



Resolution

RESOLUTION NO 960.

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA APPROVING AGREEMENT BETWEEN THE CITY OF SAN LUIS, ARIZONA AND WESTERN ARIZONA COUNCIL OF GOVERNMENTS FOR LICENSE AGREEMENT FOR HEADSTART FACILITIES

Whereas, the City of San Luis desires to enter into a license agreement with the Western Arizona Council of Governments for Head Start facilities; and

Whereas, the parties to the License Agreement desire to enter said agreement; and

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 License Agreement, as attached hereto 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 14th day of December, 2011.

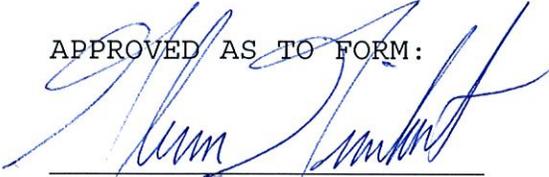

Juan Carlos Escamilla, Mayor

ATTEST:



Sonia Cuello, City Clerk

APPROVED AS TO FORM:



Glenn Gimbut
City Attorney

AGREEMENT BETWEEN WESTERN
ARIZONA COUNCIL OF GOVERNMENTS
AND THE CITY OF SAN LUIS, ARIZONA

This License Agreement is between WESTERN ARIZONA COUNCIL OF GOVERNMENTS, hereinafter referred to as WACOG, and CITY OF SAN LUIS, ARIZONA hereinafter referred to as the CITY on the 14th day of December, 2011 .

WHEREAS, THE CITY has identified the need to provide preschool assistance for "at risk" children, particularly those from low-income families, and

WHEREAS, WACOG is the operator of a successful Head Start Program in Yuma, La Paz, and Mohave Counties, and

WHEREAS, WACOG has been approved by the Department of Health and Human Services to provide these services in Yuma County,

NOW, THEREFORE the WESTERN ARIZONA COUNCIL OF GOVERNMENTS and the CITY do hereby agree:

- (1) For and in consideration of WACOG's operation of a HeadStart preschool program, THE CITY agrees to provide a portion of SW1/4SE/4SW1/4 Section 1, Township 11 South, Range 25' West, Gila and Salt River Base and Meridian, Yuma County, Arizona, more particularly described as follows: Beginning at the south quarter comer of said Section thence S89° 40'00W along the south quarter comer of said Section 1 a distance of 1325.0S feet to the southwest 1/16 comer of said Section 1, thence NOOI7' 15"W along said 1116 line of said section 1 a distance of 329.S2 feet; thence NDS9 41 '02" E a distance of 72.00 Feet to the TRUE POINT OF BEGINNING; thence N°89 41 '02" a distance of 182.00 feet; thence SO° 17' 15"E a distance of 146.00 feet; thence S89°41'02"W a distance of 182.00 feet; thence NO° 17' 15"W a distance of 146.00 feet to the TRUE POINT OF BEGINNING, containing 0.61 acres a site for WACOG to operate modular classrooms.
- (2) WACOG will solicit Federal, State and/or local funds necessary for the operation of this Head Start program, subject to funding availability. WACOG will secure the required permits and approval for the classrooms.
- (3) WACOG will secure approval from the necessary health and other regulatory agencies to insure proper operation of the Head Start classrooms within all existing laws which govern such programs and provide evidence of such approval to THE CITY prior to the beginning of operations of the Head Start program.
- (4) WACOG expressly agrees to indemnify, save, and hold harmless, THE CITY, any

of its departments, agencies, agents, officers or employees, from and against any and all fines, suits, claims, demands, damages, injuries, judgments, and actions of any kind and nature by reason of the use by WACOG of THE CITY property and any such activities on or related to such property by WACOG or any person employed by WACOG or of any others for whose acts WACOG is responsible, including but not limited to supervisors and/or employees and further including but not limited to any WACOG property improvements or additions of any kind whatsoever, including but not limited to that property of participants in the Head Start program or employees or supervisors of said program from cause or causes whatsoever, while in, upon, or in any way connected with the said premises during the term of this lease or in preparation of the property for the beginning of said program. WACOG further covenants and agrees to indemnify and save harmless THE CITY from costs and obligations on account of or arising out of any such fines, suits, claims, demands, damages, injuries, judgments, and actions, based on the use of the facilities by WACOG all as set forth supra. WACOG also agrees to name THE CITY as additional named insured under its liability policy.

