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CITY OF SAN LUIS  
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SAN LUIS, ARIZONA 85349

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**CAPTION HEADING:**

**Resolution**  
Resolution No. 2053  
Intergovernmental Agreement – Gadsden Elementary School District #32  
Construction and Maintenance of a Retention Basin at Ed Pastor Elementary School

RECEIVED

OCT 9 2018

CITY OF SAN LUIS



# *Resolution*

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

No. 2053

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA AUTHORIZING AND DIRECTING THE ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE GADSDEN ELEMENTARY SCHOOL DISTRICT # 32 FOR THE CONSTRUCTION AND MAINTENANCE OF A RETENTION BASIN AT ED PASTOR ELEMENTARY SCHOOL.**

**BE IT RESOLVED** by the Mayor and City Council of the City of San Luis, Arizona, as follows:

**Section 1.** that it is deemed in the best interest of the City of San Luis and its residents that the city enter into an Intergovernmental Agreement with Gadsden Elementary School District 32 for the construction and maintenance of a retention basin for the drainage of road run-off from 6<sup>th</sup> Street and the intersection with newly constructed Union Street;

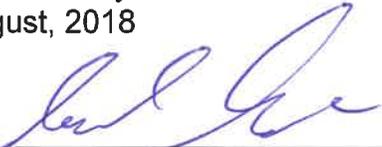
**Section 2.** that a true copy of said Intergovernmental Agreement is incorporated herein as though fully set forth again in full;

**Section 3.** that the Mayor or City Manager and his designee are hereby authorized and directed to execute this Intergovernmental Agreement on behalf of the City of San Luis and to take any and all actions as may be necessary to put the agreement into effect; and

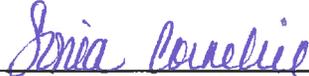
**Section 4.** that the San Luis City Clerk and her designee are authorized and directed to maintain this Intergovernmental Agreement in the official files of the City Clerk and to deliver it to the Gadsden Elementary School District No. 32.

[Signature page follows]

**PASSED, ADOPTED and APPROVED** by the Mayor and City Council of the City of San Luis, Yuma County, Arizona this 22<sup>nd</sup> day of August, 2018

  
\_\_\_\_\_  
Gerardo Sanchez, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Sonia Cornelio, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Kay Marion Macuil, City Attorney

## INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (this "IGA") made this 22nd day of August, 2018, between Gadsden Elementary School District Number 32 of Yuma County, Arizona, having its administrative offices at 1350 Juan Sanchez Boulevard, San Luis, Arizona ("GESD") and the City of San Luis, a municipal corporation organized under the laws of Arizona, having its administrative offices at 1090 East Union Street, San Luis, Arizona ("City"). GESD and City may be referred to singularly as a "Party" and collectively as the "Parties."

### SECTION ONE. PURPOSE

- 1.1. GESD and the City have the authority to enter into intergovernmental agreements under Arizona Revised Statutes Section 15-342(13) for schools and Section 11-952 for cities.
- 1.2. GESD lies within the corporate limits of the City.
- 1.3. GESD operates Ed Pastor Elementary School located at 985 N. 6<sup>th</sup> Ave., San Luis, Arizona on property it leases from the State of Arizona, by and through the Arizona State Land Department. GESD operates and maintains a retention basin ("retention basin") next to that school to service its facilities.
- 1.4. The City is improving Union Street and extending it to intersect with 6<sup>th</sup> Ave.
- 1.5. The City desires to improve, expand and use the existing aforementioned retention basin as part of its road improvement project to accommodate road water runoff, in accordance with the plans and specifications attached hereto as Exhibit B, such improvements to specifically include installing a fence designed to prevent children and other unauthorized persons from entering upon the Easement Premises.

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

### SECTION TWO. DURATION AND RENEWAL

- 2.1. The term of this IGA shall for a period of fifteen (15) years, and shall renew itself from year to year following that time, unless and until either party notifies the other in writing on or before the first day of January in the year in which expiration of this agreement is desired; provided, however, that this IGA shall automatically expire without notice or further action by

the parties or either of them when GESD's lease for premises on which the easement that is the subject of this IGA is located expires.

