



# Resolution

## Resolution No. 449

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, STATE OF ARIZONA, APPROVING A FIRST SUPPLEMENT TO PREANNEXATION DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SAN LUIS AND BORDER RANCHES, L.L.C. DATED THE 28<sup>TH</sup> DAY OF JANUARY, 1999, AND AUTHORIZING SIGNATURE.**

**WHEREAS**, pursuant to the provisions of A.R.S. § 9-500.05, the City of San Luis entered into a Preannexation Development Agreement with Border Ranches, L.L.C. dated the 28<sup>th</sup> day of January, 1999; and

**WHEREAS**, it is the desire of the parties to enter into the First Supplement to said Agreement;

**NOW THEREFORE BE IT RESOLVED**, by the Mayor and City Council of the City of San Luis, Arizona, that the First Supplement to the Preannexation Development Agreement between the City of San Luis, Arizona, and Border Ranches, L.L.C. dated the 28<sup>th</sup> day of January, 1999, a true copy of which is marked Exhibit "A" attached hereto and by this reference incorporated herein, is hereby approved, and authority for the City of San Luis to enter said First Supplement is hereby authorized, and, further, the Mayor is hereby authorized to execute said First Supplement on behalf of the City of San Luis.

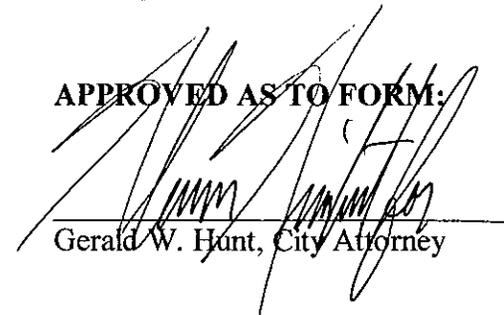
**PASSED AND ADOPTED** by the Mayor and City Council of the City of San Luis, Arizona, this 25<sup>th</sup> day of July, 2001.

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

**ATTEST:**

  
\_\_\_\_\_  
Enrique Castillo, Interim City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Gerald W. Hunt, City Attorney

WHEN RECORDED MAIL TO:  
CYNTHIA SALCIDO  
P.O. BOX 1178  
SAN LUIS, ARIZONA 85349

OFFICIAL RECORDS OF  
YUMA COUNTY RECORDER  
SUSAN MARLER



FEE #: 2001 - 21069

07/31/2001 03:37 PAGES: 0017  
FEES: 9.00 2.00 .00 .00 .00  
REQ BY: CITY OF SAN LUIS  
REC BY: PATTY MAGANA

### FIRST SUPPLEMENT TO PREANNEXATION DEVELOPMENT AGREEMENT

Whereas the City of San Luis, Arizona, ("City") and Border Ranches L.L.C., an Arizona Limited Liability Company, ("Developer"), entered into a pre-annexation development agreement ("Agreement") on or about the 28th day of January, 1999.

Whereas the Agreement provided in part that the City and Developer would cooperate in the development of infrastructure to service the lands of Developer:

Whereas the Agreement recognized that this was a region of new growth for the City and that new growth needed to pay its fair share in the development of infrastructure needed or necessary to service that growth and, in that regard, recognized that the creation of special districts might be needed for the funding and/or construction of infrastructure needs in the development of the annexed territory and that said special districts may include but are not limited to Community Facilities Districts, Water Districts, Sewer Districts, and Improvement Districts:

Whereas the development of lands within the City limits in the region presently known as the Hillander C Irrigation District will be of economic benefit to the City:

Whereas the Agreement provided for the possibility of the development of lands of Developer to be connected to City water and wastewater services, and in that event Developer agreed that it would pay all municipal connection or impact fees of City and other charges that would be in force at the time of provision of service:

Whereas Developer desires the provision of City water and wastewater service for the development of the Project; and

Whereas to connect to municipal water and wastewater services certain infrastructure needs to be developed and Developer and City desire to supplement the aforementioned Development Agreement to so provide;

