

INTERGOVERNMENTAL AGREEMENT BETWEEN YUMA UNION HIGH SCHOOL DISTRICT #70 (SAN LUIS HIGH SCHOOL) AND THE CITY OF SAN LUIS REGARDING THE JOINT DEVELOPMENT AND CONSTRUCTION OF INFRASTRUCTURE, A UTILITY EASEMENT AND ANCILLARY FACILITIES LOCATED ON YUMA UNION HIGH SCHOOL DISTRICT #70 PROPERTY

THIS AGREEMENT, made and entered into this ____ day of _____, 2017 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"; the CITY and DISTRICT hereinafter collectively referred to as the "PARTIES."

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.*, cities and Arizona Union School Districts (districts) may enter into agreements for the cooperative development, design, construction, maintenance, and operation of essential infrastructure, the development of Ancillary Facilities and the use of Recreational Facilities utilizing said infrastructure 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 baseball fields, football fields, a running track and additional space for other and Ancillary Facilities, that could be used for community health, education, and enrichment opportunities provided through the CITY during non-school hours as previously agreed upon in a separate Agreement entitled " 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" dated February 24, 2016; and

WHEREAS, the CITY and the DISTRICT have an interest in developing a wastewater line, to service those above-described DISTRICT facilities and the CITY must address the growth of the public needs in and around the DISTRICT property due to the development of a residential subdivision in the vicinity; and

WHEREAS, the CITY shall cause a wastewater line to be constructed by Riedel Holdings, L.L.C. (DEVELOPER or DEVELOPER's successor or assign) in the utility easement that is the subject of this Agreement.

WHEREAS, it is the intent that through the collaborative efforts of the PARTIES, that (1) the DISTRICT's property will be enhanced by the development of such a

wastewater line on the DISTRICT's property, (2) the wastewater line will include three (3) stub-outs for the DISTRICT's use for a concession stand, restroom and as the DISTRICT further desires, (3) that the CITY shall cause a concession stand and restroom to be constructed (the "Construction") on the property at issue in this agreement, to the DISTRICT's reasonable satisfaction or alternatively the CITY will establish a fund (Concession Stand and Restroom Fund) in the amount of Fifteen Thousand Dollars (\$15,000.00) payable to the DISTRICT for the same purpose. At the DISTRICT's written election the CITY shall cause said Construction to be initiated no later than forty-five (45) days after completion of the wastewater line and said Construction to be completed one hundred and eighty (180) days after initiation or, as the DISTRICT may direct, the CITY shall pay over to the DISTRICT the Fifteen Thousand Dollar (\$15,000.00) Concession Stand Fund upon completion of the wastewater line and upon forty-five (45) days written demand by the DISTRICT. (4) that the DEVELOPER will dedicate the wastewater line to the CITY and the CITY will operate, maintain and otherwise be responsible for the wastewater line.

WHEREAS, it is the desire of the PARTIES to act collaboratively in developing the mutually needed infrastructure and in the development and use of Recreational Facilities and Ancillary Facilities to support the Recreational Facilities to provide essential services and to conduct recreational programs that provide maximum public benefit; and

WHEREAS, it is good policy to cooperate in the development of the infrastructure and ancillary facilities noted above that can enhance the DISTRICT's current use and ensure adequate infrastructure for further development and that can be used for school enrichment, physical fitness, athletics, and public recreation.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises, benefits and agreements of the PARTIES herein contained and as more fully explained below, 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 development, design, construction, maintenance and operation of the above-referenced infrastructure ("wastewater line") and the collaboration of the PARTIES for obtaining Ancillary Facilities in the joint use of Recreational Facilities owned by the DISTRICT as represented in the picture attached hereto and made a part hereof as Exhibit A. The Facilities identified on the attached Exhibit "A" are the property of the DISTRICT and shall be referred to herein individually as a "DISTRICT Facility," and collectively as the "DISTRICT Facilities" as further defined in Section 4. A separate agreement between these parties addresses the joint use of DISTRICT Facilities. That agreement is dated February 24, 2016 and is entitled "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" (passed by CITY Resolution Number 1130).