### **SECTION THREE. OBLIGATIONS OF THE CITY**

3.1 The City shall design and install a fence around the exterior boundaries of the Easement Premises to prevent children and other unauthorized persons from entering upon the Easement Premises.

3.2 The City shall mow the retention basin from July 1 through December 31 of each calendar year during the term of this IGA. The City shall also pay/reimburse GESD for fifty percent (50%) of all other non-mowing and non-water related expenses incurred in the maintenance of said retention basin, including the above-described fence, upon receipt of invoices from the District for payment/reimbursement of such expenses.

### **SECTION FOUR. OBLIGATIONS OF GADSDEN ELEMENTARY SCHOOL DISTRICT NUMBER 32**

4.1 GESD shall allow City to improve, expand and use the aforementioned retention basin for the purposes as stated.

4.2 GESD shall mow the retention basin from January 1 through June 30 of each calendar year that this IGA is in effect.

### **SECTION FIVE. ACKNOWLEDGEMENTS**

Nothing in this IGA makes the City an agent of GESD nor GESD an agent of the City.

### **SECTION SIX. INDEMNITY AND WORKERS' COMPENSATION**

6.1 Indemnity. 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 bodily injury of any person (including death) or property damage, 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, contractors, employees or volunteers. If a Claim or Claims by third parties become subject to this

indemnity provision, the parties to this Agreement that are 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. 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.

6.2 Workers' Compensation. The parties shall procure and maintain coverage under the Arizona Workers' Compensation Laws and shall comply with its requirements, including the notice and posting provisions of A.R.S. § 23 -1022(E). For purposes of A.R.S. § 23-1022(D), an employee of either Party "who works under the jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to a specific intergovernmental agreement or contract entered into between the public agencies as provided in § 11-952 is deemed to be an employee of both public agencies for the purposes of this section. The primary employer shall be solely liable for the payment of workers' compensation benefits for the purposes of this section." The City shall be the primary employer for its employees and GESD shall be the primary employer for its employees.

## **SECTION SEVEN. PROVISIONS REQUIRED BY ARIZONA LAW**

7.1 Conflict of Interest. This IGA is subject to cancellation pursuant to the provisions of A.R.S. §38-511.

7.2 Employment Eligibility. GESD and the City warrant for themselves that each of them complies 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 IGA. The City and GESD retain the legal right to inspect the papers of the other party to ensure that the other party complies with this warranty.

7.3 Boycott. Pursuant to A.R.S. § 35-393.01, the parties certify that they do not currently participate in a boycott of Israel, and that they will not do so at any time during the term of this IGA.

## **SECTION EIGHT. MISCELLANEOUS PROVISIONS**

8.1 Notices. All notices, requests, approvals and communications provided for herein, or given in connection, shall be validly given, made, delivered or served if in writing and delivered both by (1) email and (2) either personally by process server or sent by a nationally recognized courier (e.g., Federal Express, Airborne, UPS) or by United States Postal Service certified with return receipt requested and postage prepaid to:

If to the City: San Luis City Manager  
City of San Luis  
P.O. Box 1170 (by United States Postal Service)  
1090 East Union Street (by personal process or courier)  
San Luis, Arizona 85349  
[tdelahoya@cityofsanluis.org](mailto:tdelahoya@cityofsanluis.org)

With a copy to: Public Works Director  
The City of San Luis  
P.O. Box 1170  
San Luis, Arizona 85349  
[evera@cityofsanluis.org](mailto:evera@cityofsanluis.org)

If to GESD Superintendent  
Gadsden Elementary School District No. 32  
P. O. Box 6870 (by United States Postal Service)  
1350 Juan Sanchez Boulevard (by personal process or courier)  
San Luis, Arizona 85349

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. Notices, approvals, changes of addresses and other communications provided for herein shall be effective upon receipt of the paper notice as hereinabove provided, prepaid and addressed as set forth above.

8.2 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 IGA shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this IGA.