Now therefore upon the terms and conditions and in consideration of the mutual promises and covenants contained in the preannexation and development agreement and as herein, City and Developer on this 25<sup>th</sup> day of July, 2001, hereby

supplement said preannexation and development agreement as follows:

1. DEVELOPMENT OF SEWER EXTENSION. Developer agrees to pay for the development of 24" sewer main extension line, and all related improvements needed or necessary to provide the availability of wastewater service to the lands of developer from 10<sup>th</sup> Ave. and Juan Sanchez Blvd. to County 23 1/2 and Ave. F. hereinafter referred to as the "Sewer Extension". It is further understood that this Sewer Extension may connect to mains and/or lines which connect to the Wastewater Treatment Plant which may be inadequate to provide service beyond the next 24 to 36 months. Developer understands that funding for the development of such future infrastructure as may be needed or necessary to provide continued service does not presently exist. Developer understands that the creation of special districts, imposition of impact fees, future agreements, or other funding vehicles may be needed or necessary to provide for the infrastructure needs for the continued development of the territory. Developer understands that the City has not promised and will not promise either continued service, nor full service to its lands until or unless funding for the development of all proper infrastructure becomes available.

2. DESIGN STANDARDS AND GOVERNMENTAL APPROVALS. The Sewer Extension shall be designed, built, and constructed to the City's full satisfaction, and the construction and installation of the Sewer Extension shall be completed in compliance with all applicable City standards and specifications for sanitary sewer line construction and all work in connection therewith shall be subject to the approval of the City by and through the City Engineer. Developer hereby agrees that the installation of all said sanitary sewer line construction must comply with the requirements of the Arizona State Department of Health Services, and A. D. E. Q. regulations. At all times Developer will be responsible for reimbursing the City for the costs of meeting said requirements and obtaining all appropriate approvals from the State of Arizona.

3. PUBLIC BIDDING. At all times the development and construction of the Sewer Extension must comply with the public bidding and contracting laws of the State of Arizona. Any and all plans, drawings and construction work for the development of said Sewer Extension shall occur in strict accordance with the public bidding statutes of the State of Arizona by the City. The City will select appropriate professionals in accordance with those laws to prepare any and all plans and drawings for the development of said Sewer Extension and the obtaining of any and all necessary governmental approvals for said extension. Subject to the limitation provided below, at all times Developer will be responsible for reimbursing the City for all of its costs, including but not limited to the costs of preparing all plans and drawings, obtaining all appropriate approvals from the State of Arizona, and the construction work to be performed. Any and all costs associated with putting the project to public bid, including the professional legal and engineering costs incurred by the City in putting the project to bid, and awarding bid, shall be reimbursed to the City by Developer. Developer and City hereby agree that the amount of reimbursement to City for the costs associated with putting the project to public bid, including legal costs associated with putting the

project to public bid, shall be limited to the amount provided in the estimate prepared by the City Engineer, attached as an exhibit hereto, and by this reference incorporated herein. In the event these costs exceed this estimate, the City will be responsible to bear the excess expense. This limitation applies only to the costs in putting the plans, drawings, and construction work to bid, and no other costs associated with the project for which Developer has pledged to make reimbursement.

4. INSPECTION All construction work of the "Sewer Extension" shall be subject to inspection by an independent firm experienced in the inspection of sewer mains, lines, and extensions. It is understood and agreed that the services of a qualified independent inspection firm, independent of either the City Engineer and any engineering firm engaged by the Developer, shall be chosen and engaged by the City to establish a protocol for inspection and perform the work of inspection of the actual construction of the Sewer Extension. Said inspection shall include a video inspection of all lines that may be constructed. All costs and expenses related to the engagement of said firm by the City of San Luis, including but not limited to legal expenses, and all charges, costs, and expenses of said firm shall be reimbursed to the City by Developer.

