



# Resolution

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

RESOLUTION NO. 397

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF SAN LUIS, ARIZONA, AUTHORIZING THE MAYOR TO EXECUTE AND THE CITY MANAGER TO ATTEST TO ANY AND ALL DOCUMENTS PERTAINING TO THE WATER GROUND LEASE AND SEWER GROUND LEASE BETWEEN THE CITY OF SAN LUIS, ARIZONA, AND THE SAN LUIS CIVIC IMPROVEMENT CORPORATION.

That the City is desirous of entering into certain documents incident to obtaining financing from the USDA Rural Development for water and sewer projects;

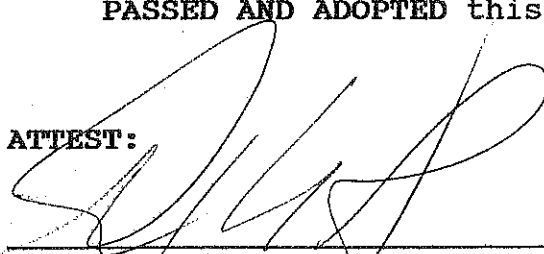
BE IT RESOLVED, by the City Council of the City of San Luis, Arizona, as follows:

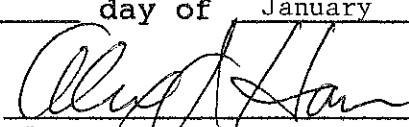
That Alex Joe Harper, the City's Mayor, is authorized to execute, and Alex Ruiz, City Manager/Clerk, to attest to, on behalf of the City of San Luis, Arizona, those certain documents entitled Water Ground Lease and Sewer Ground Lease between the City and the San Luis Civic Improvement Corporation, copies of which are attached hereto respectively as Exhibit "A" and "B", and that those documents, three copies of which are on file in the office of the City Clerk, are hereby declared to be a public record, and said copies are ordered to remain on file with the City Clerk; and

That the Mayor is further authorized to execute any additional documents required incident to loans from USDA Rural Development incident to water and sewer financing and related to the real property described in the documents constituting Exhibits "A" and "B" attached hereto.

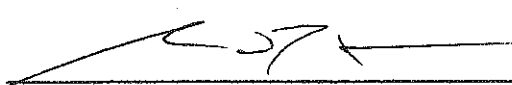
PASSED AND ADOPTED this 13th day of January, 1999.

ATTEST:

  
Alex U. Ruiz, City Clerk

  
Alex Joe Harper, Mayor

APPROVED AS TO FORM:

  
Gerald W. Hunt, City Attorney

When recorded,  
please mail to:

Gerald W. Hunt  
330 West 24th Street  
Yuma, AZ 85364

---

## WATER GROUND LEASE

CITY OF SAN LUIS, ARIZONA

*as Lessor,*

*to*

SAN LUIS CIVIC IMPROVEMENT CORPORATION

*as Lessee*

-----

This GROUND LEASE, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ (the "Ground Lease"), by and between the CITY OF SAN LUIS, ARIZONA, a municipal corporation of the State of Arizona (the "City"), as Lessor, and the SAN LUIS CIVIC IMPROVEMENT CORPORATION, a nonprofit corporation organized and existing under the laws of the State of Arizona (the "Corporation"), as Lessee;

### WITNESSETH:

WHEREAS, the City desires to lease the parcels of real property described on Exhibit "A" attached hereto (the "Real Property") to the Corporation in connection with the loan from the United States of America in the aggregate principal amount of \$\_\_\_\_\_;

NOW, THEREFORE, PURSUANT TO LAW AND FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Lease Term. The City hereby leases to the Corporation, and the Corporation hereby leases from the City, for the period commencing with the date hereof and continuing until January 1, \_\_\_\_\_, the Real Property. This Ground Lease shall be subject to earlier termination in accordance with Section 6 hereof or such later date as of which the Note is deemed paid and discharged.

Section 2. Execution of City Lease. Prior to the time either of the parties hereto execute this Ground Lease, their respective governing bodies shall authorize the execution of a City Lease (the "City Lease") to be entered into by the parties hereto, under the terms of which the Corporation will lease the Real Property as improved by the construction and acquisition of a water and related distribution system (collectively, the "Facilities") and such equipment, furnishings and other personal property and improvements (collectively, the "Improvements") to the City. The Real Property, Facilities and Improvements shall be referred to herein as the "Leased Property".

In consideration of the lease of the Leased Property by the City from the Corporation, the Corporation agrees to execute all documents incident to a loan from the United States Government which will be paid by the rental payments to be made by the City to the Corporation in accordance with the terms of the City Lease.

Section 3. Rental Payment. The Corporation shall pay to the City, as rental for the Real Property pursuant to this Ground Lease, One Hundred and 00/100 Dollars (\$100.00) for the entire term, together with other good and valuable consideration as provided herein, such rental to be paid upon execution and delivery of this Ground Lease. The City and the Corporation have agreed and determined that the total rental payment set forth above for the Real Property represents the fair rental value of the Real Property and, in making such determination, consideration has been given to the appraised value of the Corporation's leasehold interest in the Real Property, other obligations of the parties under this Ground Lease and the uses and purposes which may be served by the Real Property.

Section 4. Possession. Notwithstanding this Ground Lease, the City shall at all times have and retain all rights of access and control of the Leased Property. The Corporation's sole remedy for any breach of this Ground Lease or the City Lease shall be the enforcement of the pledge of the City's system income (as defined in the City Lease). The City represents and warrants that it has good and marketable title to the Real Property in fee simple absolute free and clear of all liens and encumbrances and that it has obtained all consents and approvals required for the lease of the Real Property under this Ground Lease.

Section 5. Termination. The City shall have the right to terminate this Ground Lease upon written notice to the Corporation given

concurrently with or subsequent to the date any lien granted is released of record as a result of the payment of or provision for the payment of the entire indebtedness secured by such lien. The Corporation shall not at any time increase the amounts of its indebtedness secured by such lien except in accordance with Section 3.05 of the City Lease relating to additional financing. So long as the Corporation and the City have entered into the City Lease and the City Lease has not been terminated, the City shall have no right to terminate this Ground Lease for any reason.

Section 6. Surrender of Property. Upon payment in full of the Promissory Note and the entire indebtedness secured by this lien and upon the termination of this Ground Lease or upon expiration of the term of this Ground Lease, the Corporation will surrender to the City the Leased Property. At the time of such surrender, the Leased Property shall be free and clear of all liens and encumbrances other than (i) conditions, reservations, exceptions, rights-of-way and easements of record on the date of the commencement of the term of the City Lease or (ii) liens or encumbrances approved by the City.

No merger of title or estates is intended by the City or the Corporation pursuant to the provisions of the City Lease or this Ground Lease.

Section 7. Environmental Condition of Real Property. Except as disclosed in writing to the Corporation prior to the date hereof, the City has not been informed of, nor does the City have any knowledge of (a) the presence of any "contaminants" (as defined below) on the Real Property, or (b) any spills, releases, threatened releases, discharges or disposal of contaminants that have occurred or are presently occurring on or onto the Real Property or any properties adjacent to the Real Property, or (c) any spills or disposal of contaminants that have occurred or are presently occurring on any other properties as a result of any construction on or operation and use of the Real Property.

(i) In connection with the construction on or operation and use of the Real Property, the City represents that it has no knowledge of any failure to comply with any applicable local, State or federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, treatment, recycling, reuse, sale, storage, handling, transport and disposal of any contaminants.

(ii) The City represents and warrants that it has given no release or waiver of liability that would impair any claim based upon contaminants to a previous owner of the Real Property or to any party who may be potentially responsible for the presence of contaminants thereon nor has it made promises of indemnification regarding contaminants on or

associated with the Real Property to any person other than the Corporation.

(iii) The City agrees to promptly notify the Corporation in writing in the event that the City becomes aware of the release of any contaminants on, or other environmental condition, problem or liability with respect to, the Real Property. The City further agrees to take all actions reasonably necessary to investigate or clean up any contaminants released on-site during or prior to the term of this Ground Lease affecting the Real Property. In the event that Corporation or any assignee of the Corporation is held liable for any contaminants released on-site prior to the commencement of the term of this Ground Lease which affect the Real Property, the City agrees to take all actions reasonably necessary to pursue other persons potentially responsible for the clean-up of any such contaminants.

(iv) As used in this Section 7, the term "Contaminants" shall mean: any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substances, petroleum or other similar term, by any federal, state or local environmental statute, regulation or ordinance presently in effect or that may be promulgated in the future, as such statutes, regulations and ordinances may be amended from time to time, including, but not limited to, the following statutes: Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901, et seq.; Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq.; Federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001, et seq.; Federal Clean Air Act, 42 U.S.C. §§ 7401-7642; Federal Water Pollution Control Act, Federal Clean Water Act of 1977, 33 U.S.C. §§ 1251, et seq.; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136, et seq.; Federal Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.; Federal Safe Drinking Water Act, 42 U.S.C. §§ 300(f), et seq.; Arizona Environmental Quality Act, A.R.S. §§ 49-101, et seq.; and Arizona Community Planning and Emergency Right-to-Know Act, A.R.S. §§ 26-341, et seq.

Section 8. Severable. If any term or provision of this Ground Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Ground Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 9. A.R.S. § 38-511. To the extent applicable by provision of law, all parties acknowledge that this Ground Lease is subject to cancellation pursuant to § 38-511, Arizona Revised Statutes, as amended, the provisions of which are incorporated herein.

*IN WITNESS WHEREOF*, the Corporation and the City have caused their respective officers thereunto duly authorized, all as of the day and year first above written.

