

**INTERGOVERNMENTAL AGREEMENT REGARDING JOINT USE OF RECREATIONAL FACILITIES AT YUMA UNION HIGH SCHOOL DISTRICT #70 (SAN LUIS HIGH SCHOOL) AND THE CITY OF SAN LUIS**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016 by and between the CITY OF SAN LUIS, a municipal corporation of the State of Arizona, hereinafter referred to as “CITY” and the YUMA UNION HIGH SCHOOL DISTRICT #70, hereinafter referred to as “DISTRICT”.

WHEREAS, the CITY is authorized by A.R.S. §11-952 to enter into this Agreement; and

WHEREAS, the DISTRICT is authorized by A.R.S. §11-952 to enter into this Agreement; and

WHEREAS, pursuant to Section 11-951 et seq. of Arizona Revised Statutes, cities and schools may enter into agreements for the construction, development, cooperative maintenance, operation, and use of parks, swimming pools, and other recreational facilities on property used for public purposes if the governing bodies having charge and control of such properties give their consent and cooperation; and

WHEREAS, the DISTRICT has recreation facilities such as tennis courts, athletic fields, and running track, that could be used for community health, education, and enrichment opportunities provided through the CITY during non-school hours; and

WHEREAS, the CITY has recreation facilities such as athletic fields, swimming pools, parks, and trails that could be used for physical education and school athletic opportunities provided through the DISTRICT; and

WHEREAS, it is the desire of the parties to develop and operate facilities for joint use and to conduct recreational programs that provide maximum public benefit; and

WHEREAS, it is good policy to cooperate in the development of facilities that can be used for school enrichment, physical fitness, athletics, and public recreation.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and agreements of the parties herein contained, it is agreed as follows:

## **Section 1. Purpose**

The purpose of this Agreement is to establish the rights, duties and responsibilities of the parties for the joint use of recreational or athletic facilities owned by each Party.

## **Section 2. Term**

This Agreement will become effective as of the date indicated above, and will terminate five (5) years thereafter, unless terminated earlier as provided in Section 3, or renewed.

## **Section 3. Termination**

This Agreement may be terminated at any time by mutual agreement of the parties or either Party may terminate this Agreement, with or without cause, upon one hundred eighty (180) days written notice to the other Party of intent to terminate. Upon termination of the Agreement, each Party will assume full use and responsibility for its facilities including, but not limited to, water costs, utility costs and maintenance.

## **Section 4. Facilities**

This Agreement authorizes the continued joint use of each Party's respective facilities, as shown on Exhibit "A" attached ("Facilities"). This Exhibit may be amended upon written approval of the City Manager or designee and the school Superintendent or designee, without further modification of this Agreement. The Facilities listed on the attached Exhibit "A" that are the property of the DISTRICT shall be referred to herein individually as a "DISTRICT Facility," and collectively as the "DISTRICT Facilities." The Facilities listed on the attached Exhibit "A" that are the property of the CITY shall be referred to herein individually as a "CITY Facility" and collectively as the "CITY Facilities". **San Luis High School's northeastern practice field inside the track shall be referred to herein specifically as "DISTRICT FIELD"**. Facilities may include, but are not limited to, buildings and grounds, recreational or athletic facilities, and parking areas.

## **Section 5. Joint Use of Facilities**

**A. Facility Usage:** Each Party will make its Facilities listed in Exhibit "A" available for use by the other Party after the scheduling requirements for each Party's own programs have been met.

1. **Scheduling Overview:** The DISTRICT will have use of DISTRICT Facilities, during the school year during regular school hours and after school hours or on week-ends as required by the DISTRICT athletic schedules and other school activities. The CITY will have use of DISTRICT Facilities, during the summer months and on weekends, holidays, and weeknights beginning at 6:00 p.m. during the school year, unless the Facilities are previously scheduled for DISTRICT events or DISTRICT maintenance. The CITY will have use of CITY Facilities year round. The DISTRICT may have use of CITY Facilities, unless previously scheduled by others or for CITY maintenance. Scheduling of facilities may be pre-empted by circumstances beyond the control of the parties. For examples, fields may not be usable due to rain or water line break. Use of specific facilities are further described in Exhibit "A".