5. TITLE TO SEWER EXTENSION; NO LIENS. Developer agrees to cause the granting to the City of all right and title to the Sewer Extension, and the City hereby agrees to accept and owns the Sewer Extension, subject to the terms and conditions herein, free and clear of all consensual liens and encumbrances, if any. In addition to the agreement to hold harmless as hereinafter set forth, the Developer hereby agrees to indemnify and hold harmless City from any and all claims, known or unknown, of whatsoever kind or nature, regarding the construction of said Sewer Extension, including but not limited to any and all claims of liens or encumbrances including, but not limited to, mechanics' liens and/or consensual liens or encumbrances otherwise attaching to the property upon which the Sewer Extension may be constructed. All sewer lines, mains, equipment and appurtenances to be installed by Developer as referenced in this Agreement shall be, and remain the property of the City and Developer shall have no right, title or interest therein or thereto.

6. EASEMENTS AND RIGHT OF WAYS. Developer shall obtain and grant to City any and all perpetual sewer easements needed or necessary for the construction and maintenance of the Sewer Extension at its sole cost and expense. Developer shall deliver to the City fully executed, acknowledged, and recordable utility easements in a form acceptable to the City. Developer agrees to grant to the City the permanent right and easement to install, operate, maintain, replace and remove such portions of the Sewer Extension as may be located on property owned and/or controlled by Developer. If any part all the water or sewer system is, or is to be, installed on property owned by other than Developer, developer shall procure from the owners thereof in the name of City all necessary permanent rights-of-way for the construction, operation, maintenance and replacement of the Sewer Extension on such other property, all in form satisfactory to City without cost to it.

## 7. DEVELOPMENT OF WATER SERVICE INFRASTRUCTURE

a. City agrees to develop and build water infrastructure to provide water service within the municipal limits in the Hillander C Irrigation District area including the lands and properties of Developer. Such infrastructure shall include of a well, or wells, and water storage facilities for a potable water system capable of providing water and fire safety service to be located in or about the parcel of land known as the SW1/4, SE 1/4, SE 1/4, Section 11, Township 11 South, Range 24 West, Gila and Salt River Base and Meridian so that water service may be available within eighteen (18) months of the date of this agreement.

b. At all times Developer will be responsible to develop and pay for the construction of any and all mains, lines, equipment, and/or other improvements needed or necessary to deliver water from the proposed storage facilities to the lands and properties of Developer. Such mains, lines, equipment and/or improvements shall be designed, built, and constructed to the City's full satisfaction, and the construction and installation of said improvements shall be completed in compliance with all applicable City standards and specifications for water main line construction and all work in connection therewith shall be subject to the approval of the City by and through the City Engineer. Developer hereby agrees that the installation of said water line construction must comply with the requirements of the Arizona State Department of Health Services, and A. D. E. O. regulations. At all times Developer will be responsible for the meeting said requirements and obtaining all appropriate approvals from the State of Arizona.

c. At all times the owners of the property or contractors developing the same shall be responsible for the payment of any and all hook-up and service fees and such other charges for water and/or sewer service as may be in force or effect at the time of the establishment of or connection to City service.

d. It is understood that City reserves the right to impose connection, service, and/or development fees or charges to reimburse the City for the cost of development of the water facilities on a "fair share" basis for the right of lands or properties serviced by the facilities referred to in Section 8a above to connect thereto or be serviced thereby. Said reimbursement may be collected by a development fee to be imposed upon lands within the expected service area including the lands of Developer. Any development fees imposed by the City will be imposed in strict accordance with the provisions of A.R.S. §9-463.05, and such fees shall be assessed in a non-discriminatory manner.

8. PAYBACK AGREEMENT. Upon the completion of the development of the Sewer Extension City and Developer intend to enter into an agreement similar to the form of Exhibit A attached hereto for the purpose of reimbursing the Developer on a pro-rata basis for the cost of the construction of the Sewer Extension by Any users who connect to the Sewer Extension within the first 15 years after construction is complete. In

developing said agreement it is understood the exact parameters of a "Service Area" to be allowed to be serviced by said line and to be subject to the imposition of fees providing for reimbursement has not yet been established, and the methodology for determining reimbursement has yet to be determined. Developer acknowledges that the Sewer Extension will connect to another extension being built by Reidel Construction Company, and a certain amount of capacity in the line must service properties not located in the Hillander C Irrigation District area. Developer understands that it may be responsible to partially reimburse Reidel Construction for the improvements constructed by that company on a "fair share" basis. City and Developer agree to work with each other, in good faith, to establish an appropriate Service Area and a methodology of repayment. At all times lands and properties of Developer must bear its "fair share" of the cost of development. At no time shall land or properties not annexed to the City of San Luis be serviced by said Sewer Extension.

