either party shall be deemed to be an "employee" of both public agencies while performing pursuant to this IGA, for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any worker's compensation benefits which may accrue. Each party shall post a notice pursuant to the provisions of A.R.S. § 23-906 in substantially the following form:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or Contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation."

17. Each party certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a boycott of Israel, as the term is defined in A.R.S. § 35-393.

18. This Agreement constitutes the entire Agreement between DISTRICT and CITY with respect to the funding mechanisms for, modifications to and use of DISTRICT PROPERTY.

19. This Agreement may not be modified except by written instrument signed by duly authorized representatives of DISTRICT and CITY.

20. The term of this Agreement shall begin on June 1, 2017, and shall be for a period of three (3) years, unless terminated earlier by either party pursuant to the terms of paragraph 22 below. This AGREEMENT shall not become effective until it is reviewed by legal counsel and executed by both parties.

21. The terms of this Agreement are intended only to define the respective rights and obligations of the parties. Nothing expressed herein should create any rights or duties in favor of any potential third party beneficiary or other person, agent or organization. CITY acknowledges that it has not been induced to enter into this Agreement by any promise from DISTRICT or any of its agents, servants or employees, which are currently available for sale, would be sold to CITY or any potential third party beneficiary of this Agreement.

22. CITY acknowledges that this Agreement, with its basis in statutes for the expenditure of public funds for recreational facilities, may not be assigned, transferred or conveyed to any private entity, corporation, or individual; nor may it be transferred to any other governmental entity without the express written permission of both the CITY council and the DISTRICT governing board.

23. Any notice to be given, approval to be requested, or other document to be delivered to CITY or DISTRICT hereunder shall be in writing and delivered to CITY or DISTRICT by depositing same in the United States Mail, with prepaid postage thereon and addressed as follows:

TO CITY:                   City of Bisbee  
                                  Attn: Richard Marsh, City Manager  
                                  118 Arizona St.  
                                  Bisbee, AZ 85603

TO DISTRICT:            Bisbee Unified School District #2  
                                  Attn: Tom Woody, Superintendent of Schools  
                                  100 Old Douglas Road  
                                  Bisbee, AZ 85603

Notice shall be deemed given upon delivery in case of personal delivery or five (5) days following deposit in the U. S. Mail.

24. This Agreement may be terminated before the expiration of the annual term as follows:

a. This Agreement may be terminated by either party at any time without cause, provided that the party terminating the Agreement gives sixty (60) days notice in writing to the other party; and further provided that the termination does not occur during a previously scheduled competitive season without express written permission from both Parties; provided further, that if the CITY undertakes to upgrade, develop and maintain the PROPERTY pursuant to this Agreement, and thus invests time, resources and money, the parties may negotiate in good faith an agreement that does not allow for termination on sixty (60) day notice.

b. If a situation arises that causes the DISTRICT to believe that a matter of the health or safety of the public has arisen and that this matter is within the control of the CITY to remedy, the DISTRICT may give notice to the CITY of the existence of the health or safety issue along with a demand that the situation be remedied within seventy-two (72) hours. If the situation is not remedied within that time period, the Agreement may be terminated at the sole discretion of the DISTRICT. Termination shall not relieve the CITY from its obligation to pay funds for materials or for water and utility usage already provided.

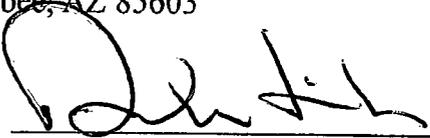
c. If CITY utilizes the property for any purpose other than as recreational fields or as fields otherwise contemplated by this Agreement, DISTRICT may give CITY seventy-two (72) hours' notice to remedy the nonconforming use. If the CITY fails to remedy the nonconforming use after receiving notice, the DISTRICT may immediately terminate this Agreement.

d. This Agreement may be cancelled pursuant to A.R.S. § 38-511, the pertinent provisions of which are incorporated herein by reference.

IN WITNESS WHEREOF the parties hereto have executed this AGREEMENT this

6<sup>th</sup> day of June, 2017.

CITY OF BISBEE  
118 Arizona St.  
Bisbee, AZ 85603

By:   
David Smith, Mayor

ATTEST:

Ashlee Coronado  
Ashlee Coronado, City Clerk

APPROVED AS TO FORM:

B  
Britt Hanson, Bisbee City Attorney

BISBEE UNIFIED SCHOOL DISTRICT #13

By: Carol Loy  
Carol Loy President Bisbee Unified School District Governing Board

ATTEST:

Maria Flores  
By: Maria Flores

APPROVED AS TO FORM:

acarl  
Anne Carl, Attorney for District



Albert N. Hopper, Jr.  
ARCHITECT

P. O. Box ABC  
Bisbee, AZ 85803  
Phone 520-432-5795  
Cell 520-243-0891  
ahopperarch@gmail.com

CONSULTANTS  
CIVIL ENGINEER:

STRUCTURAL ENGINEER:

MECHANICAL ENGINEER:

ELECTRICAL ENGINEER:

LANDSCAPE ARCHITECT:



MULTI-USE PARK  
A PARTNERSHIP  
BISBEE SCHOOLS  
CITY OF BISBEE

Melody Ln & San Jose Dr  
Bisbee, Arizona

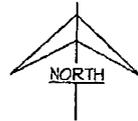
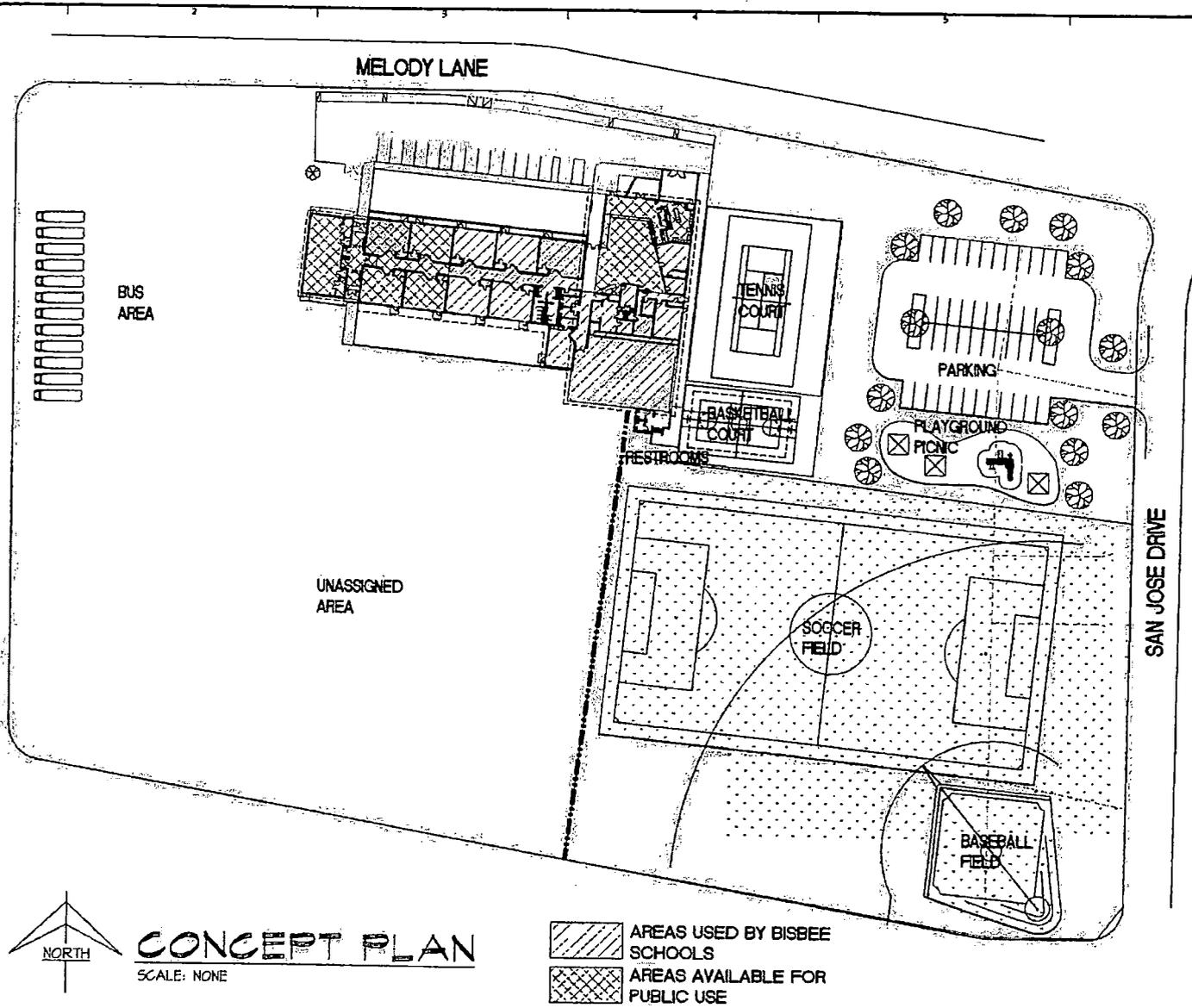
SHEET ISSUE  
DATE: February 20, 2011  
REVISIONS  
A  
B  
C

SHEET MANAGEMENT  
Cons. No.  
Drawn By: A. Hopper  
Checked By: A. Hopper

DRAWINGS ON THIS SHEET  
CONCEPT PLAN

SHEET

A-1



# CONCEPT PLAN

SCALE: NONE

-  AREAS USED BY BISBEE SCHOOLS
-  AREAS AVAILABLE FOR PUBLIC USE