(5) WACOG shall, at its cost, keep and maintain said premises and appurtenances and every part thereof in good and sanitary order, subject to funding availability, and

(6) THE CITY agrees to document the "in-kind" services at market value, minus any fee paid by WACOG for such services, that it provides for the WACOG Head Start Program. These "in-kind" services will be reported to WACOG on a monthly basis and will allow WACOG to match the federal funding it receives to provide Head Start services.

(7) This Agreement shall be for a period of (5) five years from the date of its execution. WACOG and THE CITY may agree to extend this Agreement in succeeding years.

(8) WACOG and THE CITY shall have the right, upon mutual agreement, to amend this agreement at any time.

(9) Either WACOG or the City of San Luis may terminate this agreement at any time on 90 day written notice.

(10) The above-described property may be occupied and used by WACOG solely for the purpose of providing a Head Start program. In making this promise it is understood that WACOG is performing the public purpose of providing the above-described services to the residents of the City of San Luis, and the provision of these services to the residents of San Luis is part of the consideration of this agreement.

(11) WACOG and City agree that this License Agreement is only a license and shall not be construed as a lease, or confer any rights of a lease. WACOG shall not record this License Agreement or any notice or memorandum of this Agreement.

(12) GENERAL PROVISIONS.

A. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City or WACOG of the breach of any covenant of this agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this contract.

B. Attorneys' Fees. In the event any party finds it necessary to bring any action at law or other proceeding, including arbitration, against the another party to enforce any of the terms, covenants or conditions hereof, or by reason of any breach or default hereunder, the party prevailing in any such action or other proceeding shall be paid all reasonable costs and reasonable attorneys' fees by the other party, and in the event any judgment is secured by said prevailing party, all such costs and attorneys' fees shall be included therein, such fees to be set by the court and not by jury.

C. Counterparts. This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.

D. Headings. The descriptive headings of the paragraphs of this agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

E. Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this contract.

F. Time of the Essence. Time is of the essence of this contract.

G. No Partnership and Third Parties. It is not intended by this agreement to, and nothing contained in this agreement shall, create any partnership, joint venture or other similar arrangement between City and WACOG. No term or provision of this agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

H. Entire Agreement. This agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

I. Amendment. No change or additions are to be made to this agreement except by a written amendment executed by the parties hereto.

J. Governing Law. This agreement is entered into in Arizona and shall be construed and interpreted under the laws of the State of Arizona. In particular, this agreement is subject to the provisions of A.R.S. § 38 511.

K. Reformation. Should any term, provision, covenant or condition of this agreement be held to be void or invalid, the parties shall reform this agreement to conform as closely as possible to the original intent thereof.

L. Venue. Any legal action relating to this agreement shall be brought in either the Yuma County Superior Court or in the United States District Court for the district of Arizona at the election of the plaintiff in such legal action, provided, however, that nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action.

M. Severability. Every provision of this agreement is, and will be construed to be, a separate and independent covenant. If any provision of this agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability, and each provision of this agreement will be valid and will be enforced to the extent permitted by the law, and the parties will negotiate in good faith for such amendments of this agreement which may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

N. No Personal Liability. No member, official or employee of the City shall be personally liable to WACOG, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the WACOG or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this contract.

O. Employment Eligibility. WACOG hereby warrants, and shall require its subcontractors to warrant, that it is in compliance with all federal immigration laws and regulations that relate to its employees and with A.R.S. §23-214 relating to verification of employment eligibility. A breach of this warranty shall be deemed a material breach of the agreement and is subject to penalties up to and including termination of this

State of Arizona)
) ss.
County of Yuma)

The foregoing instrument was acknowledged before me this _____ day of
_____, 2011 by _____, authorized representative of the
Western Arizona Council of Governments. .

Notary Public

My Commission Expires: _____