9. DESIGN OF SERVICE AREA. It is further understood that the prospective Service Area will be limited to the amount of developed land capable of being served by the Sewer Extension. Said extension may not necessarily be able to service all lands of Developer. The City and Developer will work together to design and develop an appropriate service area. It is anticipated that other sewer mains, lines, and/or treatment systems will have to be developed in the future to service the lands and properties of Developer and other land owners in or about the area and vicinity known as the Hillander C Irrigation District. Those improvements will be the subject of future agreements.

10. CITY DEVELOPMENT POLICY. Developer understands and the City does hereby restate its continuing policy that new growth must pay its own way with respect to the development of infrastructure needed or necessary to service that growth. To this end, it is understood and agreed that to pay for further expansions of infrastructure to service the area in which Developer's property is located, including but not limited to water service, wastewater service, roads, parks, and other public buildings, grounds, and other public works, the creation of special districts or other funding vehicles may be needed or necessary for the funding and/or construction of infrastructure needs in the development of the territory. Said special districts may include but are not limited to Community Facilities Districts, Water Districts, Sewer Districts, and Improvement Districts.

11. DELINQUENT PAYMENT PROVISIONS AND INTEREST CHARGES. With respect to the provisions herein providing for Developer to reimburse City, Developer agrees to pay all charges within thirty (30) days of the date of billing for such charges. Any sums not paid within thirty days of the date of billing shall bear interest at the rate of 1 1/2% per month, compounded monthly, until paid. Should payment not be made within said thirty (30) day period, and City elects to institute collection, Developer agrees to pay reasonable collection charges in addition to all other sums due hereunder up to and including a sum equal to 25% of all sums due and outstanding. Should suit be brought to recover sums due, Developer agrees to pay a reasonable sum, in

addition to all sums then unpaid, as attorneys fees. Any non-payment of any sum due more than thirty (30) days after billing shall not result in the termination of this agreement nor relieve Developer of its obligations hereunder, however it shall relieve the City of any further obligations pursuant to this agreement without further notice.

12. SECURITY FOR PERFORMANCE. Developer covenants that at least one business day before the date that the City Council awards any contract for the construction of the improvements described herein, that it shall cause to have issued a certificate of deposit drawn on and issued by a banking institution insured by the United States of America or any of its agencies or departments. This certificate shall be in an amount not less than the total anticipated costs of the Sewer Extension as determined by the City Engineer. It shall be made payable to the treasurer of the City, with interest to be earned, if any, to be payable solely to Developer. The certificate of deposit shall be held by the treasurer of the City.

Upon the determination of the City Manager that the developer has not reimbursed the City for any of its obligations as set forth above, the treasurer of the City may liquidate the certificate of deposit and make the proceeds available to meet the obligations of the Developer. The remainder of the proceeds, if any, shall be returned to Developer upon completion of all anticipated work and the payment of all obligations of Developer, including the construction of the future pump station and force main and payment of Developer's fair share in connection therewith

Developer may substitute a bond, executed by the Developer and a surety authorized to do business as a surety in the State of Arizona, in such form as may be acceptable to and approved by the City Attorney, to secure and guarantee the faithful performance and payment of all Developer's obligations pursuant to this agreement in substitution for the certificate of deposit as set forth above. Said bond shall be in an amount of at least 100% of the amount of the total anticipated costs of the Sewer Extension as determined by the City Engineer. All premiums for such bond shall be paid by the Developer. The bond shall remain in full force and effect until the satisfactory completion of all anticipated work and payment of all obligations of Developer.

### 13. GENERAL PROVISIONS.

A. Time is of Essence; Binding Effect. Time is of the essence of this agreement. Such agreement shall be binding upon and inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.

