

**AGREEMENT BETWEEN WESTERN
ARIZONA COUNCIL OF GOVERNMENTS
AND THE CITY OF SAN LUIS, ARIZONA**

This Revocable License Agreement is between WESTERN ARIZONA COUNCIL OF GOVERNMENTS, hereinafter referred to as WACOG, and CITY OF SAN LUIS, ARIZONA, hereinafter referred to as THE CITY on the ____ day of _____, 2017.

WHEREAS, THE CITY has identified the need to provide preschool assistance for at risk children, particularly those from low-income families and

WHEREAS, WACOG is the operator of a successful Head Start Program in Yuma, La Paz, and Mohave Counties, and

WHEREAS, WACOG has been approved by the Department of Health and Human Services to provide these services in Yuma County,

WHEREAS, WACOG has provided quality preschool services to at risk children in San Luis since at least 2011.

NOW, THEREFORE the WESTERN ARIZONA COUNCIL OF GOVERNMENTS (WACOG) and the City (THE CITY) do hereby agree:

- (1) For and in consideration of WACOG's operation of a Head Start preschool program, THE CITY agrees to provide a portion of SW1/4SE/4SW1/4 Section 1, Township 11 South, Range 25' West, Gila and Salt River Base and Meridian, Yuma County, Arizona, more particularly described as follows: Beginning at the south quarter corner of said Section thence $SS9^{\circ} 40'00''W$ along the south quarter corner of said Section 1 a distance of 1325.0S feet to the southwest 1/16 corner of said Section 1, thence $NO017' 15'' W$ along said 1116 line of said section 1 a distance of 329. S2 feet; thence $NDS9 41' 02'' E$ a distance of 72.00 feet to the TRUE POINT OF BEGINNING; thence $N^{\circ}89 41' 02''$ a distance of 182.00 feet; thence $SO^{\circ} 17' 15''E$ a distance of 146.00 feet; thence $S89^{\circ}41'02''W$ a distance of 182.00 feet; thence $NO^{\circ} 17' 15''W$ a distance of 146.00 feet to the TRUE POINT OF BEGINNING, containing 0.61 acres a site for WACOG to operate modular classrooms.
- (2) WACOG will solicit Federal, State and/or local funds necessary for the operation of this Head Start program, subject to funding availability. WACOG will secure the required permits and approval for the classrooms.
- (3) WACOG will secure approval from the necessary health and other regulatory agencies to insure proper operation of the Head Start classrooms within all existing laws which govern such programs and provide evidence of such approval to THE CITY to continue operations of the Head Start program.

- (4) WACOG expressly agrees to indemnify, save, and hold harmless, THE CITY, any of its departments, agencies, agents, officers or employees, from and against any and all fines, suits, claims, demands, damages, injuries, judgments, and actions of any kind and nature by reason of the use by WACOG of THE CITY property and any such activities on or related to such property by WACOG or any person employed by WACOG or of any others for whose acts WACOG is responsible, including but not limited to supervisors and/or employees and further including but not limited to any WACOG property improvements or additions of any kind whatsoever, including but not limited to that property of participants in the Head Start program or employees or supervisors of said program from cause or causes whatsoever, while in, upon, or in any way connected with the said premises during the term of this lease or in preparation of the property for the beginning of said program. WACOG further covenants and agrees to indemnify and save harmless THE CITY from costs and obligations on account of or arising out of any such fines, suits, claims, demands, damages, injuries, judgements, and actions, based on the use of the facilities by WACOG all as set forth above. WACOG also agrees to name THE CITY as additional named insured under its liability policy.
- (5) WACOG shall at its cost, keep and maintain said premises and appurtenances and every part thereof in good and sanitary order, subject to funding availability,
- (6) THE CITY agrees to document the "in-kind" services at market value, minus any fee paid by WACOG for such services, that it provides for the WACOG Head Start Program. These "in-kind" services will be reported to WACOG on a monthly basis and will allow WACOG to match the federal funding it receives to provide Head Start services.
- (7) This Agreement shall be for a period of (5) years from the date of its execution. WACOG and THE CITY may agree to extend this Agreement in succeeding years.
- (8) WACOG and THE CITY shall have the right, upon mutual agreement, to amend this agreement at any time.
- (9) Either WACOG or THE CITY may terminate this agreement at any time on 90 day written notice.
- (10) The above-described property may be occupied and used by WACOG solely for the purpose of providing a Head Start program. In making this promise it is understood that WACOG is performing the public purpose of providing the above-described services to the residents of THE CITY of San Luis, and the provision of these services to the residents of San Luis is part of the consideration of this agreement.

