



OFFICE OF THE
MAYOR
CITY OF SAN LUIS

Resolution RESOLUTION NO. 759

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA APPROVING A SEWER IMPROVEMENT PAYBACK AGREEMENT BETWEEN YUMA COUNTY IMPROVEMENT DISTRICT NO. 96-7 (GADSDEN) AND THE CITY OF SAN LUIS.

Whereas, the City of San Luis and Yuma County Improvement District No. 96-7 (Gadsden) desire to enter into a Sewer Improvement Payback Agreement;

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

Section 1: That the Sewer Improvement Payback Agreement, as attached as Exhibit "A", is hereby authorized and approved.

Section 2: That the appropriate City officials are hereby authorized and directed to enter into said agreement on behalf of the City and take any all actions as may be necessary to effectuate said agreement.

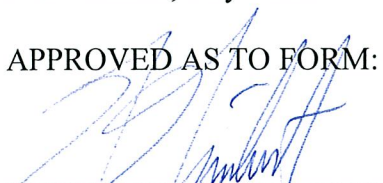
PASSED AND ADOPTED by the Mayor and Common Council of the City of San Luis, Arizona, this 13th day of November, 2007.


Juan Carlos Escamilla, Mayor

ATTEST:


Sonia Cuello, City Clerk

APPROVED AS TO FORM:


Glenn Gimbut, City Attorney

OFFICIAL RECORDS OF
YUMA COUNTY RECORDER
SUSAN MARLER



FEE #: 2008 – 00531

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FEES: .00 .00 .00 .00 .00
REQ BY: YUMA CO DEPT OF PUBLIC
REC BY: CRISTINA ACOSTA

COPY
AS TO FILING DATA ONLY

Please Return original document to:
Yuma County Department of Public Works
ATTENTION: Rachel Stallworth
4343 S. Avenue 5 1/2 E
Yuma, Arizona 85365

TYPE OF DOCUMENT:

Sewer Improvement Payback Agreement

Yuma County Improvement District No. 96-7
(Townsite of Gadsden, Gadsden Estates,
Gadsden Estates Unit Two and Chekash's
Subdivision)

SEWER IMPROVEMENT PAYBACK AGREEMENT

THIS AGREEMENT is made and entered into this 13th day of November, 2007, by and between the City Of San Luis, an Arizona municipal corporation, hereinafter referred to as the "City," and the Yuma County Improvement District No. 96-7 (Townsite of Gadsden, Gadsden Estates, Gadsden Estates Unit Two and Chekash's Subdivision), an Arizona special district and political subdivision, hereinafter referred to as "District."

WITNESSETH:

WHEREAS, the City operates and maintains a sewer utility system within and adjacent to the corporate limits of the City; and

WHEREAS, the District has constructed and installed certain sanitary sewer collection facilities, lift stations, and sewer lines, as identified and set forth in the Intergovernmental Agreement between the City and the District dated May 23, 2001 (the "Sewer Improvements") attached hereto and incorporated herein as **Exhibit "A,"** and

WHEREAS, the foregoing Sewer Improvements are capable of serving the needs of additional parcels both within and outside the District boundaries; and

WHEREAS, the Parties have determined that the fair pro rata share of the total eligible project costs of said Sewer Improvements depicted on **Exhibit "A,"** to be collected from the owner or owners of the benefited properties that connect to said Sewer Improvements, shall be Eight Hundred Ninety Thousand, Two Hundred Fifty-Six Dollars (\$890,256.00) as detailed in **Exhibit "B,"** attached hereto and incorporated herein; and

WHEREAS, the City and the District desire and intend by this Agreement to provide for the collection of the fair pro rata share of the total eligible project costs of Sewer Improvements from the owner or owners of the properties that connect to the Sewer Improvements who did not contribute to the original cost thereof:

NOW, THEREFORE, in consideration of the mutual undertakings and covenants herein, the parties hereto agree as follows:

1. All of the recitals set forth above are adopted by the parties as material elements of this Agreement.

2. In consideration of the benefits provided to properties both within and outside the District from the Sewer Improvements shown in **Exhibit "A,"** the City agrees to collect from the owner or owners of the parcels who subsequently connect to or use the Sewer Improvements, a latecomer's charge (assessment fee) equal to the fair pro rata share of the total eligible project costs as set forth in **Exhibit "B"** and described herein. It should be understood that **Exhibit "A"** attached forthwith is for illustration purposes only. Any particular connection or usage reference should be made to the "as built" drawings that are on file with the City of San Luis and the District.