#### B. Notifications.

- (i) All notices, demands or other communications must be in writing and are deemed newly delivered upon personal delivery, or as of the second business day after mailing by United States mail,

postage prepaid, registered or certified, return receipt requested,  
addressed as follows:

To City: City Manager, City of San Luis, 23222 First Street  
P.O. Box 11170, San Luis, Arizona, 85340

To Developer: Joshua J. Meyer, Manager, Border Ranches  
LLC, 11593 S. Fortuna Rd., Yuma, AZ 85367-5679.

- (ii). If either party changes address, it must give written notice to the other party. Notice of change of address is deemed effective five days after mailing by the party changing address.

C. Successor and Assigns. This Agreement is not assignable unless both parties mutually consent otherwise in writing. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both parties.

D. Waiver. If either party fails to require the other party to perform any provision of this Agreement, that failure does not prevent the party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this Agreement if the other party fails to exercise a right or remedy.

E. Governing Law and Venue.

- (i) The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance. The parties must institute and maintain any legal actions or other judicial proceedings arising from this Agreement in a court of competent jurisdiction in Yuma County, Arizona.
- (ii) This agreement is subject to the cancellation provisions of Arizona Revised Statute § 38-511, as amended.

F. Severability. If any terms, parts, or provisions of this Agreement are for any reason invalid or unenforceable, the remaining terms, parts, or provisions are nevertheless valid and enforceable.

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

H. Attorney Fees and Costs. In addition to the provisions of Section 12 herein, if either party brings an action or proceeding for failure to observe any of the terms or provisions of this agreement, the prevailing party may recover as part of the action or proceeding, all litigation, arbitration and collection expenses, including, but not limited

postage prepaid, registered or certified, return receipt requested,  
addressed as follows:

To City: City Manager, City of San Luis, 23222 First Street,  
P. O. Box 11170, San Luis, Arizona, 85340.

To Developer: Joshua J. Meyer, Manager, Border Ranches  
LLC, 11593 S. Fortuna Rd., Yuma, AZ 85367-5379.

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D. Waiver. If either party fails to require the other party to perform any provision of this Agreement, that failure does not prevent the party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this Agreement if the other party fails to exercise a right or remedy.

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

H. Attorney Fees and Costs. In addition to the provisions of Section 12 herein, if either party brings an action or proceeding for failure to observe any of the terms or provisions of this agreement, the prevailing party may recover, as part of the action or proceeding, all litigation, arbitration and collection expenses, including, but not limited

to. witness fees, court costs, and reasonable attorneys fees.

I. Integration. This Agreement contains the entire agreement between the parties, and no oral or written statements, promises, or inducements made by either party or its agents not contained or specifically referred to in this Agreement is valid or binding. All modifications to this agreement must be in writing, signed in endorsed by the parties. Both parties agree that no promises regarding infrastructure of any kind, including provision of either water or sewer service, exist other than as made in the preannexation development agreement or in this first amendment thereto.

In witness whereof, the parties have executed this agreement on the day and year first above written, and written below.

DATED this 30<sup>th</sup> day of July, 2001

CITY OF SAN LUIS

Enrique Castillo  
ENRIQUE CASTILLO  
City Manager

ATTEST: Cynthia Salesbury Salcido  
CYNTHIA SALESBURY Salcido  
Deputy City Clerk

APPROVED AS TO FORM:

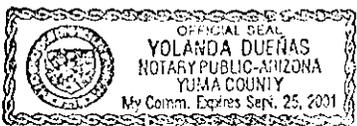
Gerald W. Hunt  
GERALD W. HUNT  
City Attorney

DEVELOPER

BORDER RANCHES L.L.C.

By: Joshua Meyer  
Manager

State of Arizona )  
                          )ss  
County of Yuma )



The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of July by Joshua Meyer, Manager of Border Ranches LLC.

Yolanda Dueñas  
Notary Public

My commission expires:  
Sept. 25, 2001

State of Arizona )  
                          )ss  
County of Yuma )

The foregoing instrument was acknowledged before me this 30<sup>th</sup> day of July  
2001 by Enrique Castillo, City Manager of the City of San Luis, Arizona.