*SAN LUIS CIVIC IMPROVEMENT  
CORPORATION*

By \_\_\_\_\_  
Its \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary-Treasurer

*CITY OF SAN LUIS, ARIZONA,*  
a municipal corporation

By \_\_\_\_\_  
Alex Joe Harper, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

*APPROVED AS TO FORM:*

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA     )  
                              ) ss.  
County of Yuma        )

The foregoing instrument acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 1998 by Alex Joe Harper, Mayor of the City of  
San Luis.

My Commission Expires: \_\_\_\_\_  
Notary Public

STATE OF ARIZONA     )  
                              ) ss.  
County of Yuma        )

The foregoing instrument acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 1998 by \_\_\_\_\_, \_\_\_\_\_ of the  
San Luis Civic Improvement Corporation.

My Commission Expires: \_\_\_\_\_  
Notary Public

## EXHIBIT "A"

### **Well Site #4 - 927 Ppep Drive**

- 1) **Legal Description:**      *Lots 1536 and 1537  
Bienestar Estates No. 5  
Docket 14, Pages 59-60  
Yuma County Recorder*
- 2) **Chemical Building:**      *a) 8' X 8' Wood Frame  
b) Contains Chlorinator and Controls  
c) Contains Sequestering Chemical and Controls*
- 3) **Reservoir:** *500,000 Gallon/Steel Construction*
- 4) **Pressure Tanks:** *2 - 7,500 Gallon/Steel Construction*
- 5) **Generator:**      *Make: Kohler                      Model: 200 ROZD  
Serial: 392312                      Kw: 200  
Volts: 277/480  
Engine: Detroit                      Model: 1063-7305  
Serial: 06A474261*
- 6) **Pumps and Motors:**
  - a) *Pumps: 3 - Aurora Model 411 Split Case (JCH)*
  - b) *Motors: 3 - 40HP U.S. Motor - Horizontal  
Phase: 3    Volts: 460  
Hertz: 60    RPM: 3600*
- 7) **Well:**      *Depth: 565 Ft                      Casing: 565'-12" Diameter Steel  
Water Level: 70 ft                      Screen: 335 ft. - Stainless  
Pump: 75 HP - Submersible    Pump Cap: 1000 gpm  
Installed: 7/15/96*
- 8) **Electrical Panel:** *Siemans-Furnas 600mcm, 600A mcc*
- 9) **Construction Cost:** *\$420,035.00*

When recorded,  
please mail to:

Gerald W. Hunt  
330 West 24th Street  
Yuma, AZ 85364

---

## WATER CITY LEASE

*SAN LUIS CIVIC IMPROVEMENT CORPORATION*

*as Lessor,*

*to*

*CITY OF SAN LUIS, ARIZONA*

*as Lessee*

-----

*THIS CITY LEASE*, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
(the "City Lease"), by and between SAN LUIS CIVIC IMPROVEMENT  
CORPORATION, a nonprofit corporation organized and existing under  
the laws of the State of Arizona (the "Corporation"), and the CITY  
OF SAN LUIS, ARIZONA, a municipal corporation of the State of  
Arizona (the "City").

### *WITNESSETH:*

*WHEREAS*, the Corporation was formed to transact any or all  
lawful business for which nonprofit corporations may be incorpo-  
rated under the laws of the State of Arizona, including, without  
limiting the generality of the foregoing, any civic or charitable  
purpose such as financing the cost of acquiring, constructing and  
equipping of certain facilities for use by and for leasing to the  
City, and

WHEREAS, the City has determined that it will be beneficial to its citizens to acquire, construct and equip a water and related distribution system (collectively, the "Project"); and

WHEREAS, the Corporation desires to assist the City in financing the Project; and

WHEREAS, the United States of America acting through the Rural Development Administration (formerly the Farmers Home Administration), United States Department of Agriculture (the "Lender" or "United States of America"), has agreed, if all of its requirements are satisfied, to loan to the Corporation an amount sufficient for a portion of such purposes, such loan to take the form of a promissory note in the principal amount of not to exceed \$\_\_\_\_\_ (the "Water Note"); and

WHEREAS, in connection therewith, the Corporation and the City shall enter into (i) a Ground Lease dated \_\_\_\_\_ (the "Ground Lease"), pursuant to which the City will lease the demised premises described on Exhibit "A" attached thereto (the "Real Property") to the Corporation and (ii) this City Lease, pursuant to which (A) the Corporation will lease the Real Property described on Exhibit "A" attached hereto and the improvements which are part of the Project described on Exhibit "B" attached hereto situated on the Real Property (the "Improvements") to the City and (B) the City shall (I) lease from the Corporation the Real Property and the Improvements and (II) as agent for the Corporation, agree to acquire, construct and equip, as the case may be, the Improvements as described in Article I, Section 1.09; and

WHEREAS, the Note shall be secured by a deed of trust, loan resolution security agreement, association water or sewer grant agreement, and other documents as required by Lender ("security instruments"); and

WHEREAS, the Note is payable solely from the revenues received by the Corporation from the City pursuant to this City Lease; and

WHEREAS, the Water Note and security instruments shall be secured by this City Lease pursuant to which the City shall pledge certain system revenues as security for the payment of rental payments coming due hereunder and, on a parity with any other Lease all other leases must be approved by Lender; and

WHEREAS, this Lease cannot be modified or changed without approval of Lender; and

WHEREAS, the Corporation has not made and does not intend to make any profit by reason of any business or venture in which it

may engage or by reason of the assistance it renders the City in financing the Project, and no part of the net earnings of the Corporation, if any, shall ever inure to the benefit of any person, firm or corporation, except the City;

**NOW THEREFORE, PURSUANT TO LAW AND FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, IT IS HEREBY AGREED AS FOLLOWS:**

**ARTICLE I**

**LEASE; TERMS; RENT; DESIGN, ACQUISITION,  
CONSTRUCTION AND EQUIPPING OF THE IMPROVEMENTS**

**Section 1.01.** The Corporation hereby leases to the City, and the City hereby leases from the Corporation, for the term commencing with the date hereof and continuing until \_\_\_\_\_ 2, 20\_\_, or such later date as of which the Note is deemed paid and discharged.

**Section 1.02.** The City shall have the right to terminate this City Lease on written notice to the Corporation given concurrently with, or subsequent to, the date the security instruments are released of record as a result of the payment of or provision for the entire indebtedness secured thereby. Upon such termination, all rights of the Corporation or any other entity, except the City, in and to the Leased Property shall cease and the Corporation, by appropriate instruments of conveyance, shall, without further consideration, convey the Leased Property to the City.

**Section 1.03.** While the Note is unpaid, the City shall make rental payments sufficient to satisfy the requirements of the security instruments as well as to pay all other amounts required to be paid by the Corporation. The rental payments payable hereunder shall be paid for and in consideration of the use and occupancy of the Leased Property which the City receives and in consideration of the continued quiet use and enjoyment thereof as provided in Section 4.01 hereof. The rental payments paid by the City under this Section shall be paid directly to the Lender for and on behalf of the Corporation. The obligation of the City for such rental payments shall be co-extensive with the debt service and other payment obligations of the Corporation pursuant to the security instruments and, when the Note and other obligations secured under the security instruments have been fully paid or provided for, the City shall, except for the obligation of the City to make payments to the Lender pursuant to provisions of Section 8.03 of this Lease, have no further obligation to make rental payments hereunder.

**Section 1.04.** Such rental payments, as well as any other money required to be expended by the City pursuant to the provisions of this City Lease, shall be payable solely from sources referred to

in Article III hereof and shall under no circumstances constitute a general obligation of the City or be payable from the proceeds of ad valorem taxes.

Section 1.05. The City shall pay as additional rental payments (i) all fees and expenses under the security instruments to the extent, if any, that such fees, expenses and payments are not met by the regular rentals payments, (ii) the reasonable expenses of the Corporation approved by the City and not otherwise required to be paid by the City under the terms hereof, (iii) fees for maintaining the corporate existence of the Corporation and all costs, expenses, losses or damages, including reasonable attorneys' fees, pertaining to any claim or legal action brought against the Corporation with respect to the legality of any defect in this City Lease, the Water Note or the security instruments, or questioning the legality of any action taken or to be taken pursuant thereto, and (iv) all other expenses of the Corporation incurred at the written request of the City or the Lender in accordance with the provisions of this City Lease. The City shall pay the amounts specified in clause (i) directly to the Lender as they become due and within twenty (20) days after receipt by the City of invoice therefor, except as otherwise provided in the security instruments, in clause (ii) to either the Corporation or its creditors, upon evidence that the expenses or fees have been incurred by it, and within twenty (20) days after receipt by the City of invoice therefor, in clause (iii) to the Corporation, as appropriate, upon evidence that such costs, expenses, losses or damages have been incurred, and in clause (iv) to the Corporation, upon evidence that such expenses have been incurred.

Section 1.06. Each installment or other amount of rent payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Corporation and at such place as the Corporation may designate in writing. Any rental payments accruing hereunder not paid within five (5) days after its due date shall bear interest at the highest rate permitted by law, but not exceeding twelve percent (12%) per annum, from the date when the same is due hereunder until the same shall be paid.

Section 1.07. Notwithstanding the provisions of Section 1.06 hereof, all rental payments for debt service on the Water Note and other items required to be paid by the security instruments, as well as additional rental payments payable to the Lender under Section 1.05 hereof, shall be paid at the office of the Lender.

Section 1.08. Unless otherwise requested by the City any money in the Revenue Fund established pursuant to the security instruments which, in the opinion of the Lender, exceeds the amounts necessary for the current debt service on the Water Note (including administrative costs and expenses) shall, at least annually, so long as the City is not in default hereunder, constitute a credit

to the City on the next succeeding rental payment or payments due or coming due hereunder. The reserve account shall not be taken into account in calculating the foregoing credit. Likewise, earnings on the Revenue Fund established pursuant to the security instruments shall, at least annually, so long as the City is not in default hereunder, constitute a credit to the City on the next succeeding rental payment or payments due or coming due hereunder.

