

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF YUMA  
AND CRANE ELEMENTARY SCHOOL DISTRICT NO. 13**

This intergovernmental agreement ("Agreement") is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2017, ("Effective Date") by and between the Crane Elementary School District No. 13 ("District") and the City of Yuma ("City"), an Arizona municipal corporation. The District and the City are sometimes hereafter referred to individually as the "Party" and collectively as the "Parties".

WHEREAS, the District and the City are authorized by A.R.S. § 11-952 *et. seq.* and the City is also authorized and empowered pursuant to Article III, Section 13, of the Yuma City Charter and the District is also authorized through A.R.S. § 15-342.13, to enter into agreements for the joint exercise of any power common to the contracting parties as to governmental functions necessary to the public health, safety and welfare, and the proprietary functions of such public agencies; and,

WHEREAS, the District desires to use a certain part of the City's right-of-way to install, operate, and maintain variable speed flashing beacons to increase driver awareness as students are using the crosswalk to cross 32<sup>nd</sup> Street; and,

WHEREAS, the City is willing to allow the District to install, operate, and maintain the variable speed flashing beacons in the right-of-way;

NOW, THEREFORE, the Parties agree as follows:

1. **Use of Right-of-Way.** Subject to the conditions set forth in this Agreement, the District may use certain portions of the right-of-way at approximately 4400 W. 32<sup>nd</sup> Street (the "Properties"), as described in Exhibit A attached and incorporated into this Agreement by reference, for the sole purpose of installing, operating, and maintaining one (1) variable speed flashing beacon ("Speed Beacon") on the north side of 32<sup>nd</sup> Street and one (1) Speed Beacon on the south side of 32<sup>nd</sup> Street. This Agreement shall not act as a bar or in any respect prevent the City from imposing lawful conditions related to other activities by the District, or prevent the City from requiring additional authorizations, or compensation, in connection with the use and occupancy of the rights-of-way for other purposes other than those expressly authorized under this Agreement, whether such uses involves the same Speed Beacons or facilities in addition to the Speed Beacons.

This Agreement does not allow or authorize the District to install, maintain, or operate Speed Beacons upon, along or on any other portion of the City's present or future rights-of-way not specifically set forth in this Agreement. This Agreement also does not eliminate any obligations of the District to obtain any permits or other authorizations as lawfully may be required to install, maintain, or operate the Speed Beacons or to perform work in the public rights-of-way. The City shall not be liable to the District should the District construct the Speed Beacons pursuant to this Agreement, or any other permits or authorizations granted by the City, in an area over which the City has erroneously exercised jurisdiction.

2. **Maintenance/Inspection.** The District shall, at its sole cost, install the Speed Beacons pursuant to the manufacturer's requirements. The District also shall, at its sole cost, operate and maintain the Speed Beacons in accordance with most current edition of the Manual on uniform Traffic Control Devices ("MUTCD"). The District shall not permit the Speed Beacons to fall into any disrepair or become a visual blight. In addition to any regular maintenance performed by the District, the District shall inspect the Speed Beacon to ensure it is operating in accordance with the MUTCD at least once each year this Agreement is in effect. The District shall submit a report summarizing the inspection's finding and results to the City within thirty (30) days after each inspection.
3. **Operation.** The District shall, at its sole cost, operate the Speed Beacons. The District shall program the Speed Beacons such that the Speed Beacons only operate (i) on weekdays when Crane Middle School is in session, as set forth on the District's school year calendar available at [www.craneschools.org](http://www.craneschools.org), and (ii) thirty (30) minutes before the start of school, and ten (10) minutes after start of school, and ten (10) minutes before students are released from school and thirty (30) minutes after students are released from school.
4. **Term.** This Agreement shall be effective as of the Effective Date set forth above and shall remain in full force and effect for five (5) years ("Initial Term") from the Effective Date, unless terminated as otherwise provided in this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for up to two (2) successive five-year terms (each a "Renewal Term") unless either Party provides at thirty (30) days written notice of termination to the other Party before the expiration of the Initial Term or the Agreement is terminated as otherwise provided in this Agreement.
5. **Termination.** Either Party may terminate this Agreement for any reason upon thirty (30) days written notice to the other Party. Prior to the termination date, the District, at its sole cost, shall remove the Speed Beacons and repair and/or restore the Properties to as good a condition as before such damage or disturbance and to the City's reasonable satisfaction, reasonable wear and tear excepted.
6. **Damage.** All public and private property damaged or disturbed by the District's activities shall be promptly, repaired, replaced, and/or restored by the District at the District's sole expense to as good a condition as before such damage or disturbance and to the City's reasonable satisfaction. If the District fails to comply with this requirement, and such failure continues for thirty (30) days after the City's written notice to the District of such failure to comply, the City shall have the option to perform or cause to be performed such reasonable and necessary work, and charge the District for the actual cost incurred by the City. Upon receipt of a demand for payment by the City, the District shall reimburse the City for such costs within thirty (30) days.
7. **Non-Interference.** The District's use of the Properties shall not infringe, impair, or interfere with any other use of the rights-of-way.

