

**SERVICE AGREEMENT
PROVIDING COMMUNITY ACCESS TO RESOURCES**

**TOWN OF PRESCOTT VALLEY
AND
WESTWIND CHILDREN'S SERVICES**

THIS AGREEMENT, entered into this 8th day of September, 2011, by and between the TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona (hereinafter the "Town"), and WESTWIND CHILDREN'S SERVICES, INC., a non-profit corporation of the State of Arizona (hereinafter "WCS");

WITNESSETH:

WHEREAS, WCS is the operator of a charter school located at 9030 E. Florentine in Prescott Valley, Arizona, in accordance with AQRS §15-183 and may enter into contracts for various purposes related to its operation of the school; and

WHEREAS, cities and towns are authorized to establish and maintain public parks, and implied therein is authority to establish and operate recreation programs for their citizens in those parks and in other public grounds and facilities [ARS §§9-494(A) and 11-932(A)]; and

WHEREAS, it is in the public interest and economically desirable for local governments to cooperate with charter schools as well as public schools in providing recreational resources; and

WHEREAS, the WCS Governing Board and the Town Council find that this service agreement (Agreement) is similar in scope to the intergovernmental agreement between the Town and Humboldt Unified School District under ARS §11-952, and is otherwise consistent with the health, safety and welfare needs of the community;

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein, the parties hereto enter into this Agreement as follows:

Section 1. TERM. The term of this Agreement shall begin on the date first-above written, and shall remain in force from year to year unless sooner terminated as set forth in Section 9 hereinafter.

Section 2. PURPOSE. The purpose of this Agreement is to establish and maintain a cooperative arrangement whereby WCS and the Town mutually share designated property, buildings and facilities in the operation of their respective recreational, leisure and cultural programs.

Section 3. DESIGNATED PROPERTY, BUILDINGS AND FACILITIES. WCS and the Town shall mutually share the following designated property, buildings and facilities without payment of compensation to the other (except as set forth herein).

WCS may use the following Town Property, Buildings and Facilities:

- * The general recreation areas (including restrooms and ramadas), and all athletic fields with no limitations on year-round use, *subject to* (a) availability, (b) Town rules and regulations as amended from time to time, (c) WCS general clean-up of the area after use; and
- * the Civic Center (including amphitheater and outdoor plazas); and
- * the Prescott Valley Public Library, including auditorium and other meeting rooms.

The Town may use the following WCS Property, Buildings and Facilities:

- * the Canyon View Preparatory High School (CVPHS) campus including, all athletic fields, athletic facilities, classrooms, and other agreed upon locations with no limitations on year-round use, *subject to* (a) availability, (b) CVPHS rules and regulations as amended from time to time, (c) Town general clean-up of the area after use; and;
- * the Mountain View Middle School (MVMS) campus including, all athletic fields, athletic facilities, classrooms, and other agreed upon locations with no limitations on year-round use, *subject to* (a) availability, (b) CVPHS rules and regulations as amended from time to time, (c) Town general clean-up of the area after use; and;

Section 4. GENERAL CONDITIONS.

- A. Town use in Section 3 above includes use by third-party non-profit persons or organizations under contract with the Town to use Town property, buildings and facilities. Town requests for use of WCS property under this Agreement shall be made through the Town's Parks and Recreation Department.
- B. Except as expressly set forth in Section 3 above, the Town and WCS shall each provide ordinary maintenance and services for its own property, buildings and facilities, including (but expressly not limited to) watering, fertilizing, mowing, weed control, maintenance and repair of irrigation systems, field marking, field repair and reseeding, maintenance and repair of fences, and maintenance and repair of bleachers.
- C. Both the Town and WCS shall provide or arrange for adequate personnel to supervise its activities or programs held at the property, buildings or facilities of the other.
- D. Both the Town and WCS shall furnish and supply all expendable materials for carrying on its activities or programs at the property, buildings or facilities of the other, unless shared use has previously been agreed to.

- E. Both the Town and WCS shall observe and enforce all established rules and regulations of the other in connection with its use of the other's property, buildings or facilities.
- F. Neither the Town nor WCS shall cancel reservations later than five (5) business days prior to the scheduled event, except in case of actual emergency.
- G. Where a party is required hereunder to repair or maintain any property, buildings or facilities of the other, the other party shall supply the needed materials out of that other party's inventories to the extent they are available.
- H. If either party believes that the other's use of its property, buildings or facilities is causing it excessive maintenance costs or property damage requiring repair beyond "normal maintenance", it may give fifteen (15) calendar days' written notice of a claim therefore, whereupon, the parties' Designated Representatives shall meet and arrive at a recommended settlement to be presented to the Town Manager and WCS Superintendent for action.
- I. Where successive maintenance of property, buildings or facilities is provided for in Section 3 above, each party shall ensure that the property, buildings or facilities are passed to the other party in good order and repair. Failure to do so may result in costs being assessed to the first party as determined by the Designated Representatives.
- J. Each party shall perform its duties and obligations hereunder in a timely fashion. Failure to do so may result in the other party carrying out the first party's duties and obligations and charging the first party with the costs thereof, as determined by the Designated Representatives.
- K. Each party shall reasonably provide timely access to its property, buildings or facilities either by making its staff available to the other party or providing keys to the other party, at the discretion of the first party.
- L. Nothing in this Agreement shall preclude the Town and/or the Prescott Valley Water District (Water District) from charging WCS for domestic water, reclaimed water, and/or wastewater service in accordance with applicable Town or Water District's regulations as amended from time to time.
- M. Nothing herein shall preclude the designated representatives from mutually agreeing, in a separate writing, to add additional WCS or Town Property, Buildings, and Facilities to those listed in this Agreement