Section 1.09. The City, as agent to the Corporation, shall provide the Project described on Exhibit "B" attached hereto pursuant to the plans and specifications of the City prior to \_\_\_\_\_, 199\_. To the extent permitted by applicable law, the City shall cause all such matters to occur or otherwise be provided for as required of the Corporation by the Loan Resolution Security Agreement and Association Water or Sewer System Grant Agreement entered into in connection with the delivery of the Note. In that respect, the City has complied and shall in the future comply with all rules, regulations, and other requirements of the United States of America necessary to assure that the amounts to be paid on the dates described in said documents.

## ARTICLE II

### TAXES, LIENS, UTILITIES, INSURANCE AND OTHER CHARGES

Section 2.01. The rental payments payable under this City Lease shall be an absolute net return to the Corporation, free from any expenses and charges with respect to the Leased Property or the income therefrom.

Section 2.02. The City shall pay or cause to be paid, punctually when due and payable, as additional rental payments hereunder, all property taxes, income taxes, gross receipts taxes, business and occupation taxes, occupational license taxes, water charges, sewer charges, assessments (including, but not limited to, assessments for public improvements or benefits), and all other governmental taxes and charges of every kind and nature which at any time prior to the expiration or termination of this City Lease shall be or become due and payable by the Corporation or the City and which shall be levied, charged, assessed or imposed:

(i) upon or with respect to the Corporation, or which shall be or become liens upon the Leased Property or any interest of the Corporation or the City therein or under this City Lease;

(ii) upon or with respect to the possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy by the City of the Leased Property, or any portion thereof; or

(iii) upon this transaction or any document to which the City is a party creating or transferring an interest or an estate in or to the Leased Property.

The City shall furnish to the Corporation promptly, upon request, proof of the payment of any such rental payments, tax, assessment or other governmental charge which is payable by the City under this Section. It shall not be a breach of this Section if the City fails to pay any such rental payment, tax, charge or assessment during any period or periods in which the City, in good faith, or the Corporation, shall be contesting the amount or validity of such tax, charge or assessment. The Corporation shall, if requested by the City, contest the amount or validity of any such rental payments, tax, charge or assessment, and the City shall pay the costs of the Corporation therefor.

Section 2.03. The City shall pay, when due, all sums of money that may become due for or purporting to be for, any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for the City in, upon or about the Leased Property and which may be secured by any mechanics', materialmen's or other lien against the Leased Property or the interest of the Corporation therein, and shall cause each such lien to be fully discharged and released at the time of performance of any obligation secured by any such lien as it matures or becomes due, provided, however, that if the City desires to contest any such lien it may do so, but notwithstanding any such contest, if any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, then and in any such event the City shall forthwith pay and discharge said judgment.

Section 2.04. The City shall pay or cause to be paid, all charges for gas, water, steam, electricity, light, heat, power, telephone or other utility service furnished to or used in connection with the Leased Property. The Corporation shall not be required to furnish to the City or any other occupant of said property any gas, water, sewer, electricity, light, heat, power, telephone or other utility service of any kind, nor shall the Corporation be required to pay for any such charges or services.

Section 2.05. The City shall, at its own cost and expense, during the term of this City Lease, keep the Leased Property in good repair and condition, ordinary wear and tear excepted and shall repair, renew or replace any portion of such improvements that shall have lost its usefulness due to damage, destruction, deterioration, or obsolescence. In exchange for the rental payments herein provided, the Corporation shall provide nothing more than the Leased Property. Failure of the City to faithfully observe this covenant shall constitute a breach of this City Lease,

and the Corporation shall have reasonable rights of inspection for the purpose of determining the performance by the City of its obligations under this Section.

Section 2.06. The City shall cause the Leased Property to be insured against loss or damage by fire, explosion and other hazards customarily insured under extended coverage, in an amount not less than the full insurable value of such property, and maintain other insurance on its business and properties with respect to loss, damage, liability and other claims of the kind customarily insured against by similarly situated municipal corporations. All such insurance shall be of such types and in such amounts and with such deductible provisions as are customarily carried under similar circumstances by such other municipal corporations. All such insurance shall be carried with financially sound and reputable insurance companies authorized to issue such policy or insure such risk in the State of Arizona. Each policy shall contain provisions, if available, that written notice of cancellation or substantial modification thereof shall be given to the Corporation and the Lender, at least thirty (30) days, or the greatest available period shorter than thirty (30), days prior to such cancellation or modification. The City may obtain blanket policies covering one or more risks if the minimum coverages required herein are met and all buildings located on the Leased Property are covered to their full insurable value.

### ARTICLE III SOURCES OF PAYMENT AND PLEDGE

Section 3.01. All rental and other payments made in accordance herewith shall be made only from system revenues received by the City. The City shall first make all rental and other payments accruing pursuant to this City Lease out of the aforesaid sources and thereafter may use the remaining funds for any other lawful purpose, but only to the extent that, taking into account the reasonably anticipated receipts during the coming month, such sources will not be reduced to such a level that the City will be unable to make the next monthly rental payment under this Lease.

Section 3.02. The City may, at the sole option of the City, make rental and other payments required hereunder from its other funds as permitted by law and as the City shall determine from time to time, but the Corporation acknowledges that it has no claim hereunder to such other funds. No part of the rental and other payments payable pursuant to this City Lease shall be payable out of any ad valorem taxes imposed by the City, from bonds or other obligations, for the payment of which the general taxing authority of the City is liable or pledged, or from its general funds, unless (i) the same shall have been duly budgeted by the City according to law, (ii) such payment or payments shall be within the budget or expenditure limitations of the Constitution and laws of the State

of Arizona, and (iii) such payment is not in conflict with the Constitution and laws of the State of Arizona.

Section 3.03. The City hereby pledges for the payment of the rental and other payments required hereunder all system revenues. The City intends that this pledge shall be a first lien upon the system revenues as will be sufficient to make the rental and other payments pursuant hereto each month, and the City shall make such payments from receipts from the system revenues, except to the extent that it chooses to make such payments from other funds pursuant to Section 3.02 hereof.

Section 3.04. To the extent permitted by law, the system revenues shall be retained and maintained so that the amount of all such revenue within and for the next preceding fiscal year shall be equal to at least one and one-half (1½) times the total of rental payments payable hereunder in any current fiscal year. If such receipts for any such preceding fiscal year shall not equal one and one-half (1½) times the rental payment requirements of any current fiscal year hereunder or if at any time it appears that the current receipts will not be sufficient to meet the rental payment requirements hereunder, the City shall increase the rates in order that (i) the current receipts will be sufficient to meet all current requirements hereunder and (ii) the current year's receipts will be reasonably calculated to attain the level as required above for the succeeding fiscal year's rental payment requirements.

Section 3.05. The pledge and lien of the system revenues shall be a first lien on the Water Note.

Section 3.06. In the event of any default by the City under this City Lease, the remedies of the Corporation with respect to the enforcement of the liens and pledges set forth in this Article and with respect to the covenants and agreements contained in this Article shall be as provided in Article V hereof. The Lender, on behalf of the United States of America, may enforce these liens and pledges and the aforesaid covenants and agreements in place of the Corporation.

#### ARTICLE IV DEPOSIT OF MONEYS; ACQUISITION AND INSTALLATION OF PROJECT

Section 4.01. Corporation agrees to acquire and construct the Project through public bidding and pursuant to the City's specifications. The City, as agent for the Corporation, will obtain bids as required by law for the acquisition and construction of the Project and will supervise and provide for and complete the design, acquisition and construction of the Project pursuant to the terms of the Agency Agreement. Failure by the Contractors to

perform shall not affect the City's obligation to make Lease Payments under this Agreement. The Corporation agrees that the Project will be acquired and installed in accordance with the plans and specifications prepared therefor. The Corporation further agrees that it will cause the work under said design, acquisition and construction contracts to be diligently performed after the Closing Date. The City agrees that, upon substantial completion of any portion for the Project, it will take possession of it and occupy that portion for the Project under the terms and provisions of this Agreement. Funds for the Project will be drawn as needed by the City as agent of Corporation under the United States of America Loan.

Section 4.02. The proceeds of the United States of America Loan shall be disbursed only for Acquisition and Installation Costs in compliance with the documents, instruments and agreements evidencing, securing and governing the United States of America Loan.

ARTICLE V  
QUIET ENJOYMENT; EXPIRATION OR TERMINATION  
OF LEASE; SURRENDER OF LEASED PROPERTY

Section 5.01. The City, by keeping and performing the covenants and agreements herein contained, shall at all times during the term hereof, peaceably and quietly, have, hold and enjoy the Leased Property, without suit, trouble or hindrance from the Corporation.

Section 5.02. Except as is otherwise provided hereinafter, the City shall upon the expiration or termination of this City Lease surrender to the Corporation the Leased Property in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance, except for reasonable wear and tear.

Section 5.03. In consideration of the timely payment of all rental payments provided herein and provided that (i) the City has performed all the covenants and agreements required of it to be performed and (ii) the Water Note and any security instruments have been paid or provided for, the Corporation shall cause the Lender to release the Leased Property from the lien. The City may then exercise its rights of termination under Section 1.02 hereof. Upon such termination, all rights of the Corporation or any other person or entity, except the City, in and to the Leased Property shall cease and the Corporation shall, without further consideration, execute and deliver to the City appropriate instruments of conveyance conveying title to the Leased Property to the City. The Corporation shall take any and all steps and shall execute and record any and all documents reasonably required by the City to consummate the transfer of title to the Leased Property to City.