Section 2. Term

This Agreement will become effective as of the date indicated above, and will terminate ten (10) years thereafter, unless terminated earlier as provided in Section 3, or renewed. However, Section 3 and 5 of this Agreement, the utility easement ("Easement") and understandings and conditions relative thereto as described herein and in the document granting the Easement, shall survive the term and remain in full force and effect subject to the specific terms and conditions of said Utility Easement (see Section 5).

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. In the event of any termination of this Agreement, the Easement and understandings and conditions relative thereto as described herein and in the Easement, shall survive and remain in full force and effect subject to the specific terms and conditions of said Easement (see Section 5). Further, the DISTRICT's right to the Concession Stand\Restroom Fund and Fees Fund as noted at Section 5 (C) (i) and (C) (x) respectively shall survive the expiration of the Term noted in Section 2 above and any other termination and be valid and enforceable rights of the DISTRICT unless the Easement has been surrendered by the CITY and the Easement property has been returned in its pre-agreement condition. Said funds shall remain due and payable regardless of any termination unless the Easement has been so surrendered and returned.

Section 4. Facilities

The Facilities identified on the attached Exhibit "A" are the property of the DISTRICT and shall be referred to herein individually as the "DISTRICT Facility," and collectively as the "DISTRICT Facilities." Facilities may include, but not be limited to, buildings and grounds, recreational or athletic facilities, parking areas, concession stand, restroom and other Ancillary Facilities.

Ancillary Facilities are the facilities that may be developed by the PARTIES pursuant to Section 6 herein in support of the Recreational Facilities.

Section 5. Infrastructure Wastewater Line

A. The PARTIES shall collaborate regarding the plans for development, design, construction, operation and maintenance of the wastewater line on the North border of the San Luis High School campus as depicted on the aerial photograph attached hereto and made a part hereof as Exhibit A, and as

legally described in the legal description attached hereto and made a part hereof as Exhibit B.

B. The DISTRICT will grant to the CITY a limited, non-exclusive, 30-foot wide, utility easement ("Easement") for a wastewater line as depicted on Exhibit A and legally described in Exhibit B, subject to terms and conditions as set forth herein and in the Easement. The proposed Easement document is attached as Exhibit C.

C. As consideration for the Easement, as required by A.R.S. §15-342(10), the CITY will do the following:

i. the CITY will enhance the value of the DISTRICT's undeveloped property with a wastewater line and, as is required by A.R.S. §9-500.18, exempt the DISTRICT from CITY development fees and provide a fund ("Fees Fund") of up to \$4,500.00 for use by the DISTRICT toward any and all non-exempt wastewater related development, impact and/or connection fees of the CITY which may or could be assessed against the DISTRICT for any and all improvements which the DISTRICT may develop, construct or implement at any time in the future.;

ii. the CITY shall cause the fence, which is currently in place along the length of the Easement, to be relocated ten (10) feet south of its current location and in its current or improved condition. The PARTIES shall collaborate regarding the relocation plan for said fence and all other details relative to said relocation. The fence shall be relocated as stated above within ninety (90) days of the completion of the wastewater line.

iii. the CITY will install sufficient backflow or other such devices as necessary and as approved by the DISTRICT; provide to the DISTRICT a sealed engineer's report confirming the adequacy of the lift station presently in place for current and foreseeable usage; maintain, repair and replace as necessary the lift station associated with the wastewater line; and, install, construct, maintain, repair and replace other such devices in the wastewater line to preclude blockages, back-ups or discharges relative to the wastewater line which may intrude upon or impact DISTRICT property, operations, programs or the health, safety and welfare of DISTRICT's students, staff and guests and shall repair and remediate any such occurrence at CITY's sole cost;

iv. the CITY shall cause three (3) stub-outs to the wastewater line to be provided for DISTRICT's use to serve the planned concession stand, restroom and other DISTRICT uses as noted on Page 2 above. The location of the stub-outs shall be approved by the DISTRICT and approval shall not be unreasonably withheld;