8.3 Headings. The descriptive headings of the paragraphs of this IGA are inserted for convenience only, and shall not control or affect the meaning or construction of the provisions of the IGA.

8.4 Authority. The undersigned represent to each other that they have full power and authority to enter into this IGA, and that all necessary actions have been taken to give full force and effect to this IGA. GESD and the City warrant to each other that the individuals executing this IGA on behalf of their respective parties are authorized and empowered to bind the Party on whose behalf each individual is signing.

8.5 Amendment of the IGA. This IGA may be amended, in whole or in part only with the mutual written consent of the parties to this IGA or by their successors in interest or assigns.

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

8.7 Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this IGA.

8.8 Venue. The parties agree that venue for any action commenced in connection with this IGA shall be proper only in a court of competent jurisdiction in Yuma County, Arizona, or in the Arizona Federal District Court and the parties waive any right to object to such venue.

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

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

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

8.12 No Personal Liability. No member, official or employee of the City or GESD or any successor or assignee thereof shall be personally liable to the other Party (a) for any breach or default under this IGA; (b) for any amount/s which may become due to the City or GESD under this IGA; or (c) for any obligation of the City or GESD under this IGA.

8:13 Time is of the essence. Time is of the essence in this IGA and City and GESD agree to use the utmost diligence in the performance of this IGA. Unless otherwise specifically provided in this IGA, any consent to delay in the performance of this IGA shall apply only to the particular transaction to which it relates, and shall not apply to any other obligation or transaction.

8:14 Further Acts. Each of the Parties 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 IGA.

8:15 Force Majeure. If GESD or City are prevented or materially restricted from performing any of their obligations under this IGA by an event of force majeure, then the obligations of each Party shall be suspended or reduced to the extent made necessary by the event. As used in this section, "force majeure" means any act or cause not reasonably within the control of the Party whose ability to perform is impaired and which that Party could not have prevented by exercising reasonable diligence. This includes, but is not limited to, acts of God, fire, flood, explosions, strikes or labor disputes over which the affected Party has no control, sabotage, riots, civil commotion, acts of civil or military authority, wars or material changes in applicable business laws or regulations.

8.16 Entire IGA. This IGA, including its Exhibits, which are incorporated herein by this reference; specifically Exhibit A, the final (or substantially final) form of easement, including a legal description of the easement premises; and Exhibit B, the plans and specifications for the improvements to the retention basin, including the afore-mentioned fence ; constitute the entire agreement between the parties.

8.17 Counterparts. This IGA may be executed in counterparts, any of which shall be deemed to be an original.

## **SECTION NINE. EFFECT OF IGA**

This IGA shall inure to the benefit of and bind the heirs, legal representatives, assignees, and successors of the respective parties.

## **SECTION TEN. PROPERTY**

Except as provided above, this IGA does not contemplate the exchange of any property between the Parties.

[Intentionally left blank, signatures continue on next page]

The parties have executed this IGA in Yuma County, Arizona the day and year set forth above which is the day the last governing body approved this IGA.

**Gadsden Elementary School District No. 32**

  
Luis Marquez, President of School the Board

**ATTEST:**

  
Signature

  
Print Name

**School District Attorney Certification**

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) and 15-342(13) have determined that the foregoing Intergovernmental 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.

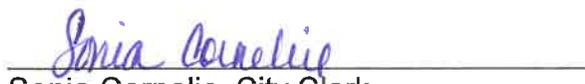
Dated this 27<sup>th</sup> day of August, 2018

  
Steven Horton, School District Attorney

**City of San Luis, Arizona**

  
Gerardo Sanchez, Mayor

**ATTEST:**

  
Sonia Cornelio, City Clerk

**Certification of City Attorney**

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 Intergovernmental 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 22 day of August, 2018

  
Kay Marion Macuil, City Attorney

When recorded mail to:

CITY CLERK  
CITY OF SAN LUIS  
P.O. BOX 1170  
SAN LUIS, ARIZONA 85349

## EASEMENT FOR CONSTRUCTION AND MAINTENANCE OF STORMWATER DRAINAGE FACILITIES

### GRANTOR:

Gadsden Elementary School District No. 32 of Yuma County, Arizona  
P O Box 6870  
1350 Juan Sanchez Boulevard  
San Luis, AZ 85349