Lilia I. Linares  
Notary Public

My commission expires:

February 21, 2004

 Notary Public State of Arizona  
Yuma County  
Lilia I Linares  
Expires February 21 2004

EXHIBIT 'A'

AGREEMENT

This Agreement entered into this \_\_\_\_ day of \_\_\_\_\_  
by and between the City of San Luis, a municipal corporation of the State of Arizona,  
hereinafter referred to as "City," and Border Ranches L.L.C., hereinafter referred to as the  
"Developer."

**RECITALS:**

WHEREAS, the Developer owns certain real property located in the City; and

WHEREAS, Developer has developed certain sanitary sewer service mains, lines,  
and appurtenant improvements, hereinafter collectively referred to as "Sewer Utility Lines,"  
necessary to provide water and sanitary sewer service to the lands of Developer; and

WHEREAS, the Sewer Utility Lines have been installed for such purposes by the  
Developer as generally depicted on the "Easement Areas" on Exhibit "A" attached hereto;  
and

WHEREAS, the City is willing to supply sewer service to the lands of Developer  
contingent upon the transfer of the Sewer Utility Lines by the Developer to the City; and

WHEREAS, the Developer and the City desire to impose a fee as set forth in this  
Agreement whereby adjacent \_\_\_\_\_ is benefitted by the availability of sanitary sewer service  
by the improvements made by Developer will pay back to the Developer their fair share of  
the costs incurred by Developer;

NOW, THEREFORE, it is mutually covenanted and agreed by and between the  
parties hereto as follows:

1 **Incorporation of Recitals.** The recitals are hereby incorporated by  
reference as agreements of the parties.

2 **Acceptance of Improvements.** The City having inspected the Sewer Utility  
Lines to the City's full satisfaction hereby acknowledges and agrees that the construction  
and installation of the Sewer Utility Lines have been completed in compliance with all

applicable City standards and specifications for sanitary sewer line construction and that the Sewer Utility Lines are hereby approved by the City. Developer hereby represents to the City that the installation of all said sanitary sewer line construction complies with the requirements of the Arizona State Department of Health Services and ADEO regulations. At all times Developer has been and continues to be responsible for meeting said requirements and obtaining all appropriate approvals from the State of Arizona.

3 **Certification of Costs.** The City acknowledges and agrees that the engineering, legal, and construction costs necessary to install the Sewer Utility Lines in a manner that said lines are completed and ready for service are in the total amount of \_\_\_\_\_

4 **Conveyance of Improvements.** Developer hereby grants and conveys to the City all right and title to the aforementioned Sewer Utility Lines, and the City hereby accepts and owns the aforementioned Sewer Utility Lines free and clear of all consensual liens and encumbrances, if any. In addition to the agreement to hold harmless as contained in Section 7 herein, Developer hereby agrees to indemnify and hold harmless City from any and all claims, known or unknown, of whatsoever kind or nature, regarding the construction of said utility lines including but not limited to any and all claims of liens or encumbrances including, but not limited to, mechanics' liens, or consensual liens or encumbrances otherwise attaching the property upon which the utility lines have been constructed. All sewer lines, mains, equipment, and appurtenances installed as referenced in this Agreement is, shall be, and remain the property of City and Developer shall have no right, title, or interest therein or thereto.

5 **Conveyance of Easements.** Developer shall grant to City perpetual sewer easements over the easement areas on respective properties of Developer. Developer has delivered to the City fully executed, acknowledged, and recorded utility easements. Developer hereby grants to the City the permanent right and easement to install, pump, operate, and maintain, in place and in lieu such portions of the sewer system as may be located in the easement areas.

