

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

THIS AGREEMENT (“Agreement”), made and entered into this ____ day of March 2021 by and between the CITY OF SAN LUIS, a municipal corporation of the State of Arizona, hereafter referred to as “CITY” and the YUMA UNION HIGH SCHOOL DISTRICT #70, hereinafter referred to as “DISTRICT.” The CITY and the DISTRICT may be referred to in the singular as party or owner and in the plural as parties or owners.

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

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

WHEREAS, pursuant to Section 11-951 et seq. of Arizona Revised Statutes, cities and schools may enter into agreements for the construction, development, cooperative maintenance, operation, and use of parks, swimming pools, and other recreational facilities on the 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, gymnasiums, athletic fields, weight rooms, dance rooms, auditoriums, running tracks, classrooms and stage 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, a swimming pool, parks, and plans for 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 partner 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. This Agreement may be renewed for three additional five (5) year periods upon 120 days written notice to the other party. Any renewal will be reduced to writing and signed by the parties.

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 ninety

(90) days written notice to the other party of the intent to terminate.

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." Facilities may include, but not be limited to, buildings and grounds, recreational or athletic facilities, and parking areas.

Section 5. General Guidelines for 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. The DISTRICT will have use of DISTRICT Facilities during the school year during regular school hours and after school hours or on weekends 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 DISTRICT 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.

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. CITY reserves the right to enforce CITY policies at CITY sponsored events.

C. Facilities Maintenance. Each party will maintain its own Facilities and equipment in good and reasonable repair as required by law. The DISTRICT will be solely responsible for costs of and making any repair of damages to the CITY Facilities that occur during 'DISTRICT'S use of the CITY Facilities. The CITY will be solely responsible for the cost of and making any repair of damages to DISTRICT Facilities that occur 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 during the other party's use of the Facilities, shall notify the other party in writing of the damages and 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 their 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. One party to the Agreement will be responsible for damage occurring to the property of the other during the use by the first party. That responsibility should be limited to damage caused by the act or omission of the party using the facility. If the damage caused is beyond the control of the using party, then that party should not be responsible.

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 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. Joint Use Scheduling Confirmation Process

A. Scheduling. Each owner will be responsible for maintaining the schedule for its own Facilities.

B. Scheduling Meetings. Representatives of the parties will meet on or about December 1, March 1, June 1 and September 1 of each year to discuss scheduling for April through June, July through September, October through December; and January through March, respectively. 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 seven (7) days, contact the other representative to discuss changes or amendments which need to be addressed. Quarterly discussions shall include a 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 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.

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

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

E. COVID-19 Mitigation Compliance Measures (or other public health emergencies). If a party requests to use the other party's Facility or Facilities while COVID-19 or other public health measures are required by law or desirable to the party owner of the Facility or Facilities, the requesting party shall provide in writing to the party owning the Facility or Facilities:

1. a detailed description of the event;
2. anticipated number of attendees;
3. location of the event;
4. actions to comply with Federal, State, County and CITY Mitigation Compliance

Measures, including but not limited to applicable COVID-19 Arizona Governor Emergency Executive Orders, Arizona Department of Health Services Orders, Yuma County Emergency Proclamations, Yuma County Health Services District Orders, CITY Emergency Proclamations; and

5. commitment that the requesting party will cancel the event if the applicable gating criteria, metrics or benchmarks for safe infection control for the event are not met two weeks before the event.

Section 7. Fees

- A. Each party may charge the other fees for the use of their respective Facilities for reimbursement for services, maintenance or supplies, or utilities attributable to the other party's use of the Facilities. Fees will be established during the scheduling process. The parties agree to minimize fees to the extent possible for community benefit.
- B. For clarification, the obligations under Section 7. Utilities under the Intergovernmental Agreement between the CITY and the DISTRICT dated February 24, 2016, are terminated and expired. The DISTRICT will pay all its utilities, including electricity for the lights for "DISTRICT FIELD" as defined in the Intergovernmental Agreement between the parties dated February 24, 2016, unless stated otherwise in this 2021 Agreement, Section 7(A).
- C. Under Section 8. Capital Improvements of the Intergovernmental Agreement between the parties dated February 24, 2016, the CITY installed lights at the CITY's cost on the "DISTRICT FIELD" as defined in that Intergovernmental Agreement. The DISTRICT agrees to reimburse the CITY for said lights at the reasonable depreciated value of \$150,000.00 (which includes a warranty that will expire August 18, 2026) to be paid in a lump sum on or before June 30, 2021.

Section 8. 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 the period for which funds are appropriated unless the parties agree to a modification of this Agreement.

B. Notice: Any notice given under this Agreement shall be in writing and sent to the party and address listed below:

If to CITY:

If to DISTRICT:

Parks and Recreation Director
P.O. Box 1170
San Luis, Arizona 85349

YUHSD #70 Superintendent
3150 S. Avenue A
Yuma, Arizona 85364

C. Indemnification: 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 sole negligence 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, 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: 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 covering their respective activities. This insurance may be comprised of self-insurance retention (“S.I.R.”) 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 three (3) years.

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 the parties mutually agree, 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 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, the property shall be returned to its original owner.

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

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

Q. Previous Agreement Superseded: This Agreement supersedes and replaces the previous joint use Facilities Agreement between the CITY and DISTRICT dated February 24, 2016.

DATED this _____ day of March 2021

CITY OF SAN LUIS

YUMA UNION HIGH SCHOOL
DISTRICT #70

By _____
Mayor

By _____
Superintendent

ATTEST:

City Clerk

I state that I am an attorney for the City of San Luis, State of Arizona. Under A.R.S. § 11-952(D), I certify that I have determined that this Agreement is in proper form, and it is within the powers and authority granted to the City of San Luis under the laws of Arizona.

_____ Date: _____
Kay Marion Macuil
San Luis City Attorney

I state that I am an attorney for Yuma Union High School District #70 ("YUHSD"). State of Arizona. Under A.R.S. § 11-952(D), I certify that I have determined that this Agreement is in proper form, and it is within the powers and authority granted to the City of San Luis under the laws of Arizona.

 for _____ Date: 2/25/2021
C. Benson Hufford
Attorney for the Yuma Union High School District #70

Exhibit "A"

CITY Facilities

Baseball Fields
Softball Fields
Municipal Pool
Gymnasium
Athletic Field

DISTRICT Facilities

Tennis Courts
Gymnasium
Athletic Fields
Auditorium
Running Track
Classrooms