v. the CITY not the DISTRICT shall be responsible for a

suitable and safe development, design, and construction of the wastewater line and the CITY not the DISTRICT shall be responsible for maintenance, repair, and replacement of the wastewater line and related systems, including all cost and claims of any nature arising therefrom;

vi. the CITY will timely provide to the DISTRICT written notice of any intended construction, modification or maintenance to be performed by the CITY and/or by the DEVELOPER at least sixty (60) days prior to said action, plan all such activities with the DISTRICT to minimize any impact on DISTRICT operations or programs, and to further ensure the health, safety and welfare of students, staff and DISTRICT guests;

vii. the CITY will provide plans to the DISTRICT for any and all proposed construction or modifications of the wastewater line and related systems for DISTRICT's review and approval, which approval shall not be unreasonably withheld;

viii. the CITY will cause a wastewater line to be developed, designed, constructed, maintained and operated in a manner that will cause minimal interruption to DISTRICT operations, programs and events, minimal limitation of DISTRICT use of the Easement area and create the least possible threat to the health, safety and welfare of DISTRICT's students, staff and guests;

ix. the CITY and the DISTRICT may collaborate to develop Recreational Facilities ("Ancillary Facilities"), as the PARTIES may mutually agree during the life of this Agreement as defined in Section 4; and

x. the CITY shall, at the DISTRICT's discretion, cause a concession stand and restroom to be constructed (the "Construction") on the property at issue in this agreement, without cost to the DISTRICT and to the DISTRICT's reasonable satisfaction or alternatively the CITY will establish a fund (Concession Stand and Restroom Fund) in the amount of Fifteen Thousand Dollars (\$15,000.00) payable to the DISTRICT for the same purpose. At the DISTRICT's written election the CITY shall cause said Construction to be initiated no later than forty-five (45) days after completion of the wastewater line and said Construction to be completed one hundred and eighty (180) days after initiation or, as the DISTRICT may direct, the CITY shall pay over to the DISTRICT the Fifteen Thousand Dollar (\$15,000.00) Concession Stand Restroom Fund upon completion of the wastewater line and upon forty-five (45) days written demand by the DISTRICT.

D. In consideration of the benefits granted to the DISTRICT by the CITY as set forth in Section 5 above, the DISTRICT shall grant a non-exclusive, 30-foot wide, utility easement ("Easement") to the CITY subject to the terms and conditions as follows:

i. Said Easement shall be limited to the right to install wastewater line and any other water or wastewater lines as mutually agreed to by the CITY and the DISTRICT. Said Easement shall include the right to install necessary related fixtures and equipment, below the ground, as may be necessary for the proper operation of the wastewater line or agreed upon water utility services, within the Easement area upon the DISTRICT's land as identified in Exhibits A and B hereto;

ii. The CITY agrees not to construct above ground lines, structures, markers, fixtures or any other similar objects without the express written agreement of the DISTRICT;

iii. The DISTRICT reserves the right to use the land within the utility easement in any manner that is not inconsistent with the rights DISTRICT grants to the CITY in said Easement;

iv. CITY agrees to take reasonable steps upon completion of construction, maintenance and other activities related to CITY's use of the Easement to restore Easement and all other adjacent or related DISTRICT property effected by such activities, to the extent practicable, to preconstruction / use conditions at CITY's sole cost;

v. CITY shall limit access to the Easement to ensure minimal impact on DISTRICT operation and programs and in a manner to ensure the health, safety and welfare of students, staff and DISTRICT guests;

vi. The CITY shall provide reasonable notice to the DISTRICT prior to coming on to DISTRICT property or the Easement, except under exigent circumstances, and shall provide such notice and engage in consultation with the DISTRICT at least ninety (90) days prior to coming on to DISTRICT property or the Easement except during construction and before acceptance of the line from the DEVELOPER at which time the notice shall be sixty (60) days. Shorter notice may be mutually agreed to;

vii. CITY understands that the DISTRICT is an Arizona Union School District and that the area contained within the Easement is adjacent to DISTRICT Recreational Facilities and is used by the DISTRICT for its programs, operations and activities involving students, staff, parents and other DISTRICT guests and CITY will use the Easement in a manner which considers DISTRICT activities as noted above and the safety of students, staff, parents and guests;