ARTICLE VI  
REMEDIES UPON DEFAULT, NO ABATEMENT OF RENTALS

Section 6.01. Upon the nonpayment of the whole or any part of the rental payments when the same are to be paid as herein provided or violation by the City of any other covenant or provision of this City Lease, and if such default has not been cured (i) in the case of nonpayment of rental payments, within five (5) days and (ii) in the case of the breach of any other covenant or provision hereof, within thirty (30) days after notice in writing from the Corporation specifying such default, then the Corporation may bring an action for the recovery of any of the rental payments due (but not for rental payments accruing) or for damages for breach of this City Lease, and the Corporation may pursue any other remedy which the law affords, including the remedy of specific performance.

Section 6.02. The Corporation, upon the bringing of a suit to collect the rental payments in default, may request enforcement of the pledges and foreclosure of the liens set forth in Article III hereof, in which event the Corporation, as a matter of right, without notice and without giving any bond or surety to the City or anyone claiming under the City, may have a receiver appointed of the system revenues which are so pledged for the payment of the rental payments, with such powers as the court making such appointment shall confer and the City does hereby irrevocably consent to such appointment.

Section 6.03. In any suit to enforce the terms of this City Lease the Corporation shall recover its costs therein, as well as reasonable attorney fees, as the Court shall approve.

Section 6.04. The Corporation shall in no event be in default in the performance of any of its obligations under this City Lease (other than the obligation to make the rental payments required by Section 1.03 hereof) unless the Corporation shall have failed to perform such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by the City to the Corporation.

Section 6.05. Except as in this City Lease expressly provided, this City Lease shall not terminate or be affected in any manner by reason of the condemnation, destruction or damage, in whole or in part, or by reason of the unusability of, the Leased Property, and, except as in this City Lease expressly provided, the rentals, as well as all other amounts payable hereunder, shall be paid by the City in accordance with the terms, covenants and conditions of this City Lease without abatement, diminution or reduction.

Section 6.06. Each right, power and remedy of the Corporation or the City provided for in this City Lease shall be cumulative and

concurrent and shall be in addition to every other right, power or remedy provided for herein, or, unless prohibited by the terms hereof, now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers and remedies are sought to be enforced, and the exercise or beginning of the exercise by the Corporation or the City of any one or more of the rights, powers or remedies provided for herein or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by either party of any or all of such other rights, powers or remedies.

Section 6.07. The failure to insist upon a strict performance of any of the covenants or agreements herein set forth shall not be considered or taken as a waiver or relinquishment for the future of the Corporation's or the City's rights to insist upon a strict compliance by the City or the Corporation with all the covenants and conditions hereof.

#### ARTICLE VII ESTOPPEL CERTIFICATE

Section 7.01. At any time and from time to time, upon not less than ten (10) days' prior request by the Corporation or the Lender, the City shall execute, acknowledge and deliver to the Corporation and the Lender a statement in writing certifying that this City Lease are unmodified and in full force and effect and the dates to which the rentals and other amounts payable hereunder and thereunder have been paid in advance, if any.

#### ARTICLE VIII REFINANCING

Section 8.01. Upon notice to the Corporation, the City may request that the Corporation refinance or prepay, as the case may be, the outstanding Note and other obligations issued pursuant to the security instruments and otherwise of the Corporation by refunding or redeeming or prepaying, as the case may be, such obligations then outstanding (including the Note), subject to the provisions of the security instruments and the terms of any other debt obligations, by new loan or other obligations. The Corporation shall use its best efforts to so refinance or prepay, as the case may be, its indebtedness.

#### ARTICLE IX OFFICIAL STATEMENT DISCLOSURES; INDEMNIFICATION

Section 9.01. To the extent permitted by applicable law, the City shall pay, indemnify and save the Corporation and the Lender harmless for, from and against any and all claims by or on behalf

of any person, firm, corporation or governmental authority arising from the occupation, use, or possession of the Leased Property, including any liability for any violation of conditions, restrictions, laws, ordinances or regulations affecting the said property or the occupancy or use thereof.

Section 9.02. The Corporation, its incorporators, members, directors, officers, agents and employees shall not be liable to the City or to any other person whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in or on the Leased Property or any part thereof, unless caused by the willful misconduct of the Corporation, its incorporators, members, directors, officers, agents or employees. To the extent permitted by applicable law, the City shall indemnify and hold such persons harmless for, from and defend them and each of them against any and all claims, losses or judgments for death of, or injury to, any person, or for damage to any property whatsoever incurred in or on the adjoining streets, roads, sidewalks and passageways, unless caused by the willful misconduct of the Corporation, its incorporators, members, directors, officers, agents or employees. In the event any action or proceeding is brought against any of the persons referred to in this Section by reason of any such claim, the City, upon notice from the Corporation and to the extent permitted by applicable law, shall resist or defend such action or proceeding.

Section 9.03. To the extent permitted by applicable law, the City shall pay and indemnify the Corporation for, from and against all lawful and reasonable costs and charges, including reasonable counsel fees, in enforcing any covenant or agreement of the City contained in this City Lease.

Section 9.04. In clarification and extension of the provisions of the other sections of this Article VIII, and not in substitution therefor, the City, subject to the provisions of Section 1.04 hereof and to the extent permitted by applicable law, shall indemnify and hold the Corporation its respective directors, officers, agents and employees, harmless for, from and against any and all claims, expenses, liens, judgments, liability or loss whatever, including reasonable legal fees and expenses relating to or in any way arising out of (i) this City Lease, the security agreements, financing statements, supplements, amendments or additions thereto or the enforcement of any of the terms thereof; (ii) the Water Note and (iii) that such indemnity shall not extend to any actions of (A) the Corporation deliberately taken by them over the objections of the City or otherwise involving the wilful misconduct or gross negligence of the Corporation, its directors, officers or agents. The Corporation and the Lender shall give notice to the City of any event or condition which requires indemnification by the City hereunder, or any allegation of such event or condition, promptly upon obtaining knowledge thereof, and,

to the extent that the City makes or provides for payment to the satisfaction of the Corporation or the Lender under the indemnity provisions hereof, the City shall be subrogated to the rights of the Corporation or the Lender with respect to such event or condition and shall have the right to determine the settlement of claims thereon. The City shall pay all amounts due hereunder promptly upon notice thereof from the Corporation or the Lender. In case any action, suit or proceeding is brought against the Corporation or the Lender by reason of any act or condition which requires indemnification by the City hereunder, the Corporation and the Lender shall notify the City promptly of such action, suit or proceeding, and the City may (and will upon the request of the Corporation or the Lender), at the expense of the City, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended, by counsel for the insurer of the liability or by counsel designated by the City and approved by the Corporation and the Lender. If the Corporation or the Lender desire to participate in the defense of such action, suit or proceeding through their own counsel, they may do so at their own expense.

## ARTICLE X ACCESS AND CONTROL OF CITY

Section 10.01. The City, so long as no event of default by the City under this City Lease shall have occurred and be continuing, shall at all times have and retain all rights of access and control of the Leased Property.

## ARTICLE XI GENERAL PROVISIONS

Section 11.01. The City may not sell or assign its interest in this City Lease while amounts remain unpaid with respect to the Note, but may sell, lease or otherwise dispose of all or any part of the Leased Property with the consent of the Corporation. Notwithstanding any such sale, lease or other disposition, the City shall nevertheless remain liable for the rentals provided herein and for the performance of the other obligations of the City hereunder.

Section 11.02. All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing addressed and mailed by registered or certified mail, or delivered to the party for whom the same is intended, as follows:

To the Corporation: City of San Luis Civic Improvement Corporation  
Attention:  
c/o The City of San Luis  
P. O. Box 1170  
San Luis, AZ 85349

To the City:

City of San Luis, Arizona  
Attention: City Manager  
P.O. Box 1170  
San Luis, Arizona 85349

To Lender:

or to such other address as such party may hereafter designate by notice in writing addressed and mailed or delivered to the other party hereto.

Section 11.03. This City Lease shall be governed exclusively by the provisions hereof and applicable laws of the State of Arizona.

Section 11.04. If any term or provision of this City Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this City Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby and each term and provision of this City Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 11.05. To the extent applicable by provision of law, all parties acknowledge that this City Lease is subject to cancellation pursuant to § 38-511, Arizona Revised Statutes, as amended, the provisions of which are incorporated herein.

Section 11.06. This City Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute but one instrument.

*IN WITNESS WHEREOF*, the Corporation and the City have caused their respective names to be signed hereto by their respective officers thereunder duly authorized, all as of the day and year first above written.

*CITY OF SAN LUIS CIVIC  
IMPROVEMENT CORPORATION*

By \_\_\_\_\_  
Its \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Secretary-Treasurer

**CITY OF SAN LUIS, ARIZONA,**  
a municipal corporation

By \_\_\_\_\_  
Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA    )  
                          ) ss.  
County of Yuma        )

The foregoing instrument acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_ by Alex Joe Harper, Mayor of the City of  
San Luis.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA    )  
                          ) ss.  
County of Yuma        )

The foregoing instrument acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_ by \_\_\_\_\_ of the San  
Luis Civic Improvement Corporation.