2. **Parking:** Each Party will make each parking facility associated with each of Facilities listed in Exhibit "A" available for use by the other Party as part of the use of the associated Facility.

**B. Enforcement of Policy:** DISTRICT reserves the right to enforce DISTRICT policies including, but not limited to, dress codes and policies addressing alcohol consumption, at all DISTRICT sponsored activities on CITY facilities. CITY reserves the right to enforce CITY policies at CITY sponsored events on DISTRICT facilities. The DISTRICT and the CITY shall abide by all applicable laws and regulations on each other's facilities.

**C. Facility Maintenance:** Each Party will maintain its own Facilities and equipment in good and reasonable repair as required by law except that the CITY shall maintain the DISTRICT's northeastern practice field inside the track ("DISTRICT FIELD"). CITY maintenance of the DISTRICT FIELD shall include turf maintenance such as watering, seeding, fertilizing, mowing and maintaining the sprinklers in good repair. The DISTRICT shall keep the CITY informed as to the methods to preserve and maintain the track. The CITY shall make all reasonable effort in its maintenance, repair,

and its use of the DISTRICT FIELD to preserve and maintain the track in reasonable condition. The DISTRICT will be solely responsible for costs of repairing any damages to the CITY Facilities that occur and were caused by the DISTRICT during DISTRICT's use of the CITY Facilities. The CITY will be solely responsible for the cost of repairing damages to DISTRICT Facilities that occur and were caused by the CITY during CITY'S use of DISTRICT Facilities. The Party responsible for the damages shall promptly notify the owning Party of any damages that occur during the responsible Party's use of the Facilities. The owning Party, upon discovering any damages reasonably believed to be caused by the other Party during the other Party's use of the Facilities, shall notify the other Party in writing of the damages and of the cost of repair. Upon receipt of the cost of repair the Party causing the damage may elect to make the necessary repairs by notifying the owner in writing of its intent to repair. If the Party who caused the damage fails to notify the owner of its intent to repair within fifteen (15) days of receipt of the notice and cost to repair, the owner may make required repairs and invoice the responsible Party for the actual, reasonable costs thereof. The responsible Party shall pay the invoice within 30 days of receipt, unless, within ten (10) days of receipt of the written notice, the responsible Party has disputed the damages or costs in writing, specifying the items in dispute and the reasons therefore. The parties will use best efforts to investigate and resolve the disagreement prior to filing any claim for damages. The term "damage" does not include ordinary wear and tear. Each Party will be responsible for routine maintenance and cleaning of its Facilities unless specifically agreed otherwise.

**D. Non-Interference:** Each Party agrees that use of the other Party's Facilities will not interfere with the other Party's usual conduct of its business, nor be inconsistent with the intended and normal use of the Facilities used. Each Party will communicate with each other any conduct by the other which is outside the usual conduct of business and any use inconsistent with the intended and normal use of the facility.

Each Party agrees to provide necessary and appropriate supervision for activities conducted at the other Party's Facilities, to be responsible for the expenses of supervision, security, and supplies unless otherwise noted in this Agreement, and to make reasonable efforts to inspect Facilities for safety conditions and for damage at the

beginning and end of each period of use. Each Party will leave the other's Facilities in neat and orderly condition unless specifically agreed otherwise.

## **Section 6. Quarterly Meetings and Scheduling Confirmation Process**

**A. Quarterly Meetings:** The CITY and the DISTRICT shall meet regularly on or about December 1, March 1, June 1 and September 1 of each year.

**1. Scheduling Meetings:** One component of the Quarterly Meetings will be the Scheduling Meeting. Representatives of the parties will meet to discuss scheduling for April through June, July through September, October through December, and January through March respectively.

**2. Other Matters Meetings:** Another component of the Quarterly Meetings will be to discuss master planning for capital improvements, issues involving the joint use of facilities, and any other matters that parties wish to discuss for the benefit of the joint use of facilities. The Representatives for the Scheduling Meeting are not required to be the same people for this meeting.

