

**INTERGOVERNMENTAL AGREEMENT
CITY OF SAN LUIS AND GADSDEN ELEMENTARY SCHOOL DISTRICT
TO APPLY FOR RIGHTS OF WAY FROM THE STATE OF ARIZONA
AND MAKE IMPROVEMENTS ON THE RIGHTS OF WAY**

Agreement made this 14th day of December, 2016, between the City of San Luis, Arizona, a municipal corporation organized under the laws of Arizona ("City"), having its administrative offices at 1090 East Union Street, San Luis, Arizona, and Gadsden Elementary School District #32 of Yuma County, Arizona, having its administrative offices at 1453 N. Main Street, San Luis, Arizona ("School District").

RECITALS

- A. Purpose: For the benefit of the community, the City and the School District desire to improve traffic circulation and provide secondary access to San Luis Middle School, Arizona Desert Elementary School and Rio Colorado Elementary School in the area consisting of Arizona State Land Department land lying west of North 4th Avenue between Juan Sanchez Blvd. and County 22-1/2 Street and lying north of Juan Sanchez Blvd between 1st Avenue and 4th Avenue in San Luis, Arizona ("Land".)
- B. This Land is owned by the State of Arizona.
- C. The City and the School District desire to submit a Right of Way application to the State of Arizona Land Department.
- D. Arizona Revised Statutes (A.R.S.) §11-952 authorizes the City and the School District to enter into this agreement

In consideration of the matters described above, and of the mutual benefits and obligations set forth in this agreement, the parties agree as follows:

SECTION ONE: Application and Completion of Improvements

- A. The City and the School District agree to apply to the Arizona State Land Department for Rights of Way across the Land. The Legal Descriptions and plans of the proposed Rights of Way are shown on Exhibits A and B attached. The application will be made in the name of the City of San Luis.
- B. If the State of Arizona grants the Rights of Way to the City of San Luis, then the City and the School District agree to complete the improvements on the Rights of Way within 4 years and 6 months after the effective date of this Agreement. If at 4 years and 6

months, the School District's or the City's improvements cannot be completed in an additional 6 months, then the Parties agree that the City may block access to San Luis Middle School, Arizona Desert Elementary School and Rio Colorado Elementary School from North 4th Avenue and from Juan Sanchez Blvd. in San Luis, Arizona, except for such portions of the improvements that have been completed and except for emergency vehicles such as fire, ambulance and law enforcement.

- C. If the State of Arizona denies the Rights of Way application, then the City and the School District agree that the City may block access to San Luis Middle School, Arizona Desert Elementary School and Rio Colorado Elementary School from North 4th Avenue and from Juan Sanchez Blvd., Arizona, except for emergency vehicles such as fire, ambulance and law enforcement.

SECTION TWO: Costs

- A. The City and the School District shall share the costs of application, appraisal, and any other costs related to the application to the Arizona State Land Department equally, fifty percent (50%) each.
- B. The City and the School District shall each pay the cost of the acquisition of their respective portions of the Right of Way as designated in Exhibits A and B.
- C. The City and the School District shall each pay for its improvements on their respective portions of the Right of Way as designated in Exhibits A and B.
- D. Subject to annual appropriation, each party to this agreement shall include in its annual budget, approved by its governing body, the manner of financing and of establishing and maintaining a budget for this undertaking.

SECTION THREE: Dedication and Maintenance

- A. If the State of Arizona grants the Rights of Way to the City of San Luis and once the School District completes its portion of the improvements of the extensions of 1st Avenue and of Union Street in the time-frame provided in this agreement, then the School District shall dedicate the improvements of these roadways to the City for maintenance. Maintenance of unimproved 1st Avenue and Union Street shall be the responsibility of the School District until the dedication to the City is completed.
- B. Should the School District develop a parking lot within the Rights of Way acquired from the State, the School District will be responsible to construct and maintain such parking

lot.

- C. By operation of law if the improvements by either party are not completed within 5 years, the land will revert to the State of Arizona.
- D. The School District will be responsible to acquire a Rights of Entry from the Arizona State Land Department for the term of this agreement.