viii. For the purpose of DISTRICT's consideration and approval (which will not be unreasonably withheld) CITY shall provide DISTRICT with copies of plans and specifications for any proposed construction, modification or other similar activities at least ninety (90) days prior to the intended initiation of such activities except during construction and before

acceptance of the wastewater line from the DEVELOPER at which time the notice shall be sixty (60) days;

ix. If the CITY ceases or fails to use the Easement for a wastewater line for a period of more than five (5) consecutive years, CITY shall re-convey said Easement to the DISTRICT or successor by a duly executed quit claim deed;

x. CITY shall provide DISTRICT with a final copy of the as-builts for any construction or modifications of the wastewater line and related construction within thirty (30) days of completion of the project to assist the DISTRICT in avoiding any possible interference with the CITY's use of the Easement.

Section 6. Ancillary Facilities

A. Within sixty (60) days of the full execution of this Agreement, a team of members appointed by the DISTRICT shall meet and initiate plans for the development of a concession stand and restroom hereinbefore identified as Ancillary Facilities, to be developed, designed and constructed to serve the existing Recreational Facilities. The team shall complete a plan or plans for the Concession Stand and Restroom ("Concession Stand\Restroom") to be submitted by the DISTRICT for formal approval within one hundred eight (180) days of the initial team meeting. The DISTRICT shall agree upon the plan for the Concession Stand and Restroom within ninety (90) days of the presentation of a plan or plans to the DISTRICT by the team.

B. At the DISTRICT's election, as noted above, the CITY shall cause the Concession Stand and Restroom to be constructed as planned and without cost to the DISTRICT or pay over the Concession Stand\Restroom Fund as noted below and herein.

C. The CITY shall establish a Concession Stand\Restroom Fund to pay for costs associated with building the Concession Stand\Restroom Fund up to a cap of Fifteen Thousand (\$15,000.00) Dollars. The CITY's obligation to pay the DISTRICT the said fund shall survive any termination of the Agreement unless the Easement is surrendered by the CITY and Easement property returned to its pre-agreement condition as more fully explained in Section 3 above. The Fifteen Thousand (\$15,000.00) Dollar fund shall be paid by the CITY to the DISTRICT within and upon forty-five (45) days written request for said fund by the DISTRICT.

D. Should the DISTRICT elect to receive the Concession Stand\Restroom Fund, the DISTRICT shall be responsible for the procurement of the design, construction and other services necessary to design and construct the Ancillary Facilities and shall perform related oversight functions.

E. Should the DISTRICT elect to receive the Concession Stand\Restroom Fund, except for the Fifteen Thousand (\$15,000.00) Dollar Concession Stand\Restroom Fund, all expenses related to the procurement of said design, construction and related services and the cost of all such services and expenses related thereto and related to the Concession Stand, Restroom, are the responsibility of the DISTRICT.

F. After identification of the concession stand and restroom and development of plans therefore, the DISTRICT shall notify the CITY the terms and conditions of the CITY's use of the concession stand and restroom. The concession stand and restroom shall be the sole and exclusive property of the DISTRICT.

G. The PARTIES may collaborate to develop other Ancillary Facilities within the Recreational Facilities as the PARTIES may mutually agree during the life of this Agreement as defined in Section 4.

Section 7. 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.

B. Notice: Notices or other communications to the CITY regarding this Agreement shall be either delivered personally by process service or sent by registered or certified mail, postage prepaid, addressed to:

If to CITY: Tadeo A. De La Hoya, City Manager
1090 East Union Street (personal service)
P.O. Box 1170 (by registered or certified mail)
San Luis, Arizona 85349

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

or such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective.

C. 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 and up to the percentage of fault of the indemnifying party for said claims.

D. Non-Discrimination Requirements: The PARTIES shall comply with State Executive Order #2009-09, 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.