**B. Scheduling:** Each owner will be responsible for maintaining the schedule for its own Facilities.

**C. Joint Schedule:** Within two weeks following the meeting, each owner's representative shall prepare a joint use confirmation form for the quarter discussed and shall send the schedule to the other Party. The receiving Party will either approve the proposed schedule by returning it with a signature of approval or may, within 7 days, contact the other representative to discuss changes or amendments which need to be addressed. Quarterly discussions shall include review of a calendar of projected use for the coming year and shall include times when Facilities may not be used due to

appropriate maintenance of facilities and maintenance of DISTRICT FIELD turf. A final, signed schedule should be in place at least three (3) months before the scheduled use for a quarter begins. During scheduling meetings, the parties shall work to resolve any issues. The parties will in good faith discuss how to maximize the mutual benefit of the shared use of CITY and DISTRICT Facilities.

**D. Scheduling Changes:** CITY and DISTRICT will cooperate to seek a mutually acceptable alternative in the event of the need for scheduling changes. The mutual goal in rescheduling will be to maintain program continuity, to give adequate notification of scheduling changes and, where necessary, to relocate programming. In the event of no mutually acceptable alternative, use by the owner shall take priority.

**D. Health and Safety:** If at any time the CITY or the DISTRICT determines that a Facility does not meet applicable health and safety standards, or that for any other reason the Facility is unsafe for use, the using Party may cancel its event and notify the owner of the unsafe conditions. The owner will have the authority to close the Facility until the unsafe conditions are rectified. Each Party will take immediate steps to notify the other Party of the cancellation/closure.

### **Section 7. Utilities**

**A. Electricity:** The CITY will install and pay for a separate meter for the electricity feeding the lights for the DISTRICT FIELD. The CITY will pay for the Electricity to the lights for the DISTRICT FIELD.

**B. Water:** The DISTRICT will pay for the water to maintain the DISTRICT FIELD.

### **Section 8. Capital Improvements**

**A.** From time to time during this Agreement each Party may make capital improvements to property of the other Party. The parties intend to work together to develop a strategic master plan for investment in capital improvements in order to best serve the recreational needs of the communities of both the CITY and the DISTRICT.

**B.** The CITY intends to install lights at its cost on the DISTRICT FIELD. The DISTRICT hereby agrees to the installation of the lights according to a plan to be developed by the CITY and reviewed by the DISTRICT. The Party proposing any other capital improvements will submit the proposal to the other Party for review and approval, which shall not be unreasonably withheld.

**C.** Upon termination of this Agreement all capital improvements (including but not limited to the lighting paid for by the CITY for the DISTRICT FIELD) shall become the sole and exclusive property of the owner of the underlying property. The underlying property owner shall reimburse the other Party who made and paid for the improvements for the reasonable depreciated value of the improvements at the time of termination. If the parties are unable to agree on the depreciated value at termination, they shall retain the services of an independent, neutral and qualified appraiser to determine the value.

## **Section 9. General Terms and Conditions**

**A. Finance and Budget:** Each Party shall establish and maintain its own budget according to its established rules and policies and shall be responsible for financing its own activities undertaken under this Agreement. In the event of non-appropriation of funds by either Party for any Fiscal Year this Agreement is effective, this Agreement will terminate at the end of period for which funds are appropriated unless the parties agree to a modification of this Agreement.

**C. Notice:** Notices or other communications to the City regarding this Agreement shall be sent by registered or certified mail, postage prepaid, addressed to

If to CITY:                      Parks and Recreation Director  
   Parks and Recreation Department  
   City of San Luis  
   PO Box 1170

San Luis, Arizona 85349

If to DISTRICT: James Sheldahl, Associate Superintendent YUHSD  
3150 S. Avenue A  
Yuma, Arizona 85364

**D . Indemnification:** To the extent permitted by law, each Party does hereby covenant and agree to indemnify, defend, and hold harmless the other Party from and against any and all fines, suits, claims, demands, defense costs, losses, liability, actions and/or causes of action of any kind and nature (hereinafter collectively referred to as "Claims") for personal injury (including death) or property damage that may arise from that Party's use, operation, maintenance, or repair of the Facilities; except for those Claims which arise out of the negligent or willful misconduct of the other Party, its agents or employees.