8. **Indemnification.** To the fullest extent permitted by law, and to the extent of policy limits in place as of the Effective Date under the District's blanket policy, the District shall indemnify, defend and hold harmless the City and each council member, officer, director, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, fines, penalties, judgments, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (collectively "Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the intentional, reckless, or negligent acts, misconduct, errors, directives, mistakes or omissions of the District, its officers, officials, employees, agents, contractors, volunteers, students, or parents or guardians of students in the performance of this Agreement. The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this Section.
9. **Insurance.** Before the commencement of this Agreement, the District shall carry public liability and property insurance whose limits of liability shall be at least one million dollars (\$1,000,000.00) per occurrence, and at least five million dollars (\$5,000,000.00) general aggregate for the duration of this Agreement. The policy shall include bodily injury, property damage, personal injury or death claims, and broad form contractual liability, and shall name and endorse the City, and its officials, officers, employees, and agents as additional insureds and include an endorsed waiver of subrogation in favor of the City. The policy required under this Section shall be written on an occurrence basis, and shall be, or endorsed to be, a primary, non-contributory insurance policy and any insurance policy maintained by the City is considered excess insurance. The existence of excess insurance policies should in no way be construed to limit the requirements of insurance described herein. All insurance policies are subject to approval by the City. It is expressly provided that the Certificates of Insurance and required endorsements are a condition precedent and this Agreement shall not be in effect until such Certificates and required endorsements have been received by the City. If the policy or policies are cancelled, materially reduced, or not renewed, the insurance company shall provide an unqualified thirty (30) days written notice to the City prior to the effective date of such cancellation or termination. If a renewal Certificate is not sent to the City within said time, this Agreement shall automatically terminate without further notice to the District. Failure to provide required coverage and failure to comply with the terms and conditions of this Agreement shall not waive the contractual obligations herein. A "blanket" insurance policy carried by the District shall be acceptable as the insurance required by this section so long as the amount of insurance coverage required by this section is not in any way diminished by use of the blanket policy.

The District understands and agrees that the District' employees, agents, and directors, are not serving as (i) employees or (ii) under the jurisdiction or control of the City in any manner and therefore are not entitled to any of the City's industrial benefit coverages, including Workers' Compensation coverages. The District acknowledges that any injury its employees, agents, or directors sustain in the performance of this Agreement will be not be eligible for industrial benefits and any necessary treatment will be the District, or the District' insurer's, sole responsibility.

10. **Entire Agreement.** This instrument contains the entire agreement between the Parties with respect to the subject matter contained in it and supersedes all prior and contemporaneous agreements, discussions and representations related thereto. No supplement, modification or amendment hereof shall be binding and effective unless in writing and signed by all of the Parties
11. **Assignment.** No right or interest in this Agreement shall be assigned by the District without prior, written permission of the City, signed by the City Administrator. Any attempted assignment by the District in violation of this provision shall be a breach of this Agreement by the District. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.
12. **Severability.** The parties agree that should any part of this Agreement be held to be invalid or void, the remainder of the Agreement shall remain in full force and effect and shall be binding upon the parties.
13. **No Partnership.** Nothing in the Agreement is intended or shall be construed to constitute a partnership or joint venture between the Parties and neither Party shall be deemed the principal, agent, officer, or member of the other.
14. **Rights/Obligations of Parties Only.** The terms of this Agreement are intended only to define the respective rights and obligations of the Parties. Nothing expressed herein shall create any rights or duties in favor of any potential third Party beneficiary or other person, agency or organization.
15. **Choice of Law/Jurisdiction/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Any action to enforce any provision of this Agreement or to obtain any remedy with respect this Agreement shall be brought exclusively in the Superior Court, Yuma County, Arizona (or, as may be appropriate, in the Justice Courts of Yuma County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks jurisdiction over such action). The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.
16. **Attorney Fees and Costs.** In the event any action, suit or proceeding is brought for failure to observe any of the terms, covenants, or provisions of this Agreement, the prevailing Party shall be entitled to recover as part of such action or proceeding, all litigation, arbitration, and/or collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney fees.
17. **Conflict of Interest.** The Agreement is subject to the conflict of interest and cancellation provision of the A.R.S. § 38-511, as amended, the provision of which are incorporated herein.

