

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into as of November _____, 2025 (“Effective Date”), by and between the City of Yuma, Arizona, a municipal corporation (“City”), and the Yuma County Flood Control District, a political subdivision of the State of Arizona organized under A.R.S. § 48-3601 *et seq.* (“District”). The City and District may hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. The City owns Smucker Park, a 44-acre park located within the City’s corporate limits.
- B. The District maintains and operates flood control and drainage facilities and regulates floodplains within Yuma County.
- C. On or about June 1, 2015, the City and the District entered into an Amended and Restated Intergovernmental Agreement (“IGA”) to provide for storm drainage and flood control for the benefit of the citizens and residents of the City, the District, and the public in general through the construction of the Smucker Park Retention Basin (the “Project”).
- D. The construction of the flood control Project was designed and planned for the north half of Smucker Park and originally intended to hold 100-acre feet of stormwater. The area of the north half and south half of Smucker Park are depicted in the Project documents.
- E. Pursuant to the IGA, the District entered into a contract with Meridian Engineering Company (“MEC”) to provide labor and materials for the construction of the Project.
- F. The City contends that, due to: (1) MEC’s negligence in performing the work on the Project and (2) the District’s failure to properly manage MEC’s work, the City has suffered damages.
- G. Specifically, the City contends that: (1) the north half of Smucker Park (the “Project Area”) was disturbed and requires restoration, including mature trees, sidewalks, lighting, irrigation, turf, and park equipment; (2) a number of mature trees and landscaping on the south half of Smucker Park died due to the unavailability of irrigation water for an extended period of time; and (3) the City incurred costs in responding to and cleaning up sanitary sewer overflows associated with the Project.
- H. The City filed a claim with the District then a lawsuit in the Yuma County Superior Court, captioned *City of Yuma v. Yuma County Flood Control District, et al.*, and docketed as Case No. S1400CV202401035.
- I. The Parties’ desire to fully and finally resolve all of the City’s claims relating to the the Lawsuit, and the District’s activities in or affecting Smucker Park, including but not limited to those related to multiple sewer-overflow responses and site restoration (the “Claims”), without litigation or further dispute.

NOW, THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. PAYMENT

1.1 Amount and Purpose. The District shall pay the City the sum of Five Hundred Fifty Thousand Dollars and Zero Cents (\$550,000.00) (“Settlement Payment”) within ten (10) calendar days after the Effective Date. The City shall use the Settlement Payment as follows:

- a. The City will purchase and install 55 trees in Smucker Park and restore the landscaping and irrigation on the south half of Smucker Park. All City work on the south half of Smucker Park will occur in accordance with the City’s timeline and on the City’s schedule and convenience.
- b. The City will reimburse its expended cleanup costs and sanitary sewer overflow response costs associated with the multiple releases of sanitary sewage into the Park.
- c. The City covenants that other than reimbursing the City for the City’s sanitary sewer overflow response expenses, the entire Settlement Payment shall be used for the improvement or betterment of Smucker Park and for no other purpose.
- d. The Settlement Payment constitutes full and final consideration for all City Claims described in this Agreement, including damage to the south half of Smucker Park, the City’s cost to replant trees in the Project Area as described in Section 2.1 below, and reimbursement to the City for costs incurred in responding to and cleaning up sanitary sewer overflows.

1.2 Form of Payment. Payment shall be made by wire transfer or check payable to “City of Yuma” and delivered to the City’s Finance Department, or by another method approved in writing by the City.

1.3 Condition of Release. Receipt of the full Settlement Payment is a material condition precedent to the City’s release of claims under Section 4.

2. RESTORATION OBLIGATIONS

2.1 Scope. The District shall undertake its best efforts to, at its sole cost, restore the north half of the Smucker Park Project Area to the same condition as prior to commencement of the Project or as otherwise required by the IGA. All rights of inspection and acceptance of the work, as well as any warranties, shall be consistent with the Parties’ existing agreement. Notwithstanding the foregoing, the Parties agree to modify the scope of the Project to remove the portion concerning Avenue A. Whether required by the IGA or otherwise, restoration shall include, but not be limited to:

- a. Repair or replacement of all walking paths and sidewalks in accordance with timing agreed to by the City;
- b. Replacement and repair of all lighting systems, irrigation systems (including sprinkler heads, mainlines, laterals and as-built drawings of the entire north half irrigation system);
- c. Reestablishment of turf in consultation with the City Parks Department regarding type of turf (Rye and/or Bermuda), timing, and topography;
- d. Repair or replacement of all park equipment to a condition equal to or better than prior to the start of the Project;
- e. Regrading and landscaping consistent with City park standards;
- f. Removal of all trees from the north half of the Park designated by the City for removal;
- g. Removal of all construction materials and debris; and,
- h. Completion of all punch list items after City inspection.

The City of Yuma Parks department will purchase and plant replacement trees in the north half of the Smucker Park Project Area at a time determined appropriate by the City Parks Department.

2.2 Plans and Standards. The City may issue written restoration standards and a punch list of required work. The District shall complete restoration of the north half of Smuck Park in accordance with those standards and any mutually approved restoration plan.