**E. Non-Discrimination Requirements:** The parties shall comply with State Executive Order #99-4, which mandates that all persons, regardless of race, color, religion, sex, national origin or political affiliation, shall have equal access to employment opportunities, and all other applicable federal and state laws, rules and regulations, including Title VI, and all other federal and state employment and educational opportunity laws, rules and regulations, including Title VII of the Civil Rights Act of 1964, P.L. 88-854 (1964), and the Americans with Disabilities Act of 1999.

**F. Employment Eligibility:** The parties warrant, and shall require their subcontractors to warrant, that each is in compliance with all federal immigration laws and regulations that relate to their employees and with A.R.S. § 23-214 relating to verification of employment eligibility. A breach of this warranty shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of this Agreement. Each Party retains the legal right to inspect the papers of the other Party's employee or subcontractor employee who works on this Agreement to ensure that the Party or its subcontractors are complying with this warranty. Employees

hired by either Party to provide services, whether providing those services on premises owned by the CITY or the DISTRICT, shall be the employee of the hiring Party only.

**G. Insurance requirements:** *[These amounts are tentative. The City's risk pool is to provide comments as to the desirable coverage.]*

**1. Liability Insurance:** DISTRICT and CITY shall each keep and maintain in force, during the term of this Agreement and at their own expense, liability insurance of not less than \$1,000,000.00 per occurrence covering their respective activities and \$5,000,000.00 per occurrence for first responder training including, but not limited to police department, fire department, and emergency medical technician training. This insurance may be comprised of self-insurance retention ("SIR") and insurance, so long as the combination of the two equals the minimum required amounts stated above. Each Party shall provide to the other a certificate of insurance showing such coverage. The amount of insurance shall be reviewed, and may be adjusted, every 3 years.

**2. Workers' Compensation:** For purposes of workers' compensation, an employee of a Party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another Party pursuant to this Agreement, is deemed to be an employee of both the Party who is his or her primary employer and the Party under whose jurisdiction or control or within whose jurisdictional boundaries he or she is then working, as provided in A.R.S. §23-1022(D). The primary employer of such employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each Party herein shall comply with the provisions of A.R.S. §23-1022(E) by posting the notice required.

**H. Risk of Loss:** The Party sponsoring and supervising a particular event shall bear the risk of loss, including, but not limited to, loss caused by theft, vandalism or property damage or claims arising therefrom.

**I. Dispute Resolution:** The parties agree to make all reasonable efforts to resolve disputes arising under this Agreement. Upon written request by either Party, a dispute shall be submitted to mediation with a trained and neutral mediator. If

mediation is unsuccessful, the parties mutually agree, remaining claims, disputes, or other matters in question shall be submitted for arbitration and decided according to the Arizona Uniform Rules of Procedure for Arbitration. Request for arbitration must be filed in writing with the other Party to this Agreement.

**J. Costs and Attorney Fees:** In the event any action, suit, or proceeding is brought for failure to observe any of the terms, covenants, or provisions of this Agreement, the prevailing Party shall be entitled to recover as part of such action or proceeding, all litigation and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney's fees.

**K. Assignments and Successors:** Neither Party shall assign its rights, nor delegate its duties, or otherwise dispose of any right, title, or interest in all or any part of this Agreement, or assign any monies due or payable hereunder without the prior written consent of the other Party. Such consent shall not be unreasonably withheld.

**L. Entire Agreement:** This Agreement contains the entire agreement between the parties, and no oral or written statement, promises, or inducements made by either Party or agent of either Party that is not contained in this written Agreement or specifically referred to in this written Agreement shall be valid or binding. This Agreement may not be enlarged, modified, or altered except in writing signed by the parties and endorsed herein.