E. The PARTIES by their signatures below warrant and certify that they have reviewed A.R.S. Section 15-512 including but not limited to subparagraph H and further warrant that each and all of their employees, subcontractors and those for whom they have directed and direct responsibility, shall comply and cause any employee, subcontractor or employee of subcontractor or others for whom they are responsible (hereinafter "agents") to comply with A.R.S. Section 15-512. All parties, subcontractors and agents shall each obtain and possess a valid fingerprint clearance card pursuant to Title 41, Chapter 12, Article 3.1 of the Arizona Revised Code prior to coming on to DISTRICT property and failure to do so shall be a substantial breach of this Agreement.

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.

H. Insurance requirements:

i. 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 and \$2,000,000.00 aggregate covering their respective activities and for the CITY, \$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.

ii. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

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

O. 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.

P. 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.

Q. 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.

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

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

T. 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 Agreement.

U. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

V. Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the PARTIES to this Agreement.

W. Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

X. Time is of the essence.

Y. The PARTIES acknowledge that the CITY's performance of the Agreement is contingent in part upon the DEVELOPER's performance of third party agreements between CITY and DEVELOPER. Failure of DEVELOPER to perform said third party agreements shall be grounds for termination of this Agreement and obligations thereunder except for obligations that expressly survive any termination as set forth in the Agreement.

[Intentionally left blank, signatures continue on next page]

DATED this _____ day of _____, 2017

CITY OF SAN LUIS,
a municipal corporation

YUMA UNION HIGH SCHOOL
DISTRICT#70

By _____
Gerardo Sanchez
Mayor

By _____
Toni Badone
Superintendent

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By _____
Kay Marion Macuil
San Luis City Attorney

By _____

YUHSD Attorney

ATTEST:

Sonia Cornelio
San Luis City Clerk

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 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.

I hereby state that I am an attorney for Yuma Union High School District #70 (YUHSD), State of Arizona, and pursuant to the provisions of A.R.S. 11-952(D) have determined that the foregoing agreement is in proper form and is within the powers and authority granted to YUHSD under the laws of the State of Arizona.

Dated this ____ day of _____, 2017

Dated this ____ day of _____, 2017

By _____
Kay Marion Macuil
San Luis City Attorney

By _____

YUHSD Attorney

All materials submitted as part of a response to a solicitation are subject to Arizona public records law and will be disclosed if there is an appropriate public records request at the time of or after the award of the contract. Legislation has been enacted to prohibit the state and its political subdivisions from contracting with companies currently engaged in a boycott of Israel. To ensure compliance with A.R.S. §35-393.01, this form must be completed and returned with the response to the solicitation and any supporting information to assist the State in making its determination of compliance.

As defined by A.R.S. §35-393.01:

1. "Boycott" means engaging in a refusal to deal, terminating business activities or performing other actions that are intended to limit commercial relations with Israel or with persons or entities doing business in Israel or in territories controlled by Israel, if those actions are taken either:
 - (a) In compliance with or adherence to calls for a boycott of Israel other than those boycotts to which 50 United States Code section 4607(c) applies.
 - (b) In a manner that discriminates on the basis of nationality, national origin or religion and that is not based on a valid business reason.
2. "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, and includes a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate.
3. "Direct holdings" means all publicly traded securities of a company that are held directly by the state treasurer or a retirement system in an actively managed account or fund in which the retirement system owns all shares or interests.
4. "Indirect holdings" means all securities of a company that are held in an account or fund, including a mutual fund, that is managed by one or more persons who are not employed by the state treasurer or a retirement system, if the state treasurer or retirement system owns shares or interests either:
 - (a) together with other investors that are not subject to this section.
 - (b) that are held in an index fund.
5. "Public entity" means this State, a political subdivision of this STATE or an agency, board, commission or department of this state or a political subdivision of this state.
6. "Public fund" means the state treasurer or a retirement system.
7. "Restricted companies" means companies that boycott Israel.
8. "Retirement system" means a retirement plan or system that is established by or pursuant to title 38.

All offerors must select one of the following:

_____ My company **does not** participate in, and agrees not to participate in during the term of the contract a boycott of Israel in accordance with A.R.S. §35-393.01. I understand that my entire response will become public record in accordance with A.A.C. R2-7-C317.