3. The total project costs eligible for reimbursement for said Sewer Improvements under this Agreement, shall be as itemized in **Exhibit "B."** The eligible portion of the total project costs includes costs for design and engineering; surveying; construction; construction inspection; and construction contract administration incurred and paid by the District. The latecomer's charge (assessment fee) for each of the parcels that connect to the Sewer Improvements shall be a fair pro rata share of the total eligible project costs based on a percent of capacity basis. The pro rata share of the eligible project costs to be assessed against each parcel connecting to the Sewer Improvements shall be calculated by dividing the engineer's estimate of 450 gallon discharge per single family dwelling or equivalent unit by the 57,000 gallon capacity of the City's sewer system allowed for the District, and multiplying the resulting answer by the eligible project costs set forth in **Exhibit "B."** The resulting pro rata share is \$7,028.34 per single family dwelling or equivalent unit. For connections other than single family dwellings, the daily discharge rate should be calculated in accordance with accepted industry standards. That discharge rate would then be divided by 450 gallons (the single family dwelling rate) and the result would be the equivalent number of units to be assessed. That equivalent number of units would then be multiplied by \$7,028.34, which would equal the pro rata share for connections other than single family dwellings.

4. The City agrees that it will not allow an owner of a parcel to connect to the Sewer Improvements or otherwise utilize the Sewer Improvements as described herein without such owner or owners having first paid to the City the latecomers charge. The City agrees that its

officers, agents, and employees will use their best efforts to collect assessments under this Agreement. As part of those best efforts, the City agrees that it will immediately notify the District of receipt of the required latecomer's charge, thereby allowing the District to release any objections related to:

(a) Any rezoning, preliminary plat, final plat, or building permit approval for properties or projects within the benefited area.

(b) Issuance of a certificate of occupancy on a benefited property.

5. The City shall pay to the District the sums agreed to be collected pursuant to the provisions of paragraph 4 above, within sixty (60) days after receipt thereof at the address of the District as set forth hereinafter, or at such other address as the District shall notify the City by Certified Mail.

6. No assignment of this Agreement or any of the benefits hereunder by District shall be binding upon the City unless or until written notice of such assignment shall be given to the City and approval is given by the City, which approval shall not be unreasonably refused. In the event of the assignment or transfer of the rights of the District involuntarily, or by operation of law, then the City shall pay all benefits accruing hereunder, after notice, to such successor of the District as the City, in its sole judgment, deems entitled to such benefits.

7. In the event that either party must commence any action at law or otherwise to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys fees and costs.

8. The City shall be entitled to rely on the provisions of this Agreement with respect to the fairness of the pro rata charges, and upon the determination of the benefited properties as provided herein. The Parties agree to indemnify, hold harmless, and defend each other for, from, and against any challenge to the method used to calculate the pro rata share applied to parcels as set forth in this Agreement.

9. Nothing contained in this Agreement shall be construed so as to affect or impair the right of the City to regulate the use of its sewer system. The imposition by the City of any such requirement shall not be deemed to be an impairment of this Agreement, even though it

may be imposed in such a manner as to refuse service to an owner or owners of a parcel attempting to connect to the Sewer Improvements.

10. This Agreement shall become operative upon its recordation with the Yuma County Recorder, and shall remain in force and effect for a period of fifteen (15) years after the date of such recording, or until the District, or its successor and assigns, shall have been fully reimbursed as described herein, whichever event occurs earlier.

11. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining terms and provisions of this Agreement shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

12. This Agreement constitutes the final and complete agreement between the parties and cannot be changed or modified other than by a written agreement executed by both parties.

13. The Public Works Director for the City shall have primary responsibility for administering this Agreement, and shall coordinate all communications between the District and the City.

14. Any and all notices affecting, or relative to, this Agreement shall be effective if in writing and delivered or mailed, postage prepaid, to the respective party being notified at the address listed below:

To the City:

City Administrator
City of San Luis
P.O. Box 1170
San Luis, AZ 85349-1170

To the District:

Yuma County Improvement District No. 96-7
4343 S. Avenue 5 ½ E
Yuma, AZ 85365

15. Arizona law shall govern the interpretation of this Agreement, without regard to Arizona's choice of law statutes or common law. Yuma County shall be the venue of any arbitration or lawsuit arising out of this Agreement.