Section 5. DISPOSITION OF PERSONAL PROPERTY. Any personal property placed in, on or about the real property, buildings, or facilities of one party by the other shall remain the property of the party placing said items thereon. However, all such property shall be removed by the party owning it within sixty (60) days after any termination of this Agreement.

Section 6. DESIGNATED REPRESENTATIVES. The designated representatives of the respective parties shall initially be the Athletic Director for Canyon View Preparatory High School and the Parks and Recreation Director for the Town. However, either party may designate a new representative at any time in accordance with the Notice procedures set forth in Section 12 hereinafter.

Section 7. BUDGETING AND FINANCING. WCS and the Town shall each provide for its own costs under this Agreement, except as expressly provided herein for reimbursement of excessive maintenance or property damage. WCS and the Town shall each include in its annual budget the necessary appropriations to meet the cost of its performances hereunder.

Section 8. DISPUTE RESOLUTION. In the event of any dispute between the parties arising out of any activity or program conducted pursuant to this Agreement, such dispute shall be directed to the Designated Representatives and resolved by them. If necessary, their resolution shall be presented for approval to the Town Manager and the WCS Superintendent. If necessary, the resolution of the Town Manager and the WCS Superintendent shall be presented for approval to the respective governing boards of the parties.

Section 9. TERMINATION. This Agreement may be terminated by either party for any reason whatever, effective upon receipt of thirty (30) days' written notice.

Section 10. INDEMNIFICATION. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') for, from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising 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, agents, employees, or volunteers.

Section 11. NO PARTNERSHIP; NOT EMPLOYEES. Nothing herein is intended to create a partnership or joint venture between the parties, nor does it create an employment relationship between either the personnel of WCS and the Town or the personnel of the Town and WCS.

Solely for purposes of workers compensation, ARS §23-1022(D) and (E) shall apply and WCS and the Town shall be solely liable for the payment of workers' compensation benefits for their respective employees providing services in accordance with this Agreement.

Section 12. NOTICES. All notices provided in connection with this Agreement shall be in writing and shall be deemed to have been sufficiently delivered or served when presented personally or upon the third (3rd) day after being deposited in the United States mail, postage prepaid, by registered or certified mail, addressed as follows:

WCS: Canyon View Preparatory High School
9030 E Florentine Rd
Prescott Valley, AZ 86314
Attn: Athletic Director

Town: Town of Prescott Valley
7501 East Civic Circle
Prescott Valley, AZ 86314
Attn: Parks and Recreation Director

Section 13. LAWS AND REGULATIONS. In their respective performances under this Agreement, the parties shall comply with all applicable laws, statutes, rules, regulations, and ordinances including, without limitation, those governing wages, hours, employment discrimination, and safety.

Section 14. FURTHER INSTRUMENTS. Each party hereto shall, promptly upon the request of the other, have acknowledged and delivered to the other any and all further instruments and assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Amended Agreement.

Section 15. AMENDMENT AND CONSTRUCTION. This Agreement sets forth the entire understanding of the parties as to the matters set forth herein as of the date of this Agreement and cannot be altered or otherwise amended except pursuant to an instrument in writing signed by the authorized representatives of each of the parties hereto. This Agreement is intended to reflect the mutual intent of the parties with respect to the subject matter hereof, and no rule of strict construction shall be applied against any party.

Section 16. NO WAIVER. No waiver by any party of a breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein-contained.

Section 17. ATTORNEYS' FEES. In the event any action shall be instituted between any of the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs, including reasonable attorneys' fees.

Section 18. SAVINGS CLAUSE. In the event any phrase, clause, sentence, paragraph, section, article or other portion of this Amended Agreement shall become illegal, null or void or against public policy for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in force and effect to the fullest extent permissible by law.

Section 19. MERGER CLAUSE. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

Section 20. GOVERNING LAW AND VENUE. This Agreement shall be governed by and construed under the laws of the State of Arizona, and shall be deemed made and entered into in Yavapai County.

Section 21. CONFLICT-OF-INTEREST. This Agreement may be canceled pursuant to ARS §38-511 in the event of a conflict-of-interest as described therein.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement by and through their authorized representatives.

TOWN OF PRESCOTT VALLEY, a municipal corporation of Arizona, (Town)

Harvey C Skoog, Mayor

ATTEST:

Diane Russell, Town Clerk

APPROVED AS TO FORM:

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Ivan Legler, Town Attorney

PARK VIEW SCHOOLS, INC., 501c (3) non-profit corporation



Debra K. Slagle, President

ATTEST:

Clerk