_____ My company **does** participate in a boycott of Israel as defined by A.R.S. §35-393.01.:

By submitting this response, proposer agrees to indemnify and hold the State, its agents and employees, harmless from any claims or causes of action relating to the State's action based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the State in defending such an action.

Company Name

Address

City State Zip

Signature of Person Authorized to Sign

Printed Name

Title

Exhibit "A"

COUNTY 22ND STREET

1477601003
BARKLEY LIMITED AZ PARTNERSHIP

1477601015
BARKLEY LIMITED AZ PARTNERSHIP

Ex. Sewer
Lift Station

Proposed 30' Wide City of San Luis Sewer Easement

1477611001
REIDEL HOLDINGS AZ, LLC
(Planned Las Quintas No. 2 Subdivision)

SIDEWINDER ROAD
East Main Canal

147760100401
BARKLEY LIMITED AZ PARTNERSHIP

1477601016
YUMA UNION HIGH SCHOOL DIST #70
SAN LUIS HIGH SCHOOL

147760100601
USA

**PROPOSED EASEMENT FOR CITY OF SAN LUIS
GRAVITY SEWER LINE**

Exhibit "B"

EASEMENT FOR SEWER LINE

LEGAL DESCRIPTION

The North 30 feet of the following property:

The Southeast Quarter of the Northwest Quarter and of that portion of the Southwest Quarter of the Northeast Quarter lying West of Sidewinder Road as Recorded in Fee No. 2015-03579, all in Section 6, Township 11 South, Range 24 West, Gila and Salt River Base and Meridian, Yuma County, Arizona.

Further described as:

Beginning at the Northwest Corner of the Southeast Quarter of the Northwest Quarter of the Section 6, Township 11 South, Range 24 West, Gila and Salt River Base and Meridian, Yuma County, Arizona, said point being the True Point of Beginning;

Thence N 89°51'18" E along the North Line of the Southeast Quarter of the Northwest Quarter a distance of 1323.76 feet to the Northeast Corner of the Southeast Quarter of the Northwest Quarter;

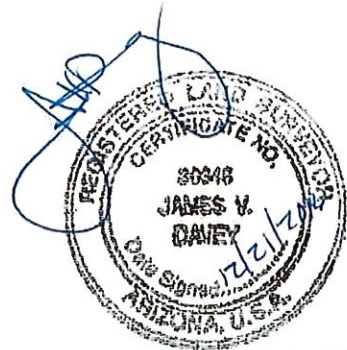
Thence N 89°44'59" E along the North Line of the Southwest Quarter of the Northeast Quarter a distance of 595.41' to the West Right-of-Way line of Sidewinder Road;

Thence at a local tangent bearing of S 5°09'02"E through a curve to the right with a radius of 457.00 feet along the West Right-of-Way line of Sidewinder Road through an arc of 3°46'52" for a distance of 30.05';

Thence S 89°44'59" W along a line 30' South of and parallel to the North Line of the Southwest Quarter of the Northeast Quarter for a distance of 597.18';

Thence S 89°51'18" W along a line 30' South of and Parallel to the North Line of the Southeast Quarter of the Northwest Quarter a distance of 1323.76 feet to the West Line of the Southeast Quarter of the Northwest Quarter;

Thence N 0°06'33" E a distance of 30.00 to the Northwest Corner of the Southeast Quarter of the Northwest Quarter of said Section 6 and the True Point of Beginning.



Expires 9.30.2017

Exhibit "C"

When recorded, mail to:

Ms. Toni Badone, Superintendent
Yuma Union High School District #70
3150 South Avenue A
Yuma, AZ 85364-7998

Sonia Cornelio, City Clerk
City of San Luis
P. O. Box 1170
San Luis, AZ 85349

UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That Yuma Union High School District #70 (YUHSD) hereinafter called GRANTOR for and in consideration of one dollar (\$1.00) and other valuable considerations the receipt of which is hereby acknowledged, does hereby grant, remise, release and forever quitclaim unto the CITY OF SAN LUIS, a municipal corporation of the State of Arizona, hereinafter called GRANTEE (1090 E. Union Street, San Luis, Arizona, 85349), a non-exclusive utility easement, subject to the terms and conditions noted herein, for the location, construction, reconstruction, maintenance, operation and repair of a wastewater line and related wastewater improvements and any and all appurtenances incidental thereto in, under, upon, over and through the following-described tract of land ("Land") situate in San Luis, Yuma County, Arizona:

PROPERTY DESCRIPTION

(The legal description of the Land is attached hereto and made a part hereof as Exhibit A.)