6 **Method of Determining Fee.** Pursuant to the terms an agreement between Developer and City, Developer has reimbursed the City for the costs as set forth in paragraph 3 herein. The construction costs as paid by Developer, as referred in subparagraph 3 herein, shall be partially repaid by owners of property benefitting from the improvements made by Developer by the imposition of a fee which fee has been determined on the following basis: (

A. \$\_\_\_\_\_ is the identified dedication or construction costs and engineering fees credit for the property, property rights, facilities, and improvements which are the subject of this Agreement. The Developer's fair share is the amount of \$\_\_\_\_\_. In calculating Developer's fair share said share was determined on the same pro rata share per acre basis for both Sewer Utility Lines as to be required of

owners in the Border Ranches Sewer Utility District Service Area as hereinafter set forth. On file in the Office of the Clerk of the City of San Luis is a document entitled "Report Regarding Proposed Impact Fees for Sewer Utility Service lines and Establishment of Service Areas for Same ("Border Ranches Sewer Utility District Service Area)." Said report provides the basis of calculation of fees and charges as well as offsets for determining the pro rata share ("fair share") per acre for Sewer Utility Lines for both Developer and affected persons in the proposed Border Ranches Sewer Utility District Service Area which are the subject of this Agreement.

B. In establishing the districts, the Public Works Director has determined that all lands (DESCRIPTION OF SERVICE AREA TO BE INSERTED HERE) as shown on Exhibit "A" attached hereto will benefit equally from the availability of sewer service due to the improvements constructed by Developer. As a result it is agreed that a fee will be charged at the time of the issuance of a building permit and/or the approval of a final subdivision plat for lands in the proposed districts to reimburse, proportionate to said benefit, the Developer for the improvements that have been constructed.

(i) The following parcels (using the parcel numbers of the Yuma County Assessor) were found to be (DESCRIBE REQUIREMENTS OF AREA:

1. (LIST PARCELS)
- 2.
- 3.
- 4.

There is a total of \_\_\_\_\_ acres which have been determined to benefit from the sewer utility lines and related improvements constructed by Developer.

(ii) By dividing the total cost for new sewer utility service by the number of acres benefitted, one arrives at a cost per acre for new sewer utility service of \$\_\_\_\_\_.

(iii) A.R.S. §9-463.05 provides that fees assessed by a municipality shall be assessed in a non-discriminatory manner. By deducting lands owned or controlled by the Developer or for which the Developer has already received reimbursement, the following parcels are designated as not subject to assessment of the proposed fees:

1. (LIST PROPERTIES)
- 2.
- 3.

This is a total of \_\_\_\_\_ acres.

(iv) Therefore, the parcels of land against which a sewer utility charge is to be made for reimbursement of costs to the Developer are the following parcels:

1. (LIST PARCELS)
- 2.
- 3.
- 4.
- 5.

This remaining area is to become the Border Ranches Sewer Utility Service District Area and is for a total of \_\_\_\_\_ acres.

(v) The total amount of funds to be reimbursed pursuant to the Border Ranches Sewer Utility Service District is \_\_\_\_\_ acres times \$\_\_\_\_\_ for a total of \$\_\_\_\_\_.

C. The manner of calculation as provided in Subsection B above has included the properties of Developer in determining the amount of cost benefit in a non-discriminatory manner, and has assured that the Developer bears his proportionate burden with respect to the costs sought to be reimbursed by the proposed fees. The properties in the Border Ranches Sewer Utility Service District Area will benefit equally from the availability of sewer service due to the improvements constructed by Developer.

D. A fee will be charged owners of property or other affected persons seeking to develop or build upon lands in the Border Ranches Sewer Utility Service District Area as hereinafter set forth. Said fee will be for the purpose of partial reimbursement of costs of Developer as set forth herein.

**7. Ordinance Adopting Fee.** The City shall adopt an Ordinance establishing a Sewer Utility District Service Area and a Sewer Utility District Service Fee in the amount of \$\_\_\_\_\_ per acre. The fee will include a calculation and charge for interest as hereinafter set forth. The Ordinance will provide that owners of property in the aforementioned service areas shall be required to pay to Developer the aforementioned fees as a pre-condition to the issuance of a building permit and/or approval of final subdivision plat map. Said owners shall be required to file with the City a certificate of payment showing payment as a prerequisite to obtaining building permits or other development-related approvals from the City. Developer agrees to maintain on file at City the name, address, and telephone number of the person and place where owners in the service district areas may make payment and obtain a certificate of payment. It is understood that if an owner in a service district area makes a demonstration of good faith efforts to make payment and can show an inability on the part of Developer to either receive payment or issue a certificate of payment, the City may forgive this requirement as a condition of municipal approval. The City shall owe no special duty to Developer to collect monies from owners of property in the Sewer Utility District Service Area. Developer hereby agrees to indemnify

and hold City harmless from claims based upon the failure of the City to either collect monies from said owners or require certification of payment prior to the issuance of building permits or as a condition for other approval by the municipality.

