

**AGREEMENT
BETWEEN CITY OF SAN LUIS
AND
SAN LUIS INDUSTRIAL PARK L.L.C.
FOR RETENTION BASIN IMPROVEMENTS AND MAINTENANCE**

THIS AGREEMENT, made and entered into this ____ day of February, 2019 by and between the CITY OF SAN LUIS, a municipal corporation of the State of Arizona, hereinafter referred to as "CITY" and the SAN LUIS INDUSTRIAL PARK L.L.C., an Arizona Limited Liability Company, hereinafter referred to as "SLIP", the CITY and SLIP hereinafter collectively referred to as the "PARTIES," or individually may be referred to as a "PARTY."

WHEREAS, the CITY is a tenant in the Subdivision known as San Luis Industrial Park; and a member of SLIP; and

WHEREAS, there are retention basins within the Subdivision, which are the responsibility of the CITY to maintain; and

WHEREAS, SLIP proposes to install certain landscaping improvements in said retention basins upon the condition that the CITY will maintain said improvements in good condition and repair.

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 installation and maintenance of certain landscaping improvements in the retention basins located in the Subdivision.

Section 2. Term

This AGREEMENT will become effective as of the date indicated above, and will terminate 10 years thereafter. The term of this Agreement will automatically renew annually unless either PARTY gives notice to the other of non-renewal at least 90 days prior to the end of the initial term of this Agreement.

Section 3. Landscaping

SLIP will install landscaping in the Subdivision retention basins bordering Urtuzuastegui Street. SLIP will coordinate the be installation with both the Parks and Recreation Department and the Public Works Department of the CITY to ensure that any installation will be of a kind and nature so as to be consistent with the ability of the CITY to maintain the improvements and not interfere in the functioning of the retention basins.

Section 4. Maintenance

To the extent permitted by law, subject to the appropriations of the City Council of the CITY pursuant to its annual budget, pursuant to the scheduling and practices of the CITY, the CITY shall maintain said landscaping improvements as follows:

1. General policing of the area for litter pick-up.
2. Lawns will be mown and trimmed.
3. Lawns will be edged.
4. Lawns will be fertilized to keep good appearance.
5. Trees will be trimmed and suckers removed per CITY needs.
6. Trees will be inspected to ensure proper growth.
7. Diseased or dying trees, or shrubbery, will be removed and replaced.
8. Shrubby will be maintained and thinned regularly to contain their size in respect to species, surroundings and the best health of the plant.
9. The irrigation system will be maintained and repaired as needed.
10. All gravel and cobbled areas will be maintained on a regular basis to insure the integrity of the color and design.
11. Weed removal and/or abatement.
12. Payment of all water and electricity for the irrigation system.

Section 5. General Terms and Conditions

A. 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
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If to SLIP:	Frank Rascon P.O. Box 832 San Luis, Arizona 85349
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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.

B. 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.

C. 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.

D. 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.

E. 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.

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

G. 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.

H. 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.

I. Counterparts: This AGREEMENT may be executed in multiple counterparts, each of which shall constitute one and the same instrument. Digitally scanned signatures shall be the same as original signatures.

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

K. 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.

L. 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.

M. 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.

N. Time is of the essence.

O. 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.

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

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

R. No Boycott of Israel. SLIP hereby certifies that it does not boycott Israel.

S. Attorneys' fees and costs. The prevailing PARTY in any legal action or proceeding to interpret or enforce this AGREEMENT shall be awarded its reasonable attorneys' fees and costs.

DATED this _____ day of _____, 2017

CITY OF SAN LUIS,
a municipal corporation

SAN LUIS INDUSTRIAL PARK L.L.C.

By _____
Gerardo Sanchez
Mayor

By _____
Manager

APPROVED AS TO FORM:

By _____
City Attorney

ATTEST:

City Clerk