TERMS AND CONDITIONS OF GRANT

1. By the granting of this utility easement ("Easement") it shall not be construed to prohibit the GRANTOR from developing any adjoining property or from the laying out, establishing and constructing pavement, surfacing of roadways, curbing and gutters and other improvements along, upon, over or across said Easement or any portion thereof; provided, however, said Easement shall be kept free from additional depth of overburden, buildings, and any other structure or obstruction (except sidewalks, roadways pavement, grass, shrubs, fences, curbs and other improvements as noted above), which will interfere with the GRANTEE in entering upon said adjacent land and Easement for the purpose of laying, constructing, reconstructing, operating, repairing and maintaining a wastewater line, wastewater improvements and appurtenances including stub outs for DISTRICT

connections. Upon mutual agreement of the GRANTOR and GRANTEE easement may include other utility uses including but not limited to water service and GRANTOR permission shall not unreasonably be withheld.

2. GRANTEE shall maintain the Easement Area together with any improvements constructed or installed thereon by GRANTEE or associated with GRANTEE's use of the Easement Area. The operation and maintenance of such improvements and of the Easement Area shall be at GRANTEE's sole cost and expense.
3. This Easement is subject to all liens, encumbrances, covenants, conditions, restrictions, reservations, contracts, leases and licenses, Easements, and rights of way pertaining to the Land, whether or not of record, and the related Intergovernmental Agreement between GRANTOR and GRANTEE. The use of the word "grant" shall not imply any warranty on the part of the GRANTOR with respect to the Easement or the Easement Area.
4. GRANTEE shall comply with all applicable laws, ordinances and regulations, including but not limited to all applicable regulatory, environmental and safety requirements at GRANTEE's sole cost and expense.
5. GRANTEE shall not use, deposit or permit the use or deposit of any hazardous material or toxic waste or other harmful substances on the Land or on any other real property of GRANTOR adjacent to the Easement Area.
6. GRANTEE shall not materially interfere with the use by and operation and activities of GRANTOR on its property, and GRANTEE shall use such routes and follow such procedures on GRANTOR's property as result in the least damage and inconvenience to GRANTOR.
7. GRANTEE shall be responsible for any damage to GRANTOR's property or that of third parties resulting from any exercise of the rights herein granted, including but not limited to soil erosion, subsidence or damage resulting therefrom. GRANTEE shall promptly repair and restore to its original condition any of GRANTOR's property, including, but not limited to, roads, utilities, buildings and fences that may be altered, damaged or destroyed in connection with the exercise of the Easement or use of the Easement Area.
8. This Grant of Easement is made on the express condition that GRANTOR is to be free from all liability by reason of injury or death to persons or injury to property from whatever cause arising out of GRANTEE's, its contractors', agents', officers', members', employees', invitees', or licensees' exercise of rights granted pursuant to this Easement or use of the Easement Area or of the improvements or personal property of GRANTEE thereto or thereon, including any liability for injury or death to the person or property of GRANTEE, its contractors, agents, officers, members, employees, invitees, or licensees or to any property under the control or custody of GRANTEE. GRANTEE hereby covenants and agrees to defend and indemnify GRANTOR, its officers, employees, agents, students, invitees and guests and save them harmless from any and all liability, loss, costs, or obligations on account of, or arising out of, any such injury or losses caused or claimed to

be caused by the exercise of the Easement or use of the Easement Area by GRANTEE, however occurring, other than those caused solely by the willful or negligent acts or omissions of GRANTOR.