8. **Effective Date of Fee.** It is further understood and agreed that additional charges to owners of property and the payment of monies to the Developer as described herein cannot occur until proper ordinances of the City of San Luis have been adopted, and the provisions, procedures, time limits, of A.R.S. §9-463.05 have been complied with. Developer agrees that the Developer bears the duty to provide any written reports, professional studies, data, and/or other documentation as may be necessary or required by the provisions of A.R.S. §9-463.05 to support the assessment of fees and charges upon owners of property in the service district areas as set forth in this Agreement.

9. **Termination of Fees.**

The Sewer Utility District Fee provided by this agreement shall terminate upon either the payment of the fees imposed by the ordinance referred to herein by each of the properties which are the subject of the fee to the Developer or the date fifteen years from the effective date of the imposition of the fee pursuant to the ordinance as referred to in Section 7 above, or until full reimbursement of the sum of \$ \_\_\_\_\_ whichever first occurs.

10. **Assignment.** Developer may with prior written consent of City assign, transfer, or sell the right of repayment as contained in this Agreement, if the assignee in writing agrees to perform this Agreement. City shall be provided of an executed copy of such agreement by assignee.

11. **Hold Harmless.** The City represents that all legal procedures for adoption of any fee referred to in this agreement have been or will be followed. Further, Developer shall have the affirmative duty to defend the legality of this Agreement and all of its provisions, including any Ordinance adopted in connection therewith, against any challenge by any person and shall pay the legal costs and attorneys fees incurred by the City. It is agreed that in the event of litigation, the City shall control the choice of defense counsel. Developer shall indemnify, pay, and hold the City harmless from, all attorneys fees and costs incurred. The Developer shall indemnify and hold the City harmless from any and all judgments for damages, or judgments calling for or resulting in the refund of any fees or interest paid pursuant to any ordinance adopted pursuant hereto and any interest incurred thereon, of whatsoever kind or nature, arising from any claim by any person regarding the legality of this Agreement, or any ordinance adopted in connection therewith, including but not limited to claims concerning the correctness of the provisions regarding payback, provisions regarding the collection of monies from owners of property in the service district areas, as well as any and all claims of whatsoever kind or nature emanating from the collection of monies from the owners of property in the service district areas.

13. General Provisions:

A. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

B. This agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

C. Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing signed by each party or authorized representative of each party.

D. This agreement shall be subject to the cancellation provisions of ARS § 38-511.

E. The failure of City to insist upon the performance of any of the terms and conditions of this agreement, or the waiver of any breach of any of the terms and conditions of this agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

F. It is agreed that this agreement shall be governed by, and construed, and enforced in accordance with the laws of the State of Arizona. Jurisdiction and venue for any dispute of any kind or nature arising between the parties of this agreement shall be exclusively in the courts of Yuma County, State of Arizona. Although the provisions of this agreement were the result of mutual negotiations and were drawn by City, this agreement shall not be construed either for or against either party, but this agreement shall be interpreted in accordance with the general tenor of the language in an effort to reach an equitable result.

G. In the event of an action or proceeding brought by either party, the prevailing party shall be entitled to recover the successful party's reasonable attorney's fees.

H. This agreement may be executed in counterpart.

In witness whereof, the parties hereto have hereunto set their hands the day and year first above written.

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

Border Ranches L.L.C.

By: \_\_\_\_\_  
Authorized Managing Partner

EXHIBIT B

CITY ENGINEER'S ESTIMATE: \$23,000.00