



# Resolution

RESOLUTION NO.773

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA AUTHORIZING AND APPROVING AN AGREEMENT WITH GREATER YUMA PORT AUTHORITY FOR PAYBACK OF AGREEMENT WITH WELLS FARGO BROKERAGE SERVICES, L.L.C. AND OPTION TO PURCHASE PROPERTY

WHEREAS the City of San Luis (“City”) is a member of the Greater Yuma Port Authority (“GYPA”);

WHEREAS GYPA is developing a parcel of property within the City limits of the City of San Luis including a new commercial port of entry being constructed by the General Services Administration, and a commercial vehicle inspection station to be constructed by the Arizona Department of Transportation (“GYPA Property”); and

WHEREAS the City of San Luis has agreed to provide sewer service and potable water to the GYPA Property; and

WHEREAS the it is in the best interest of the parties to cooperate in the mutual installation of certain infrastructure facilities to serve the GYPA Property; and

WHEREAS the parties have agreed to the terms and conditions of the development of the infrastructure of the GYPA Property; and

WHEREAS the City of San Luis has negotiated a lease purchase arrangement with Wells Fargo Public Finance to provide up to \$600,000 in funds for the construction of infrastructure on GYPA Property, which funds will be reimbursed to San Luis by GYPA pursuant to this Agreement; and

WHEREAS the City of San Luis is desirous of acquiring five (5) acres of land located on the Southwest corner of the intersection of Avenue E and County 24 ½ (“Avenue E Property”) from GYPA for the purposes of developing an emergency response facility;

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

Section 1: That the Agreement between the City of San Luis and the Greater Yuma Port Authority marked Exhibit "A" attached hereto, and by this reference incorporated herein, is hereby approved and city officials and staff are hereby authorized and directed to take such acts and actions as may be necessary to execute and effectuate said agreement.

PASSED AND ADOPTED by the Mayor and Council of the City of San Luis, Arizona, this 26<sup>th</sup> day of March, 2008.

  
\_\_\_\_\_  
Juan Carlos Escamilla, Mayor

ATTEST:

  
\_\_\_\_\_  
Sonia Cuello, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Glenn J. Gimbut  
City Attorney

LAW OFFICES  
BYRNE, BENESCH & VILLARREAL, P.C.

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ARTURO I. VILLARREAL  
JOHN S. GARCIA  
BRANDON S. KINSEY  
RYAN C. HENGL

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PETER C. BYRNE  
(1916 - 1994)  
230 WEST MORRISON STREET  
YUMA, ARIZONA 85364

October 1, 2008

Glenn Gimbut, Esq.  
City of San Luis  
P.O. Box 1170  
San Luis, Arizona 85349

*Hand Delivered by Jim Chessum*

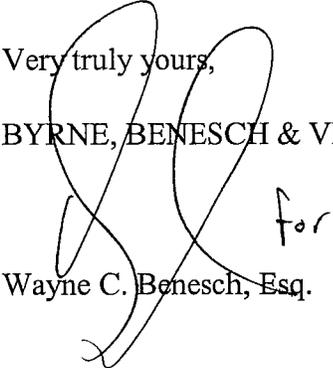
*Re: GYPA/San Luis Loan*

Dear Glenn:

As requested, enclosed herein please find a copy of the agreement by and between the City of San Luis and the Greater Yuma Port Authority, Inc. ("GYPA") regarding the Wells Fargo Loan ("Agreement"). Gary Magrino, the Chairman of GYPA, has executed the Agreement, however, the City of San Luis has not. Please obtain the applicable signatures and forward a copy of the fully executed Agreement to me. We will continue to work with you and city staff in developing the terms of a payback agreement on the lift station improvements. If you have any questions, please do not hesitate to call me.

Very truly yours,

BYRNE, BENESCH & VILLARREAL, P.C.

for  
Wayne C. Benesch, Esq.

WCB/rch

Enclosure

cc: Jim Chessum  
Gary Magrino

## AGREEMENT

THIS AGREEMENT is entered into this 26<sup>th</sup> day of March, 2008, by and between the CITY OF SAN LUIS, ARIZONA, a municipal corporation (hereinafter referred to as "San Luis") and the GREATER YUMA PORT AUTHORITY, INC., an Arizona non-profit corporation, (hereinafter referred to as "GYPA").