**M. Conflicts of Interests Provisions:** This Agreement is subject to the conflict of interest provisions of A.R.S. §38-511.

**N. Venue:** The parties must initiate and maintain any mediation, arbitration, legal actions or other judicial proceedings arising from this Agreement in a court of competent jurisdiction in Yuma County, Arizona.

**O. Disposal of Property:** The parties do not anticipate that there will be any personal property to be disposed of upon partial or complete termination of this

Agreement. However, to the extent that such disposition is necessary, property shall be returned to its original owner.

**P. Construction:** Headings are solely for the parties' convenience, are not a part of this Agreement, and shall not be used to interpret this Agreement. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it.

**Q. Counterparts:** This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

**R. Governing Law:** The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance.

**S. Independent entities:** DISTRICT and CITY are independent entities and contractors. Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the parties or constitute any Party or its agent, representative, or employee to be the agent, representative, or employee of the other Party for any purpose. Employees of the DISTRICT and the CITY shall not be personally liable under this contract.

CITY OF SAN LUIS  
a municipal corporation

YUMA UNION HIGH SCHOOL  
DISTRICT #70

By \_\_\_\_\_  
Tadeo A. De La Hoya  
Interim City Manager

By \_\_\_\_\_  
Toni Badone  
Superintendent

I hereby state that I am an attorney for the City of San Luis, State of Arizona, and pursuant to the provisions of A.R.S. 11-952(D) have determined that the foregoing

I hereby state that I am an attorney for Yuma Unified High School District (YUHSD), State of Arizona, and pursuant to the provisions of A.R.S. 11-952(D) have

agreement is in proper form and is within the powers and authority granted to the City of San Luis, Arizona under the laws of the State of Arizona.

determined that the foregoing agreement is in proper form and is within the powers and authority granted to the YUHSD under the laws of the State of Arizona.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2016

Dated this \_\_\_\_ day of \_\_\_\_\_, 2016

By \_\_\_\_\_  
City Attorney

By \_\_\_\_\_  
YUHSD Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

DRAFT

**Exhibit “A” Facilities**

(Note: Use of Facilities include use of associated parking.)

**City Facilities** (CITY Facilities)

**YUHSD #70 Facilities** (DISTRICT Facilities)

San Luis Baseball/ Softball Fields

San Luis HS northeastern practice field inside the track

San Luis Baseball/ Softball Fields

(DISTRICT Field)

**San Luis HS track**

San Luis HS Tennis Courts

\*\*San Luis HS Performing Arts Center

\*\*\*San Luis HS Main Soccer Field

**\*\*\*\* San Luis HS Campus**

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**Use of Specific Facilities:**

**\*San Luis Aquatic Center**

The San Luis Aquatic Center will be used by the DISTRICT for official in-season Swimming Team practices. The CITY will not charge the DISTRICT a fee for life guards.

**\*\*San Luis HS Performing Arts Center**

The San Luis HS Performing Arts Center will be used by the CITY for 2 events annually. The DISTRICT will not charge the CITY any fees or costs including but not limited to rental fee, costs of auditorium manager, security, student workers, and custodial services. Dates for the CITY events must be mutually agreed upon by the CITY and the DISTRICT.

Additional dates will be charged to the CITY at the DISTRICT’s regular non-profit rate. Dates for additional CITY event must be mutually agreed upon by the CITY and the DISTRICT.

**\*\*\*San Luis High School Main Soccer Field**

**Soccer League Championship Games:** If CITY games are played prior to the beginning of the AIA winter season, they may be scheduled with the DISTRICT and played on the main field under the lights at no rental fee for 3 games but operational costs will apply. Operational costs are outlined in DISTRICT Facilities rental fee schedule.

CITY’s additional use of the main field will be scheduled with the DISTRICT and charged at the regular non-profit rate, as per the District Facilities Rental Fees Schedule

At all times CITY soccer games will only be played when the main field is lined for soccer and not in use by the school. The CITY will not schedule adult soccer games for the main field.

\*\*\* San Luis HS Campus: There shall be limited San Luis HS campus use for the CITY's police department and fire department training.

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