18. **Remedies.** If either Party breaches or defaults on this Agreement the other party is entitled to exercise legal and equitable rights and remedies. The defaulting Party shall be given written notice and an opportunity to cure the default. In no event shall the time to cure exceed thirty (30) days after receipt of notice, however, that if the default takes longer than thirty (30) days to cure, the defaulting party will not be deemed to be in default if the defaulting party has begun the cure and diligently prosecutes the cure to completion.
19. **Employment Eligibility.** To the extent applicable under A.R.S. § 41-4401, the Parties hereby warrant, and represent to each other, that they are in compliance with A.R.S. §§ 41-4401 and 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. 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 Agreement. The parties retain the legal right to inspect the papers of any Party or subcontractor employee who works on this Agreement to ensure that the other Party or its subcontractors are complying with this warranty.
20. **Notices.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given and received if (A) personally delivered to the undersigned representatives listed below at the addresses set forth below; (B) three (3) days after it is deposited in the U.S. Mail, postage prepaid, certified, return receipt requested, to the addresses set forth below; or (C) prepaid and given to a recognized and reputable overnight delivery service, such as UPS or FedEx, to be delivered to the addresses set forth below.

If a copy of a notice is also given to a Party's counsel or other authorized recipient, the notice is deemed to have been received on the date on which the undersigned representative received the notice, not the date its counsel or other authorized recipient received the notice.

City of Yuma  
Attn: City Administrator  
One City Plaza  
Yuma, AZ 85364

Crane School District  
Attn: Superintendent  
4250 W. 16<sup>th</sup> St  
Yuma, AZ 85364

21. **Waiver.** The failure of either Party to insist upon strict performances of any of the provisions of this Agreement, or to exercise any of the rights or remedies provided by this Agreement, or any delay in the exercise of any rights or remedies, shall not release either Party from any of the responsibilities or obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Agreement.
22. **Compliance with Law.** The Parties shall comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. The Parties shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The Parties shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement

in employment of qualified persons because of physical or mental handicap, and the Americans with Disabilities Act.

23. **Time is of the Essence.** Time is of the essence in this Agreement. Unless otherwise specifically provided in this Agreement, any consent to delay in the performance by the District of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not be applicable to any other obligation or transaction.
24. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original and all of which together constitute one and the same instrument. Delivery of signature by fax, or scan delivered by email, receipt acknowledged are effective to bind a Party hereto.
25. **Authorization.** This Agreement has been approved by actions taken by each of the governing bodies of the District and the City. In such respective action, the undersigned were authorized and directed to execute this Agreement.

**IN WITNESS WHEREOF**, the parties thereto have executed this Agreement as of the Effective Date written above.

**City of Yuma**

**Crane Elementary School District No. 13**

By: \_\_\_\_\_  
Gregory K. Wilkinson  
Title: Administrator, City of Yuma

By: \_\_\_\_\_  
Laurie Doering  
Title: Superintendent, Crane Elementary School District  
No. 13

**ATTEST:**

\_\_\_\_\_  
Lynda L. Bushong, City Clerk

#### **INTERGOVERNMENTAL AGREEMENT DETERMINATION**

In accordance with A.R.S. § 11-952, this contract has been reviewed by the undersigned who have determined that this contract is in appropriate form and within the powers and authority granted to each respective public body.

Attorney for City of Yuma

Attorney for Crane Elementary School District  
No. 13

\_\_\_\_\_  
Richard W. Files  
Speed Flashing Beacon Crane District  
08/17/2017

\_\_\_\_\_  
Candyce Pardee

**Exhibit “A”**

**GPS Coordinates of the Properties**

NAD 83

North Speed Beacon:

Northing of 608496.126, and Easting of 416023.395 at an elevation of 119.806 U.S. Survey feet

South Speed Beacon:

Northing of 608435.611, and Easting of 415048.788 at an elevation of 119.683 U.S. Survey feet