### W I T N E S S E T H

WHEREAS, GYPA is developing a parcel of property within the City limits of the City of San Luis including a new commercial port of entry being constructed by the General Services Administration, and a commercial vehicle inspection station to be constructed by the Arizona Department of Transportation ("GYPA Property"); and

WHEREAS, San Luis has agreed to provide sewer service and potable water to the GYPA Property; and

WHEREAS, it is in the best interest of the parties to cooperate in the mutual installation of certain infrastructure facilities to serve the GYPA Property; and

WHEREAS, the parties have agreed to the terms and conditions of the development of the infrastructure of the GYPA Property; and

WHEREAS, San Luis has negotiated a lease purchase arrangement with Wells Fargo Public Finance to provide up to \$600,000 in funds for the construction of infrastructure on GYPA Property, which funds will be reimbursed to San Luis by GYPA pursuant to this Agreement; and

WHEREAS, San Luis is desirous of acquiring five (5) acres of land located on the Southwest corner of the intersection of Avenue E and County 24 ½ ("Avenue E Property") from GYPA for the purposes of developing an emergency response facility;

NOW, THEREFORE, for the reasons set forth above, and in consideration of the mutual promises and agreements set forth in this Agreement, San Luis and GYPA agree as follows:

**1. Wells Fargo Loan.** San Luis will close on the loan with Wells Fargo Public Finance in the amount of \$600,000.00 on or before April 15, 2008. The Loan Proceeds shall be immediately placed in an escrow account and shall be disbursed by San Luis to be used exclusively by GYPA for the purposes of payment of construction costs associated with the construction of certain infrastructure elements of the GYPA Property.

**2. Construction of Infrastructure Elements.** GYPA shall continue with the construction of infrastructure elements of the GYPA Property in accordance with the specifications

of construction plans reviewed and approved by San Luis. The parties shall establish a process for payment of the construction bills presented by GYPA to San Luis.

**3. Repayment of Loan Proceeds.** GYPA shall repay the Loan Proceeds to San Luis, including principal and interest, in accordance with the payments schedule attached hereto as Exhibit "A."

**4. Purchase of the Avenue E Property.** As consideration for entering into this Agreement, San Luis shall have the right to purchase the Avenue E Property for the purpose of establishing an emergency response facility at the appraised value. ("Purchase Price"). The appraised value of the Avenue E Property shall be determined by an appraiser agreed upon by both parties and the cost of the appraisal shall be borne by GYPA. The appraisal shall be completed between the dates of January 1, 2009, and June 30, 2009.

In the event that San Luis shall elect to purchase the Avenue E Property prior to the final repayment of the Loan Proceeds as outlined in Exhibit "A" attached hereto, but in no event earlier than June 30, 2010, GYPA's obligation to re-pay the principal amount shall be reduced in an amount equal to the Purchase Price ("Re-payment Credit"). The Re-Payment Credit shall be the sole consideration for the purchase of the Avenue E Property. Any balance due shall be paid by GYPA as provided in Exhibit "A" attached hereto.

**5. Miscellaneous Provisions.**

**A. No Waiver.** The failure of either party to this Agreement 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.

**B. Severability.** If any one or more of the provisions of this Agreement is found to be illegal or unenforceable, then notwithstanding same, this Agreement shall remain in full force and effect, and such term or provision shall be deemed severed.

**C. Complete Agreement.** This Agreement contains the entire agreement between the parties hereto with respect to the matters covered herein and, except as specifically provided in this Agreement, supersedes and merges all prior and contemporaneous oral and written agreements, discussions, and understandings between the parties. No other agreements, representations, warranties or other matters, oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

**D. Amendment.** This Agreement may be amended only by a written document signed by both parties.

**E. Relationship of the Parties.** No agency, partnership, joint venture, franchise, other joint relationship, or any business organization of any kind is created by this Agreement and the agents of neither party shall have authority of any kind to bind the other party in any respect whatsoever.

**F. Attorneys' Fees.** In the event suit is brought or an attorney is retained by any party to this Agreement to seek interpretation or construction of any term or provision of this Agreement, to enforce the terms of this Agreement, to collect any money due, or to obtain any money damages or equitable relief for breach, or to seek recourse in a bankruptcy proceeding, the prevailing party shall be entitled to recover, in addition to any other available remedy, reimbursement for reasonable attorneys' fees for representation in the court (including, without limitation, bankruptcy court), court costs, costs of investigation, and other related expenses.

**G. Advice of Counsel.** Each party agrees that it is signing this Agreement of its own free will, after consideration with counsel or an opportunity to seek the assistance of counsel such that no presumptions of interpretation shall apply.