2.3 Schedule and Access. Restoration shall commence within ninety (90) days of the Effective Date, subject to weather conditions, material availability, and coordination with the City Parks Department. The City shall provide reasonable site access to the Project Area for the District and its contractors.

2.4 Inspection and Acceptance. Upon substantial completion, the District shall notify the City for inspection. The City shall issue written acceptance or identify deficiencies in writing. The District shall correct all deficiencies within a reasonable period.

2.5 Warranty. For one (1) year after written acceptance, the District shall repair or replace, at its expense, any restoration work found defective due to materials or workmanship, excluding normal wear or vandalism.

2.6 City's Responsibility for South Half of Smucker Park. The City shall be solely responsible for the restoration of the south half of Smucker Park, including replanting or replacing trees lost due to lack of irrigation. The District shall have no responsibility for the south half other than maintaining any existing flood-control facilities located there.

3. LONG TERM STORMWATER MANAGEMENT PLAN UPDATE

3.1 District Commitment. As a material consideration for this Agreement, the District agrees to lead the preparation and completion of an updated and revised Flood Control District stormwater control plan to address localized flooding within the City of Yuma. The plan shall identify and prioritize flood-prone areas within the City of Yuma for future flood control projects, with construction timing to be determined. The construction of any future flood control projects identified by such updated and revised plans shall be governed by separate written agreement(s), and nothing in this Section shall be construed as binding any Party to construct any such flood control projects.

4. RELEASE OF CLAIMS

4.1 Release by the City. Upon receipt of the Settlement Payment, the City, for itself and its departments, officers, employees, agents, and assigns, fully and forever releases and discharges the District and MEC, and their respective officers, employees, agents, and representatives, from any and all claims, demands, causes of action, damages, or liabilities of any kind, known or unknown, contingent or not contingent, presently existing or arising in the future, arising from or related in any way to the Claims, and the Lawsuit, and/or the activities in and around Smucker Park, including the City's responses to sanitary sewer overflows as detailed in the City's Notice of Claim to the District and subsequent Lawsuit.

4.2 Reservations. This release does not extend to claims arising from new or unrelated District activities occurring after the Effective Date, or to the City's non-waivable regulatory, police, or zoning powers. Further, nothing in this Agreement shall be construed as a release or waiver of any claims that the District may have against MEC.

4.3 Dismissal of litigation. The City will file a Rule 41(a)(1)(A)(i) Notice of Dismissal of the Lawsuit with prejudice no later than one (1) business day after receiving an executed copy of this Agreement from the District. The prompt dismissal of the Lawsuit is a material consideration for the Settlement Payment.

5. NO ADMISSION OF LIABILITY

This Agreement represents a compromise of disputed matters. No Party admits fault or liability.

6. FURTHER ASSURANCES; CONTINUING COOPERATION

The Parties agree to execute any and all documents and to take all additional actions that may be necessary or appropriate to effectuate the basic terms and intent of this Agreement. The Parties further agree to cooperate with each other in upholding the validity of this Agreement and in completing the Project pursuant to the IGA.

7. AUTHORITY AND APPROVAL

Each Party represents that execution of this Agreement has been duly authorized under applicable Arizona law, including compliance with the Arizona Open Meeting Law (A.R.S. § 38-431 *et seq.*), and that the signatories below are duly authorized to bind their respective entities.

8. GOVERNING LAW; VENUE; MEDIATION

This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. Venue for any dispute shall lie in the Superior Court of Arizona in and for Yuma County. If a dispute arises out of or related to this Agreement, and if such dispute cannot be settled through direct discussions, the Parties agree to endeavor to first settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before filing a lawsuit..

9. ENTIRE AGREEMENT; AMENDMENTS

This Agreement constitutes the entire understanding between the Parties concerning its subject matter. Any amendment must be in writing and signed by both Parties.

10. SEVERABILITY

If any provision is determined invalid, the remainder shall continue in full force provided the essential terms can still be performed.

11. CONSTRUCTION

The Parties acknowledge that they: (a) have consulted with (or had adequate opportunity to have this Agreement reviewed by) legal counsel; (b) have been advised by independent legal counsel in relation to this Agreement; and (c) have executed this Agreement after independent investigation and without fraud, duress, or undue influence. Each of the Parties has read this Agreement carefully, knows and understands its contents, and has made such investigation as each deems necessary or desirable. This Agreement shall be deemed drafted equally by all Parties, the language of this Agreement shall be construed as a whole according to its fair meaning, and the Parties expressly waive any common law or statutory rule of construction that ambiguities should be construed against any Party. The captions and headings are inserted for convenience only and shall not be used to interpret, construe, or in any way affect the meaning of the Agreement.

12. COUNTERPARTS AND ELECTRONIC SIGNATURES

This Agreement may be executed in counterparts, each deemed an original, and signatures transmitted electronically shall have the same effect as originals.

CITY OF YUMA, ARIZONA

YUMA COUNTY FLOOD
CONTROL DISTRICT

John D. Simonton
Acting City Administrator

Martin Porchas
Chairman, Board of Directors

Attest:

Attest:

Lynda L. Bushong
City Clerk

Desiree Gunderman
Clerk of the Board

Approved as to form:

Approved as to form:

Richard W. Files
City Attorney

Karolyn Kaczorowski
County Attorney