My Commission Expires:

\_\_\_\_\_  
Notary Public

## EXHIBIT "A"

### **Well Site #4 - 927 Ppep Drive**

- 1) **Legal Description:**            *Lots 1536 and 1537  
Bienestar Estates No. 5  
Docket 14, Pages 59-60  
Yuma County Recorder*
- 2) **Chemical Building:**        *a) 8' X 8' Wood Frame  
b) Contains Chlorinator and Controls  
c) Contains Sequestering Chemical and Controls*
- 3) **Reservoir:** *500,000 Gallon/Steel Construction*
- 4) **Pressure Tanks:** *2 - 7,500 Gallon/Steel Construction*
- 5) **Generator:**            *Make: Kohler                      Model: 200 ROZD  
Serial: 392312                   Kw: 200  
Volts: 277/480  
Engine: Detroit                Model: 1063-7305  
Serial: 06A474261*
- 6) **Pumps and Motors:**
  - a) *Pumps: 3 - Aurora Model 411 Split Case (JCH)*
  - b) *Motors: 3 - 40HP U.S. Motor - Horizontal  
Phase: 3    Volts: 460  
Hertz: 60   RPM: 3600*
- 7) **Well:**    *Depth: 565 Ft                      Casing: 565'-12" Diameter Steel  
Water Level: 70 ft                Screen: 335 ft. - Stainless  
Pump: 75 HP - Submersible    Pump Cap: 1000 gpm  
Installed: 7/15/96*
- 8) **Electrical Panel:** *Siemans-Furnas 600mcm, 600A mcc*
- 9) **Construction Cost:** *\$420,035.00*

# **EXHIBIT "B"**

## **Project Description:**

The project consists of repairing and lining the interior surface of 107 sanitary sewer manholes and three sewage pump station wet wells; furnishing and installing new guide rail systems, discharge piping, new duplex pumps and new controls in two wet wells; and constructing four new lined sludge drying beds at the wastewater treatment facility.

This project will be constructed in accordance with plans, contract documents and specifications approved by Arizona Department of Environmental Quality and USDA Rural Development entitled "Sewage Collection Improvements (Manhole Rehabilitation and Sludge Drying Beds) which are incorporated herein by reference.

When recorded,  
please mail to:

Gerald W. Hunt  
330 West 24th Street  
Yuma, AZ 85364

---

## SEWER GROUND LEASE

CITY OF SAN LUIS, ARIZONA

*as Lessor,*

*to*

SAN LUIS CIVIC IMPROVEMENT CORPORATION

*as Lessee*

-----

This GROUND LEASE, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ (the "Ground Lease"), by and between the CITY OF SAN LUIS, ARIZONA, a municipal corporation of the State of Arizona (the "City"), as Lessor, and the SAN LUIS CIVIC IMPROVEMENT CORPORATION, a nonprofit corporation organized and existing under the laws of the State of Arizona (the "Corporation"), as Lessee;

### WITNESSETH:

WHEREAS, the City desires to lease the parcels of real property described on Exhibit "A" attached hereto (the "Real Property") to the Corporation in connection with the loan from the United States of America in the aggregate principal amount of \$\_\_\_\_\_;

NOW, THEREFORE, PURSUANT TO LAW AND FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Lease Term. The City hereby leases to the Corporation, and the Corporation hereby leases from the City, for the period commencing with the date hereof and continuing until January 1, \_\_\_\_\_, the Real Property. This Ground Lease shall be subject to earlier termination in accordance with Section 6 hereof or such later date as of which the Note is deemed paid and discharged.

Section 2. Execution of City Lease. Prior to the time either of the parties hereto execute this Ground Lease, their respective governing bodies shall authorize the execution of a City Lease (the "City Lease") to be entered into by the parties hereto, under the terms of which the Corporation will lease the Real Property as improved by the construction and acquisition of a sewer and related distribution system (collectively, the "Facilities") and such equipment, furnishings and other personal property and improvements (collectively, the "Improvements") to the City. The Real Property, Facilities and Improvements shall be referred to herein as the "Leased Property".

In consideration of the lease of the Leased Property by the City from the Corporation, the Corporation agrees to execute all documents incident to a loan from the United States Government which will be paid by the rental payments to be made by the City to the Corporation in accordance with the terms of the City Lease.

Section 3. Rental Payment. The Corporation shall pay to the City, as rental for the Real Property pursuant to this Ground Lease, One Hundred and 00/100 Dollars (\$100.00) for the entire term, together with other good and valuable consideration as provided herein, such rental to be paid upon execution and delivery of this Ground Lease. The City and the Corporation have agreed and determined that the total rental payment set forth above for the Real Property represents the fair rental value of the Real Property and, in making such determination, consideration has been given to the appraised value of the Corporation's leasehold interest in the Real Property, other obligations of the parties under this Ground Lease and the uses and purposes which may be served by the Real Property.

Section 4. Possession. Notwithstanding this Ground Lease, the City shall at all times have and retain all rights of access and control of the Leased Property. The Corporation's sole remedy for any breach of this Ground Lease or the City Lease shall be the enforcement of the pledge of the City's system income (as defined in the City Lease). The City represents and warrants that it has good and marketable title to the Real Property in fee simple absolute free and clear of all liens and encumbrances and that it has obtained all consents and approvals required for the lease of the Real Property under this Ground Lease.

Section 5. Termination. The City shall have the right to terminate this Ground Lease upon written notice to the Corporation given

concurrently with or subsequent to the date any lien granted is released of record as a result of the payment of or provision for the payment of the entire indebtedness secured by such lien. The Corporation shall not at any time increase the amounts of its indebtedness secured by such lien except in accordance with Section 3.05 of the City Lease relating to additional financing. So long as the Corporation and the City have entered into the City Lease and the City Lease has not been terminated, the City shall have no right to terminate this Ground Lease for any reason.

Section 6. Surrender of Property. Upon payment in full of the Promissory Note and the entire indebtedness secured by this lien and upon the termination of this Ground Lease or upon expiration of the term of this Ground Lease, the Corporation will surrender to the City the Leased Property. At the time of such surrender, the Leased Property shall be free and clear of all liens and encumbrances other than (i) conditions, reservations, exceptions, rights-of-way and easements of record on the date of the commencement of the term of the City Lease or (ii) liens or encumbrances approved by the City.

No merger of title or estates is intended by the City or the Corporation pursuant to the provisions of the City Lease or this Ground Lease.

Section 7. Environmental Condition of Real Property. Except as disclosed in writing to the Corporation prior to the date hereof, the City has not been informed of, nor does the City have any knowledge of (a) the presence of any "contaminants" (as defined below) on the Real Property, or (b) any spills, releases, threatened releases, discharges or disposal of contaminants that have occurred or are presently occurring on or onto the Real Property or any properties adjacent to the Real Property, or (c) any spills or disposal of contaminants that have occurred or are presently occurring on any other properties as a result of any construction on or operation and use of the Real Property.

(i) In connection with the construction on or operation and use of the Real Property, the City represents that it has no knowledge of any failure to comply with any applicable local, State or federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, treatment, recycling, reuse, sale, storage, handling, transport and disposal of any contaminants.

(ii) The City represents and warrants that it has given no release or waiver of liability that would impair any claim based upon contaminants to a previous owner of the Real Property or to any party who may be potentially responsible for the presence of contaminants thereon nor has it made promises of indemnification regarding contaminants on or

associated with the Real Property to any person other than the Corporation.

(iii) The City agrees to promptly notify the Corporation in writing in the event that the City becomes aware of the release of any contaminants on, or other environmental condition, problem or liability with respect to, the Real Property. The City further agrees to take all actions reasonably necessary to investigate or clean up any contaminants released on-site during or prior to the term of this Ground Lease affecting the Real Property. In the event that Corporation or any assignee of the Corporation is held liable for any contaminants released on-site prior to the commencement of the term of this Ground Lease which affect the Real Property, the City agrees to take all actions reasonably necessary to pursue other persons potentially responsible for the clean-up of any such contaminants.

(iv) As used in this Section 7, the term "Contaminants" shall mean: any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substances, petroleum or other similar term, by any federal, state or local environmental statute, regulation or ordinance presently in effect or that may be promulgated in the future, as such statutes, regulations and ordinances may be amended from time to time, including, but not limited to, the following statutes: Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901, et seq.; Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq.; Federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001, et seq.; Federal Clean Air Act, 42 U.S.C. §§ 7401-7642; Federal Water Pollution Control Act, Federal Clean Water Act of 1977, 33 U.S.C. §§ 1251, et seq.; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136, et seq.; Federal Toxic Substances Control Act, 14 U.S.C. §§ 2601, et seq.; Federal Safe Drinking Water Act, 42 U.S.C. §§ 300(f), et seq.; Arizona Environmental Quality Act, A.R.S. §§ 49-101, et seq.; and Arizona Community Planning and Emergency Right-to-Know Act, A.R.S. §§ 26-341, et seq.

Section 8. Severable. If any term or provision of this Ground Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Ground Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 9. A.R.S. § 38-511. To the extent applicable by provision of law, all parties acknowledge that this Ground Lease is subject to cancellation pursuant to § 38-511, Arizona Revised Statutes, as amended, the provisions of which are incorporated herein.

*IN WITNESS WHEREOF*, the Corporation and the City have caused their respective officers thereunto duly authorized, all as of the day and year first above written.

*SAN LUIS CIVIC IMPROVEMENT  
CORPORATION*

By \_\_\_\_\_  
Its \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Secretary-Treasurer

*CITY OF SAN LUIS, ARIZONA,  
a municipal corporation*

By \_\_\_\_\_  
Alex Joe Harper, Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA     )  
                              ) ss.  
County of Yuma        )

The foregoing instrument acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 19\_\_ by Alex Joe Harper, Mayor of the City of  
San Luis.

My Commission Expires:

\_\_\_\_\_  
Notary Public

STATE OF ARIZONA     )  
                              ) ss.  
County of Yuma        )

The foregoing instrument acknowledged before me this \_\_\_\_\_ day  
of \_\_\_\_\_, 19\_\_ by \_\_\_\_\_, \_\_\_\_\_ of the San  
Luis Civic Improvement Corporation.