(11) WACOG and THE CITY agree that this License Agreement is only a revocable license and shall not be construed as a lease, or confer any rights of a lease. WACOG shall not record this License Agreement or any notice or memorandum of this Agreement.

(12) GENERAL PROVISIONS

- A. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by THE CITY or WACOG of the breach of any covenant of this agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this contract.
- B. Attorneys' Fees. In the event any party finds it necessary to bring any action at law or other proceeding, including arbitration, against the other party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in any such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party, and in the event any judgement is secured by said prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the court and not by jury.
- C. Counterparts. This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.
- D. Headings. The descriptive headings of the paragraphs of this agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- E. Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this contract.
- F. Time of the Essence. Time is of the essence of this contract.
- G. No Partnership and Third Parties. It is not intended by this agreement to, and nothing contained in this agreement shall, create any partnership, joint venture or other similar arrangement between THE CITY and WACOG. No term or provision of this agreement is intended to, or shall,

be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

- H. Entire Agreement. This agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral and written, are hereby superseded and merged herein.
- I. Amendment. No change or additions are to be made to this agreement except by a written amendment executed by the parties hereto.
- J. Governing Law. This agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, this agreement is subject to the provisions of A.R.S. § 38-511.
- K. Reformation. Should any term, provision, covenant or condition of this agreement be held to be void or invalid, the parties shall reform this agreement to conform as closely as possible to the original intent thereof.
- L. Venue. Any legal action relating to this agreement shall be brought in either the Yuma County Superior Court or in the United States District Court for the district of Arizona at the election of the plaintiff in such legal action, provided, however, that nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.
- M. Severability. Every provision of this agreement is, and will be construed to be, a separate and independent covenant. If any provision of this agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability, and each provision of this agreement will be valid and will be enforced to the extent permitted by the law, and the parties will negotiate in good faith for such amendments of this agreement which may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.
- N. No Personal Liability. No member, official or employee of THE CITY shall be personally liable to WACOG, or any successor or assignee, (a) in the event of any default or breach by THE CITY (b) for any amount which may become due to the WACOG or its successor or assign, or (c) pursuant to any obligation of THE CITY under the terms of this contract.

- O. Employment Eligibility. WACOG hereby warrants, and shall require its subcontractors to warrant, that it is in compliance with all federal immigration laws and regulations that relate to its 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. THE CITY retains the legal right to inspect the papers of WACOG and any contractor or subcontractor employee of WACOG to ensure that WACOG and any of its contractors or subcontractors are compliant with this warranty.

- P. WACOG hereby certifies that it does not participate in, and agrees not to participate in during the term of this agreement 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.

- Q. Assignment. The rights of each party under this agreement are personal to that party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

IN WITNES WHEREOF, we have hereunto set our hands and seals on the date and year first above written. Each party to this agreement has caused it to be executed on the date pursuant to the verifications below

ACCEPTED AND APPROVED:

ACCEPTED AND APPROVED:

 City Manager, City of San Luis

 Western Arizona Council of Governments

DATE: _____

DATE: _____

ATTEST:

 City Clerk

 City Attorney

State of Arizona)
) ss
County of Yuma)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017 by _____.

Notary Public

My Commission Expires: _____