9. GRANTOR may terminate this Easement and all of the rights granted herein any time after five (5) years of continuous non-use of the Easement or the Easement Area by GRANTEE. In the event of such termination, the Easement shall be quitclaimed from GRANTEE to GRANTOR, without expense to GRANTOR, and any and all interest in GRANTOR's Land conveyed in this Easement shall automatically revert to GRANTOR or its assigns and successors, without the necessity of any further action to effect said reversion. On demand by GRANTOR, GRANTEE shall promptly remove any and all improvements it installed in, on, under or above the Easement Area. At the option of GRANTOR, all such improvements shall become the personal property of GRANTOR at no cost to GRANTOR.
10. GRANTEE alone shall pay any and all taxes, charges or use fee(s) levied by any governmental agency against GRANTEE's interest in the Easement Area, or against any of GRANTOR's real property as a result of the Easement herein granted. GRANTEE shall not cause liens of any kind to be placed against the Easement Area or any of GRANTOR's real property.
11. This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect except in a subsequent modification in writing, signed by the party to be charged.
12. This instrument shall bind and inure to the benefit of the respective successors and assigns of the parties hereto.

The Easement granted herein is subject to the terms and conditions attached hereto as Exhibit B and made an enforceable part hereof by reference.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the ____ day of _____, 2017.

GRANTOR: YUMA UNION HIGH SCHOOL DISTRICT #70

By _____
Toni Badone

Its Superintendent

[Signature page continues on the next 2 pages]

GRANTEE: CITY OF SAN LUIS

By _____

Its _____

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF ARIZONA)
) ss.
COUNTY OF YUMA)

On _____, 20____, before me, _____, a notary public in and for said County and State, personally appeared **Toni Badone, Superintendent of the Yuma Union High School District #70, Grantor**, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(Signature of Notary Public)

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF ARIZONA)
) ss.
COUNTY OF YUMA)

On _____ before me, _____, a notary public in and for said County and State, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s), acted, executed the instrument.

WITNESS my hand and official seal.

(Signature of Notary Public)

San Luis High School
1250 8th Avenue
San Luis, AZ 85349

Exhibit "D"

CONFORMED COPY
2016-09939 INTERGOVERNMENTAL AGREE.
04/28/2016 02:44:11 PM Pages: 14 Fees: \$19.00
Requested By: CITY OF SAN LUIS CITY CLERK
Recorded By: askaggs
Robyn Stallworth Pogue County Recorder, YUMA County AZ

WHEN RECORDED MAIL TO:

**CITY OF SAN LUIS
ATTN: SONIA CORNELIO, CITY CLERK
P.O. BOX 1170
SAN LUIS, ARIZONA 85349**

The above area is to be reserved for recording information

CAPTION HEADING:

**Intergovernmental Agreement
An Intergovernmental Agreement between the City of San Luis Arizona and the Yuma
Union High School District #70**

**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 24th day of February, 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 A.R.S. §11-951 et seq., 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 example, fields may not be usable due to rain or a 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 the 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 condition. 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.

E. 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.

B. 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

C. 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.

D. 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, and also including Title VII of the Civil Rights Act of 1964, P.L. 88-854 (1964), and the Americans with Disabilities Act of 1999.

E. 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.

F. Insurance requirements:

- 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

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

M. 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.

N. 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.

O. 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.

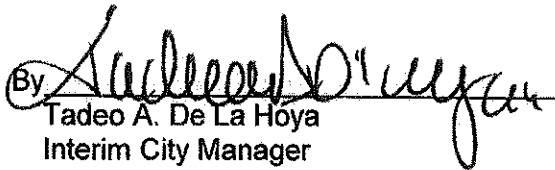
P. Counterparts: This Agreement may be executed in multiple counterparts, each of which shall constitute one and the same instrument.

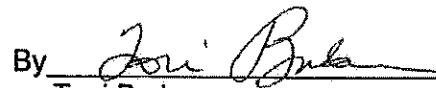
Q. Governing Law: The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance.

R. 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

ATTEST:


City Clerk

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 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.

Dated this 2 day of March,
2016

By 
City Attorney

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 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 31st day of March,
2016

By 
YUHSD Attorney

Exhibit "A" Facilities

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

| <u>City Facilities</u> | (CITY Facilities) | <u>YUHSD #70 Facilities</u> (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 |

.....
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.