My Commission Expires:

\_\_\_\_\_  
Notary Public

# **EXHIBIT "A"**

## **San Luis Sewage Pump Station** **No. 200 Site**

### **Legal Description**

**Parcel 1:** A Portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  OF Section 12, T11S., R 25W., Gila and Salt River Base and Meridian (G&SRB&M), Yuma County, Arizona more particularly described as follows:

Being at the northwest corner of said section 12, Thence N89°40'00"E along the north line of said Section 12 a distance of 164.33 feet to a point; Thence S00°20'00"W a distance of 30.00 feet to a point said point being the northwest corner of the Wastewater Pump Station No. 200 Site and said point being the TRUE POINT OF BEGINNING; Thence S00°20'00"E, a distance of 20.00 feet to a point on the south right of way line of "G" Street; Thence N89°40'00"E along said right of way line a distance of 20.00 feet; Thence N00°20'00"W a distance of 20.00 feet; Thence S89°40'00"W a distance of 20.00 feet to the TRUE POINT OF BEGINNING containing 0.0092 acres.

### **Parcel 2:**

The West 40 Feet of The South 30 feet of the East 70 feet of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 2, T11S, R25W G&SRB&M, Yuma County Arizona

When recorded,  
please mail to:

Gerald W. Hunt  
330 West 24th Street  
Yuma, AZ 85364

---

## SEWER CITY LEASE

SAN LUIS CIVIC IMPROVEMENT CORPORATION

*as Lessor,*

*to*

CITY OF SAN LUIS, ARIZONA

*as Lessee*

-----

THIS CITY LEASE, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_,  
(the "City Lease"), by and between SAN LUIS CIVIC IMPROVEMENT  
CORPORATION, a nonprofit corporation organized and existing under  
the laws of the State of Arizona (the "Corporation"), and the CITY  
OF SAN LUIS, ARIZONA, a municipal corporation of the State of  
Arizona (the "City").

### WITNESSETH:

WHEREAS, the Corporation was formed to transact any or all  
lawful business for which nonprofit corporations may be incorpo-  
rated under the laws of the State of Arizona, including, without  
limiting the generality of the foregoing, any civic or charitable  
purpose such as financing the cost of acquiring, constructing and  
equipping of certain facilities for use by and for leasing to the  
City, and

*WHEREAS*, the City has determined that it will be beneficial to its citizens to acquire, construct and equip a sewer and related distribution system (collectively, the "Project"); and

*WHEREAS*, the Corporation desires to assist the City in financing the Project; and

*WHEREAS*, the United States of America acting through the Rural Development Administration (formerly the Farmers Home Administration), United States Department of Agriculture (the "Lender" or "United States of America"), has agreed, if all of its requirements are satisfied, to loan to the Corporation an amount sufficient for a portion of such purposes, such loan to take the form of a promissory note in the principal amount of not to exceed \$\_\_\_\_\_ (the "Sewer Note"); and

*WHEREAS*, in connection therewith, the Corporation and the City shall enter into (i) a Ground Lease dated \_\_\_\_\_ (the "Ground Lease"), pursuant to which the City will lease the demised premises described on Exhibit "A" attached thereto (the "Real Property") to the Corporation and (ii) this City Lease, pursuant to which (A) the Corporation will lease the Real Property described on Exhibit "A" attached hereto and the improvements which are part of the Project described on Exhibit "B" attached hereto situated on the Real Property (the "Improvements") to the City and (B) the City shall (I) lease from the Corporation the Real Property and the Improvements and (II) as agent for the Corporation, agree to acquire, construct and equip, as the case may be, the Improvements as described in Article I, Section 1.09; and

*WHEREAS*, the Note shall be secured by a deed of trust, loan resolution security agreement, association water or sewer grant agreement, and other documents as required by Lender ("security instruments"); and

*WHEREAS*, the Note is payable solely from the revenues received by the Corporation from the City pursuant to this City Lease; and

*WHEREAS*, the Sewer Note and security instruments shall be secured by this City Lease pursuant to which the City shall pledge certain system revenues as security for the payment of rental payments coming due hereunder and, on a parity with any other Lease all other leases must be approved by Lender; and

*WHEREAS*, this Lease cannot be modified or changed without approval of Lender; and

*WHEREAS*, the Corporation has not made and does not intend to make any profit by reason of any business or venture in which it

may engage or by reason of the assistance it renders the City in financing the Project, and no part of the net earnings of the Corporation, if any, shall ever inure to the benefit of any person, firm or corporation, except the City;

**NOW THEREFORE, PURSUANT TO LAW AND FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS HEREINAFTER CONTAINED, IT IS HEREBY AGREED AS FOLLOWS:**

**ARTICLE I**

**LEASE; TERMS; RENT; DESIGN, ACQUISITION,  
CONSTRUCTION AND EQUIPPING OF THE IMPROVEMENTS**

**Section 1.01.** The Corporation hereby leases to the City, and the City hereby leases from the Corporation, for the term commencing with the date hereof and continuing until \_\_\_\_\_ 2, 20\_\_, or such later date as of which the Note is deemed paid and discharged.

**Section 1.02.** The City shall have the right to terminate this City Lease on written notice to the Corporation given concurrently with, or subsequent to, the date the security instruments are released of record as a result of the payment of or provision for the entire indebtedness secured thereby. Upon such termination, all rights of the Corporation or any other entity, except the City, in and to the Leased Property shall cease and the Corporation, by appropriate instruments of conveyance, shall, without further consideration, convey the Leased Property to the City.

**Section 1.03.** While the Note is unpaid, the City shall make rental payments sufficient to satisfy the requirements of the security instruments as well as to pay all other amounts required to be paid by the Corporation. The rental payments payable hereunder shall be paid for and in consideration of the use and occupancy of the Leased Property which the City receives and in consideration of the continued quiet use and enjoyment thereof as provided in Section 4.01 hereof. The rental payments paid by the City under this Section shall be paid directly to the Lender for and on behalf of the Corporation. The obligation of the City for such rental payments shall be co-extensive with the debt service and other payment obligations of the Corporation pursuant to the security instruments and, when the Note and other obligations secured under the security instruments have been fully paid or provided for, the City shall, except for the obligation of the City to make payments to the Lender pursuant to provisions of Section 8.03 of this Lease, have no further obligation to make rental payments hereunder.

**Section 1.04.** Such rental payments, as well as any other money required to be expended by the City pursuant to the provisions of this City Lease, shall be payable solely from sources referred to

in Article III hereof and shall under no circumstances constitute a general obligation of the City or be payable from the proceeds of ad valorem taxes.

Section 1.05. The City shall pay as additional rental payments (i) all fees and expenses under the security instruments to the extent, if any, that such fees, expenses and payments are not met by the regular rentals payments, (ii) the reasonable expenses of the Corporation approved by the City and not otherwise required to be paid by the City under the terms hereof, (iii) fees for maintaining the corporate existence of the Corporation and all costs, expenses, losses or damages, including reasonable attorneys' fees, pertaining to any claim or legal action brought against the Corporation with respect to the legality of any defect in this City Lease, the Sewer Note or the security instruments, or questioning the legality of any action taken or to be taken pursuant thereto, and (iv) all other expenses of the Corporation incurred at the written request of the City or the Lender in accordance with the provisions of this City Lease. The City shall pay the amounts specified in clause (i) directly to the Lender as they become due and within twenty (20) days after receipt by the City of invoice therefor, except as otherwise provided in the security instruments, in clause (ii) to either the Corporation or its creditors, upon evidence that the expenses or fees have been incurred by it, and within twenty (20) days after receipt by the City of invoice therefor, in clause (iii) to the Corporation, as appropriate, upon evidence that such costs, expenses, losses or damages have been incurred, and in clause (iv) to the Corporation, upon evidence that such expenses have been incurred.

Section 1.06. Each installment or other amount of rent payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Corporation and at such place as the Corporation may designate in writing. Any rental payments accruing hereunder not paid within five (5) days after its due date shall bear interest at the highest rate permitted by law, but not exceeding twelve percent (12%) per annum, from the date when the same is due hereunder until the same shall be paid.

Section 1.07. Notwithstanding the provisions of Section 1.06 hereof, all rental payments for debt service on the Sewer Note and other items required to be paid by the security instruments, as well as additional rental payments payable to the Lender under Section 1.05 hereof, shall be paid at the office of the Lender.

Section 1.08. Unless otherwise requested by the City any money in the Revenue Fund established pursuant to the security instruments which, in the opinion of the Lender, exceeds the amounts necessary for the current debt service on the Sewer Note (including administrative costs and expenses) shall, at least annually, so long as the City is not in default hereunder, constitute a credit

to the City on the next succeeding rental payment or payments due or coming due hereunder. The reserve account shall not be taken into account in calculating the foregoing credit. Likewise, earnings on the Revenue Fund established pursuant to the security instruments shall, at least annually, so long as the City is not in default hereunder, constitute a credit to the City on the next succeeding rental payment or payments due or coming due hereunder.

Section 1.09. The City, as agent to the Corporation, shall provide the Project described on Exhibit "B" attached hereto pursuant to the plans and specifications of the City prior to \_\_\_\_\_, 199\_. To the extent permitted by applicable law, the City shall cause all such matters to occur or otherwise be provided for as required of the Corporation by the Loan Resolution Security Agreement and Association Water or Sewer System Grant Agreement entered into in connection with the delivery of the Note. In that respect, the City has complied and shall in the future comply with all rules, regulations, and other requirements of the United States of America necessary to assure that the amounts to be paid on the dates described in said documents.

## ARTICLE II

### TAXES, LIENS, UTILITIES, INSURANCE AND OTHER CHARGES

Section 2.01. The rental payments payable under this City Lease shall be an absolute net return to the Corporation, free from any expenses and charges with respect to the Leased Property or the income therefrom.

Section 2.02. The City shall pay or cause to be paid, punctually when due and payable, as additional rental payments hereunder, all property taxes, income taxes, gross receipts taxes, business and occupation taxes, occupational license taxes, water charges, sewer charges, assessments (including, but not limited to, assessments for public improvements or benefits), and all other governmental taxes and charges of every kind and nature which at any time prior to the expiration or termination of this City Lease shall be or become due and payable by the Corporation or the City and which shall be levied, charged, assessed or imposed:

(i) upon or with respect to the Corporation, or which shall be or become liens upon the Leased Property or any interest of the Corporation or the City therein or under this City Lease;

(ii) upon or with respect to the possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy by the City of the Leased Property, or any portion thereof; or

(iii) upon this transaction or any document to which the City is a party creating or transferring an interest or an estate in or to the Leased Property.