SECTION FOUR: Term and Termination

- A. The term of this agreement shall be for five (5) years or until the terms of this agreement are fulfilled whichever comes sooner.
- B. This agreement may be extended at the expiration of the five (5) years, the City with recommendations from the Arizona State Land Department, will determine the timeframe for an extension.
- C. Either party to this agreement may terminate this agreement within ninety (90) days of notice to the other party.
- D. This agreement is subject to cancellation under the provisions of A.R.S. Section 38-511.

SECTION FIVE: Notices

Notices: All notices and communications provided for in this Agreement or given in connection with this Agreement, shall be validly made in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City:

Attention: City Manager
(Copy to City Attorney)
City of San Luis
P.O. Box 1170
1090 Union Street
San Luis, AZ 8534

If to the School District: _____

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.

SECTION SIX: Liability Insurance and Indemnity

- A. Each party to this agreement shall carry public liability insurance in amounts not less than Three million (\$3,000,000.00).
- B. Until such time as proper Rights of Way from the State of Arizona are acquired and streets and other improvements are developed and dedicated to and accepted by the City for maintenance as provided herein, School District agrees to defend, indemnify and hold City, its respective affiliates, officers, directors, employees and agents harmless from and against any and all losses, claims, demands, suits, actions, judgments, fines or payments for, or in connection with, any accident, injury or damage whatsoever caused to any person or property arising, directly or indirectly, out of use of the Land for pedestrian or vehicular traffic.
- C. To the extent permitted by law, each party to this Agreement agrees (as indemnitor) to indemnify, defend and hold harmless the other party (as indemnitee) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney’s fees) (collectively, “Claims”) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims are caused by the act, omission or negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees or volunteers.
- D. Subject to subsection “B” above, if a Claim or Claims by third parties become subject to this indemnity provision, the parties to this Agreement that the subject of such Claim or Claims shall expeditiously meet to discuss a common and mutual defense, including possible proportional liability and proportional payment of possible litigation expenses and money damages.
- E. Each party’s obligation of indemnification shall survive the termination of this agreement. Each party shall remain solely and exclusively responsible for the employee benefits, wage and disability payments, pensions and workers’ compensation claims for its employees. In addition each party shall be solely and exclusively responsible to pay for any damage to its equipment, including personal protective equipment, and medical expense incurred by any of its employees in connection with the performance of this

contract.

SECTION SEVEN: Miscellaneous Provisions

- A. **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.
- B. **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 of the Agreement.
- C. **Authority.** The undersigned represent to each other that they have full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement.
- D. **Entire Agreement.** This Agreement, including the Exhibits hereto, which are incorporated herein by this reference, constitutes the entire agreement between the parties. This provision applies only to the entirety of this Agreement only; additional laws and agreements with the City may apply to the Property, and this provision has no effect on them.
- E. **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 or by their successor in interest or assigns. The City shall record the amendment or cancellation in the official records of the Yuma County Recorder.
- F. **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.
- G. **Governing Law.** The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Yuma County, Arizona, and the parties hereby waive any right to object to such venue.
- H. **Recordation of Agreement and Subsequent Amendment; Cancellation.** This Agreement, and any amendment or cancellation of it shall be recorded in the official records of the Yuma County Recorder after the City and the School District execute such agreement amendment or cancellation.

I. Attorney's Fees and Costs. If either party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorney's fees and court costs.

J. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

K. No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

L. Non-Liability of City Officials and Employees Except for mandamus and other special actions, no member, official or employee of the City shall be personally liable to the School District, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the School District or successor, or under any obligation under the terms of this Agreement.

M. Employment Eligibility. The City and the School District hereby warrant that each of them 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 this Agreement. City retains the legal right to inspect the papers of Developer to ensure that Developer is compliant with this warranty.

N. Time is of the essence.

O. This agreement may be executed in counterparts, any of which shall be deemed to be an original.

[Signature page follows]

The parties have executed this agreement the day and year first above-written.

The City of San Luis, Arizona

Gadsden Elementary School District #32

By: _____
Gerardo Sanchez
Mayor

By: _____
Luis Marquez
President

Attest:

Attest:

Sonia Cornelio
San Luis City Clerk

I hereby state that I am the 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 ____ day of _____, 2016

Kay Marion Macuil
San Luis City Attorney

I hereby state that I am the attorney for the Gadsden Elementary School District #32, County of Yuma, 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 Somerton, Arizona under the laws of the State of Arizona.

Dated this ____ day of _____, 2016

Steven Horton
School District Attorney