### GRANTEE:

City of San Luis, an Arizona Municipal Corporation  
P O Box 1170  
San Luis, AZ 85349

GRANTOR Gadsden Elementary School District No. 32 of Yuma County, Arizona, as lessee of that certain real property in Yuma County, Arizona more particularly described below (the "Easement Premises"), and in accordance with that certain Intergovernmental Agreement between itself and GRANTEE City of San Luis, an Arizona municipal corporation, as well as GRANTOR'S lease with the State of Arizona for the property that includes the Easement Premises, does hereby grant, unto GRANTEE, its successors and assigns, subject to the limitations in the aforementioned documents (including but not limited to the duration of GRANTOR'S leasehold interest in the property under the aforementioned lease), the right, privilege and easement to enter upon, survey, travel along, construct, reconstruct, lay, relay, increase the size of, operate, maintain and remove public drainage infrastructure at any and all points within, through, over and across the Easement Premises, together with the right to authorize, permit and license the use thereof for those uses compatible with the primary use of the Easement Premises as public drainage easement.

By accepting this easement, GRANTEE agrees to exercise reasonable care to avoid damage to said Easement Premises and any property that may at any time be thereon, as well as any other property of the GRANTOR.

The Easement Premises are more particularly described as follows:

That portion of the South half of the Southwest quarter of Section 6, Township 11 South, Range 24 West, Gila and Salt River Base and Meridian, Yuma County, Arizona more particularly described as follows:

A parcel of land consisting of the south 230.00 feet of the north 280.00 feet of the west 90.00 feet of Tract 5 of State Plat No. 17 - Comitè De Bienestar as recorded in the Office of the County Recorder of Yuma County, Arizona in Book 11 of Plats, Page 86;

Except the West 33.00 feet thereof used for public roadway purposes;

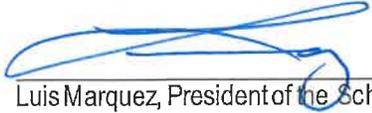
Said parcel contains 13,110 square feet, more or less.

GRANTOR acknowledges that the use of the Easement Premises for storm water drainage purposes in accordance with this Easement and the aforementioned Intergovernmental Agreement and lease is in the public interest. For its part, GRANTEE warrants that said Easement shall be used as a public drainage easement with related

improvements for the benefit of the general public (including GRANTOR), and shall indemnify, defend and hold harmless GRANTOR, and its officers, officials, agents, employees, contractors and volunteers from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (collectively, "Claims") arising out of any injury to any person (including death) or property damage, to the extent that such claims are caused by the act, omission or negligence, misconduct, or other fault of GRANTEE, its officers, officials, agents, employees, contractors or volunteers.

GRANTOR:

**Gadsden Elementary School District No. 32**

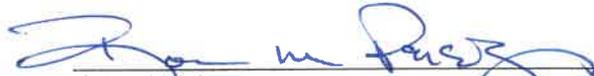
  
Luis Marquez, President of the School Board

State of [ARIZONA] }ss  
County of [Yuma]

On this 29<sup>th</sup> day of August, 2018, before me, the undersigned officer, personally appeared

In witness whereof I hereunto set my hand and official seal.

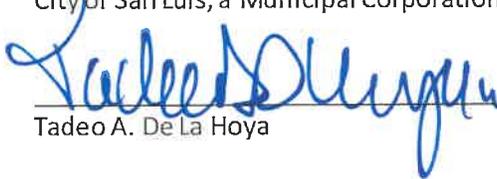


  
Notary Public  
My commission expires: August 14, 2019

Accepted and approved this 10<sup>th</sup> day of September, 2018

City of San Luis, a Municipal Corporation

Approved as <sup>to KMM</sup> form:

  
Tadeo A. De La Hoya

  
Kay Marion Macuil, City Attorney

Attest:

  
Sonia Cornelio, City Clerk