The City shall furnish to the Corporation promptly, upon request, proof of the payment of any such rental payments, tax, assessment or other governmental charge which is payable by the City under this Section. It shall not be a breach of this Section if the City fails to pay any such rental payment, tax, charge or assessment during any period or periods in which the City, in good faith, or the Corporation, shall be contesting the amount or validity of such tax, charge or assessment. The Corporation shall, if requested by the City, contest the amount or validity of any such rental payments, tax, charge or assessment, and the City shall pay the costs of the Corporation therefor.

Section 2.03. The City shall pay, when due, all sums of money that may become due for or purporting to be for, any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for the City in, upon or about the Leased Property and which may be secured by any mechanics', materialmen's or other lien against the Leased Property or the interest of the Corporation therein, and shall cause each such lien to be fully discharged and released at the time of performance of any obligation secured by any such lien as it matures or becomes due, provided, however, that if the City desires to contest any such lien it may do so, but notwithstanding any such contest, if any such lien shall be reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and said stay thereafter expires, then and in any such event the City shall forthwith pay and discharge said judgment.

Section 2.04. The City shall pay or cause to be paid, all charges for gas, water, steam, electricity, light, heat, power, telephone or other utility service furnished to or used in connection with the Leased Property. The Corporation shall not be required to furnish to the City or any other occupant of said property any gas, water, sewer, electricity, light, heat, power, telephone or other utility service of any kind, nor shall the Corporation be required to pay for any such charges or services.

Section 2.05. The City shall, at its own cost and expense, during the term of this City Lease, keep the Leased Property in good repair and condition, ordinary wear and tear excepted and shall repair, renew or replace any portion of such improvements that shall have lost its usefulness due to damage, destruction, deterioration, or obsolescence. In exchange for the rental payments herein provided, the Corporation shall provide nothing more than the Leased Property. Failure of the City to faithfully observe this covenant shall constitute a breach of this City Lease,

and the Corporation shall have reasonable rights of inspection for the purpose of determining the performance by the City of its obligations under this Section.

Section 2.06. The City shall cause the Leased Property to be insured against loss or damage by fire, explosion and other hazards customarily insured under extended coverage, in an amount not less than the full insurable value of such property, and maintain other insurance on its business and properties with respect to loss, damage, liability and other claims of the kind customarily insured against by similarly situated municipal corporations. All such insurance shall be of such types and in such amounts and with such deductible provisions as are customarily carried under similar circumstances by such other municipal corporations. All such insurance shall be carried with financially sound and reputable insurance companies authorized to issue such policy or insure such risk in the State of Arizona. Each policy shall contain provisions, if available, that written notice of cancellation or substantial modification thereof shall be given to the Corporation and the Lender, at least thirty (30) days, or the greatest available period shorter than thirty (30), days prior to such cancellation or modification. The City may obtain blanket policies covering one or more risks if the minimum coverages required herein are met and all buildings located on the Leased Property are covered to their full insurable value.

### ARTICLE III SOURCES OF PAYMENT AND PLEDGE

Section 3.01. All rental and other payments made in accordance herewith shall be made only from system revenues received by the City. The City shall first make all rental and other payments accruing pursuant to this City Lease out of the aforesaid sources and thereafter may use the remaining funds for any other lawful purpose, but only to the extent that, taking into account the reasonably anticipated receipts during the coming month, such sources will not be reduced to such a level that the City will be unable to make the next monthly rental payment under this Lease.

Section 3.02. The City may, at the sole option of the City, make rental and other payments required hereunder from its other funds as permitted by law and as the City shall determine from time to time, but the Corporation acknowledges that it has no claim hereunder to such other funds. No part of the rental and other payments payable pursuant to this City Lease shall be payable out of any ad valorem taxes imposed by the City, from bonds or other obligations, for the payment of which the general taxing authority of the City is liable or pledged, or from its general funds, unless (i) the same shall have been duly budgeted by the City according to law, (ii) such payment or payments shall be within the budget or expenditure limitations of the Constitution and laws of the State

of Arizona, and (iii) such payment is not in conflict with the Constitution and laws of the State of Arizona.

Section 3.03. The City hereby pledges for the payment of the rental and other payments required hereunder all system revenues. The City intends that this pledge shall be a first lien upon the system revenues as will be sufficient to make the rental and other payments pursuant hereto each month, and the City shall make such payments from receipts from the system revenues, except to the extent that it chooses to make such payments from other funds pursuant to Section 3.02 hereof.

Section 3.04. To the extent permitted by law, the system revenues shall be retained and maintained so that the amount of all such revenue within and for the next preceding fiscal year shall be equal to at least one and one-half (1½) times the total of rental payments payable hereunder in any current fiscal year. If such receipts for any such preceding fiscal year shall not equal one and one-half (1½) times the rental payment requirements of any current fiscal year hereunder or if at any time it appears that the current receipts will not be sufficient to meet the rental payment requirements hereunder, the City shall increase the rates in order that (i) the current receipts will be sufficient to meet all current requirements hereunder and (ii) the current year's receipts will be reasonably calculated to attain the level as required above for the succeeding fiscal year's rental payment requirements.

Section 3.05. The pledge and lien of the system revenues shall be a first lien on the Sewer Revenues.

Section 3.06. In the event of any default by the City under this City Lease, the remedies of the Corporation with respect to the enforcement of the liens and pledges set forth in this Article and with respect to the covenants and agreements contained in this Article shall be as provided in Article V hereof. The Lender, on behalf of the United States of America, may enforce these liens and pledges and the aforesaid covenants and agreements in place of the Corporation.

#### ARTICLE IV DEPOSIT OF MONEYS; ACQUISITION AND INSTALLATION OF PROJECT

Section 4.01. Corporation agrees to acquire and construct the Project through public bidding and pursuant to the City's specifications. The City, as agent for the Corporation, will obtain bids as required by law for the acquisition and construction of the Project and will supervise and provide for and complete the design, acquisition and construction of the Project pursuant to the terms of the Agency Agreement. Failure by the Contractors to

perform shall not affect the City's obligation to make Lease Payments under this Agreement. The Corporation agrees that the Project will be acquired and installed in accordance with the plans and specifications prepared therefor. The Corporation further agrees that it will cause the work under said design, acquisition and construction contracts to be diligently performed after the Closing Date. The City agrees that, upon substantial completion of any portion for the Project, it will take possession of it and occupy that portion for the Project under the terms and provisions of this Agreement. Funds for the Project will be drawn as needed by the City as agent of Corporation under the United States of America Loan.

Section 4.02. The proceeds of the United States of America Loan shall be disbursed only for Acquisition and Installation Costs in compliance with the documents, instruments and agreements evidencing, securing and governing the United States of America Loan.

ARTICLE V  
QUIET ENJOYMENT; EXPIRATION OR TERMINATION  
OF LEASE; SURRENDER OF LEASED PROPERTY

Section 5.01. The City, by keeping and performing the covenants and agreements herein contained, shall at all times during the term hereof, peaceably and quietly, have, hold and enjoy the Leased Property, without suit, trouble or hindrance from the Corporation.

Section 5.02. Except as otherwise provided hereinafter, the City shall upon the expiration or termination of this City Lease surrender to the Corporation the Leased Property in good order and condition and in a state of repair consistent with prudent use and conscientious maintenance, except for reasonable wear and tear.

Section 5.03. In consideration of the timely payment of all rental payments provided herein and provided that (i) the City has performed all the covenants and agreements required of it to be performed and (ii) the Sewer Note and any security instruments have been paid or provided for, the Corporation shall cause the Lender to release the Leased Property from the lien. The City may then exercise its rights of termination under Section 1.02 hereof. Upon such termination, all rights of the Corporation or any other person or entity, except the City, in and to the Leased Property shall cease and the Corporation shall, without further consideration, execute and deliver to the City appropriate instruments of conveyance conveying title to the Leased Property to the City. The Corporation shall take any and all steps and shall execute and record any and all documents reasonably required by the City to consummate the transfer of title to the Leased Property to City.

ARTICLE VI  
REMEDIES UPON DEFAULT, NO ABATEMENT OF RENTALS

Section 6.01. Upon the nonpayment of the whole or any part of the rental payments when the same are to be paid as herein provided or violation by the City of any other covenant or provision of this City Lease, and if such default has not been cured (i) in the case of nonpayment of rental payments, within five (5) days and (ii) in the case of the breach of any other covenant or provision hereof, within thirty (30) days after notice in writing from the Corporation specifying such default, then the Corporation may bring an action for the recovery of any of the rental payments due (but not for rental payments accruing) or for damages for breach of this City Lease, and the Corporation may pursue any other remedy which the law affords, including the remedy of specific performance.

Section 6.02. The Corporation, upon the bringing of a suit to collect the rental payments in default, may request enforcement of the pledges and foreclosure of the liens set forth in Article III hereof, in which event the Corporation, as a matter of right, without notice and without giving any bond or surety to the City or anyone claiming under the City, may have a receiver appointed of the system revenues which are so pledged for the payment of the rental payments, with such powers as the court making such appointment shall confer and the City does hereby irrevocably consent to such appointment.

Section 6.03. In any suit to enforce the terms of this City Lease the Corporation shall recover its costs therein, as well as reasonable attorney fees, as the Court shall approve.

Section 6.04. The Corporation shall in no event be in default in the performance of any of its obligations under this City Lease (other than the obligation to make the rental payments required by Section 1.03 hereof) unless the Corporation shall have failed to perform such obligations within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by the City to the Corporation.