**H. Representation.** Each individual executing this Agreement represents and warrants that the individual has the complete and full authority to enter into this Agreement on behalf of the party for whom the individual signs.

**I. No Third Party Rights.** No term or provision of this Agreement is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation, or other entity other than the parties hereto, and no such person, firm, corporation, or other entity shall have any right or cause of action hereunder.

**J. Remedies Cumulative.** All of the rights and remedies of the parties shall be cumulative, and the exercise or assertion of one or more of such rights or remedies shall not affect any other rights or remedies allowed by law or equity.

**K. Binding Effect.** The provisions of this Agreement shall be binding on and inure to the benefit of each party and its administrators, representatives, successors, assigns, transferees, grantees and any other person or entity acting on the party's behalf, except to the extent modified herein.

**L. Execution in Counterparts.** This Agreement may be executed in one or more counterparts, and by the parties hereto in separate counterparts, each of which will be deemed to be an original but all of which, taken together, shall constitute one in the same Agreement.

**M. Governing Law.** This Agreement shall be interpreted and governed by the laws of the State of Arizona.

511. N. This Agreement shall be subject to the cancellation provisions of A.R.S. §38-

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

**CITY OF SAN LUIS, ARIZONA**



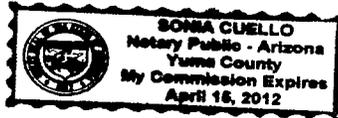
By: Juan Carlos Escamilla  
Its: Mayor

STATE OF ARIZONA        )  
  )ss.  
County of Yuma            )

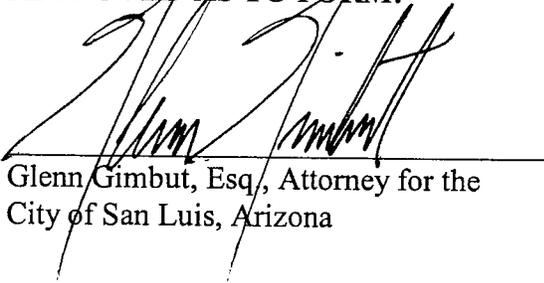
SUBSCRIBED AND SWORN to before me this 8<sup>th</sup> day of October, 2008 by Juan Carlos Escamilla, in his capacity as Mayor of the City of San Luis, Arizona.

  
Notary Public

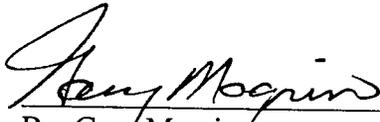
My Commission Expires:  
4/15/2012



**APPROVED AS TO FORM:**

  
Glenn Gimbut, Esq., Attorney for the  
City of San Luis, Arizona

**GREATER YUMA PORT AUTHORITY, INC.**

  
By: Gary Magrino  
Its: Chairman

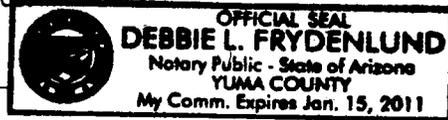
STATE OF ARIZONA        )  
  )ss.  
County of Yuma            )

SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of June, 2008 by Gary Magrino, in his capacity of Chairman of the Greater Yuma Port Authority, Inc.

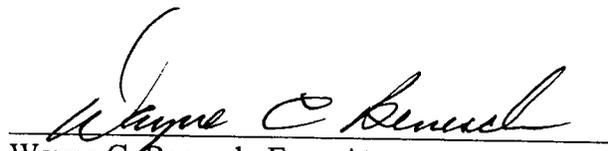
  
Notary Public

My Commission Expires:

1-15-2011



**APPROVED AS TO FORM:**

  
Wayne C. Benesch, Esq., Attorney  
for the Greater Yuma Port Authority, Inc.

**EXHIBIT "A"**

Pmt.	Total Payment Due	Interest Payments Due	Principal Payment Due	After Payment Principal Balance	After Payment Termination Value	Payment Due Date
	\$0.00		\$0.00	\$600,000.00		Mar. 15, 2008
1	\$27,391.67	\$27,391.67	\$0.00	\$600,000.00	\$612,487.91	Mar. 1, 2009
2	\$28,500.00	\$28,500.00	\$0.00	\$600,000.00	\$608,487.43	Mar. 1, 2010
3	\$28,500.00	\$28,500.00	\$0.00	\$600,000.00	\$604,326.92	Mar. 1, 2011
4	\$628,500.00	\$28,500.00	\$600,000.00	\$0.00	\$1.00	Mar. 1, 2012