Section 6.05. Except as in this City Lease expressly provided, this City Lease shall not terminate or be affected in any manner by reason of the condemnation, destruction or damage, in whole or in part, or by reason of the unusability of, the Leased Property, and, except as in this City Lease expressly provided, the rentals, as well as all other amounts payable hereunder, shall be paid by the City in accordance with the terms, covenants and conditions of this City Lease without abatement, diminution or reduction.

Section 6.06. Each right, power and remedy of the Corporation or the City provided for in this City Lease shall be cumulative and

concurrent and shall be in addition to every other right, power or remedy provided for herein, or, unless prohibited by the terms hereof, now or hereafter existing at law or in equity or by statute or otherwise, in any jurisdiction where such rights, powers and remedies are sought to be enforced, and the exercise or beginning of the exercise by the Corporation or the City of any one or more of the rights, powers or remedies provided for herein or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by either party of any or all of such other rights, powers or remedies.

Section 6.07. The failure to insist upon a strict performance of any of the covenants or agreements herein set forth shall not be considered or taken as a waiver or relinquishment for the future of the Corporation's or the City's rights to insist upon a strict compliance by the City or the Corporation with all the covenants and conditions hereof.

#### ARTICLE VII ESTOPPEL CERTIFICATE

Section 7.01. At any time and from time-to-time, upon not less than ten (10) days' prior request by the Corporation or the Lender, the City shall execute, acknowledge and deliver to the Corporation and the Lender a statement in writing certifying that this City Lease are unmodified and in full force and effect and the dates to which the rentals and other amounts payable hereunder and thereunder have been paid in advance, if any.

#### ARTICLE VIII REFINANCING

Section 8.01. Upon notice to the Corporation, the City may request that the Corporation refinance or prepay, as the case may be, the outstanding Note and other obligations issued pursuant to the security instruments and otherwise of the Corporation by refunding or redeeming or prepaying, as the case may be, such obligations then outstanding (including the Note), subject to the provisions of the security instruments and the terms of any other debt obligations, by new loan or other obligations. The Corporation shall use its best efforts to so refinance or prepay, as the case may be, its indebtedness.

#### ARTICLE IX OFFICIAL STATEMENT DISCLOSURES; INDEMNIFICATION

Section 9.01. To the extent permitted by applicable law, the City shall pay, indemnify and save the Corporation and the Lender harmless for, from and against any and all claims by or on behalf

of any person, firm, corporation or governmental authority arising from the occupation, use, or possession of the Leased Property, including any liability for any violation of conditions, restrictions, laws, ordinances or regulations affecting the said property or the occupancy or use thereof.

Section 9.02. The Corporation, its incorporators, members, directors, officers, agents and employees shall not be liable to the City or to any other person whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in or on the Leased Property or any part thereof, unless caused by the willful misconduct of the Corporation, its incorporators, members, directors, officers, agents or employees. To the extent permitted by applicable law, the City shall indemnify and hold such persons harmless for, from and defend them and each of them against any and all claims, losses or judgments for death of, or injury to, any person, or for damage to any property whatsoever incurred in or on the adjoining streets, roads, sidewalks and passageways, unless caused by the willful misconduct of the Corporation, its incorporators, members, directors, officers, agents or employees. In the event any action or proceeding is brought against any of the persons referred to in this Section by reason of any such claim, the City, upon notice from the Corporation and to the extent permitted by applicable law, shall resist or defend such action or proceeding.

Section 9.03. To the extent permitted by applicable law, the City shall pay and indemnify the Corporation for, from and against all lawful and reasonable costs and charges, including reasonable counsel fees, in enforcing any covenant or agreement of the City contained in this City Lease.

Section 9.04. In clarification and extension of the provisions of the other sections of this Article VIII, and not in substitution therefor, the City, subject to the provisions of Section 1.04 hereof and to the extent permitted by applicable law, shall indemnify and hold the Corporation its respective directors, officers, agents and employees, harmless for, from and against any and all claims, expenses, liens, judgments, liability or loss whatever, including reasonable legal fees and expenses relating to or in any way arising out of (i) this City Lease, the security agreements, financing statements, supplements, amendments or additions thereto or the enforcement of any of the terms thereof; (ii) the Sewer Note and (iii) that such indemnity shall not extend to any actions of (A) the Corporation deliberately taken by them over the objections of the City or otherwise involving the wilful misconduct or gross negligence of the Corporation, its directors, officers or agents. The Corporation and the Lender shall give notice to the City of any event or condition which requires indemnification by the City hereunder, or any allegation of such event or condition, promptly upon obtaining knowledge thereof, and,

to the extent that the City makes or provides for payment to the satisfaction of the Corporation or the Lender under the indemnity provisions hereof, the City shall be subrogated to the rights of the Corporation or the Lender with respect to such event or condition and shall have the right to determine the settlement of claims thereon. The City shall pay all amounts due hereunder promptly upon notice thereof from the Corporation or the Lender. In case any action, suit or proceeding is brought against the Corporation or the Lender by reason of any act or condition which requires indemnification by the City hereunder, the Corporation and the Lender shall notify the City promptly of such action, suit or proceeding, and the City may (and will upon the request of the Corporation or the Lender), at the expense of the City, resist and defend such action, suit or proceeding, or cause the same to be resisted and defended, by counsel for the insurer of the liability or by counsel designated by the City and approved by the Corporation and the Lender. If the Corporation or the Lender desire to participate in the defense of such action, suit or proceeding through their own counsel, they may do so at their own expense.

ARTICLE X  
ACCESS AND CONTROL OF CITY

Section 10.01. The City, so long as no event of default by the City under this City Lease shall have occurred and be continuing, shall at all times have and retain all rights of access and control of the Leased Property.

ARTICLE XI  
GENERAL PROVISIONS

Section 11.01. The City may not sell or assign its interest in this City Lease while amounts remain unpaid with respect to the Note, but may sell, lease or otherwise dispose of all or any part of the Leased Property with the consent of the Corporation. Notwithstanding any such sale, lease or other disposition, the City shall nevertheless remain liable for the rentals provided herein and for performance of the other obligations of the City hereunder.

Section 11.02. All notices, consents or other communications required or permitted hereunder shall be deemed sufficient if given in writing addressed and mailed by registered or certified mail, or delivered to the party for whom the same is intended, as follows:

To the Corporation:           City of San Luis Civic  
                                  Improvement Corporation  
                                  Attention:  
                                  c/o The City of San Luis  
                                  P. O. Box 1170  
                                  San Luis, AZ 85349

To the City:

City of San Luis, Arizona  
Attention: City Manager  
P.O. Box 1170  
San Luis, Arizona 85349

To Lender:

or to such other address as such party may hereafter designate by notice in writing addressed and mailed or delivered to the other parties hereto.

Section 11.03. This City Lease shall be governed exclusively by the provisions hereof and by the applicable laws of the State of Arizona.

Section 11.04. If any term or provision of this City Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this City Lease or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby and each term and provision of this City Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 11.05. To the extent applicable by provision of law, all parties acknowledge that this City Lease is subject to cancellation pursuant to § 38-511, Arizona Revised Statutes, as amended, the provisions of which are incorporated herein.

Section 11.06. This City Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute but one instrument.

*IN WITNESS WHEREOF*, the Corporation and the City have caused their respective names to be signed hereto by their respective officers thereunder duly authorized, all as of the day and year first above written.

*CITY OF SAN LUIS CIVIC  
IMPROVEMENT CORPORATION*

By \_\_\_\_\_  
Its \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary-Treasurer

**CITY OF SAN LUIS, ARIZONA,**  
a municipal corporation

By \_\_\_\_\_

Alex Joe Harper, Mayor

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Attorney

STATE OF ARIZONA    )  
                          ) ss.  
County of Yuma        )

The foregoing instrument acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ by Alex Joe Harper, Mayor of the City of San Luis.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF ARIZONA    )  
                          ) ss.  
County of Yuma        )

The foregoing instrument acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_ by \_\_\_\_\_, \_\_\_\_\_ of the San Luis Civic Improvement Corporation.

\_\_\_\_\_  
Notary Public

My Commission Expires:

# **EXHIBIT "A"**

## **San Luis Sewage Pump Station** **No. 200 Site**

### **Legal Description**

**Parcel 1:** A Portion of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$  OF Section 12, T11S., R 25W., Gila and Salt River Base and Meridian (G&SRB&M), Yuma County, Arizona more particularly described as follows:

Being at the northwest corner of said section 12, Thence N89°40'00"E along the north line of said Section 12 a distance of 164.33 feet to a point; Thence S00°20'00"W a distance of 30.00 feet to a point said point being the northwest corner of the Wastewater Pump Station No. 200 Site and said point being the TRUE POINT OF BEGINNING; Thence S00°20'00"E, a distance of 20.00 feet to a point on the south right of way line of "G" Street; Thence N89°40'00"E along said right of way line a distance of 20.00 feet; Thence N00°20'00"W a distance of 20.00 feet; Thence S89°40'00"W a distance of 20.00 feet to the TRUE POINT OF BEGINNING containing 0.0092 acres.

### **Parcel 2:**

The West 40 Feet of The South 30 feet of the East 70 feet of the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 2, T11S, R25W G&SRB&M, Yuma County Arizona

# **EXHIBIT "B"**

## **Project Description:**

The project consists of replacing existing undersized asbestos cement water mains, old undersized fire hydrants, lot service lines, water meters and water boxes. The new watermains will be C900, Class 150 PVC pipe of adequate size. New pressure reducing valves and system valves will be installed to create pressure zones (Mesa Zone and Valley Zone).

This project will be constructed in accordance with plans, contract documents and specifications approved by Arizona Department of Environmental Quality and USDA Rural Development entitled "Water Main Replacement Project", which are incorporated hereby by reference.