

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE COUNTY OF YUMA AND THE CITY OF YUMA  
FOR THE IMPROVEMENT OF  
COUNTY 8<sup>TH</sup> STREET, BETWEEN AVENUE C AND AVENUE D**

This Intergovernmental Agreement ("Agreement") is between the County of Yuma, Arizona, a political body ("County") and the City of Yuma, Arizona, a municipal corporation of the State of Arizona ("City"), pursuant to A.R.S. § 11-951 through § 11-954, as amended. The County and the City are sometimes hereafter referred to individually as the "Party" and collectively as the "Parties".

**RECITALS**

WHEREAS, the County is empowered by Arizona Revised Statutes [A.R.S.] § 11-251 to enter into this Agreement and the City is empowered by A.R.S. § 11-951 et seq. and the Yuma City Charter, Article III, Section 13, to enter into this Agreement; and

WHEREAS, it is to the mutual benefit of the City and the County to enter into an Agreement for the reconstruction and widening of a portion of County 8<sup>th</sup> Street between Avenue C to east of Avenue D, to a five lane roadway with curb, gutter, sidewalk, street lights, storm water improvements and detention basins, pump stations, force main and appurtenances appropriate thereto, the location being more particularly set forth and delineated upon the map attached hereto and incorporated herein as Exhibit "A". Said construction shall hereafter be referred to as the "Project"; and

WHEREAS, certain real property needed for Project right-of-way and the construction of improvements lies within the jurisdiction of the County and the City; and

WHEREAS, the parties have agreed that the completion of the Project is essential to the public safety and welfare; and

WHEREAS, the discharge of the storm water from the Project into Yuma County's County 8<sup>th</sup> Street Storm Sewer System, west of Avenue C, is in part derived from the Yuma County Flood Control District's agreement to discharge storm water into the MODE with the United States Bureau of Reclamation; and

WHEREAS, the parties desire to cooperate in the completion of the Project.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the following terms and conditions contained herein, the Parties agree as follows:

**SECTION 1. PURPOSE.** The purpose of this Agreement is to provide for the adjustment or modification of utilities, the design and construction of the Project conforming to County Road Standards, financing, and the subsequent operation and maintenance of the Project for the benefit of the citizens and residents of the County and the City and the public in general.

**SECTION 2. DURATION.** This Agreement shall become effective on the date it is adopted, approved and fully executed by both the City and the County and shall continue in full force and effect until the Project has been completed and accepted in writing and signed by the

City and the County; provided however, that the maintenance responsibilities of the parties will survive this Agreement.

SECTION 3. DESIGN. The Project shall be designed by the County in accordance with Federal, State, and County requirements. The parties acknowledge and agree that the County shall, at its sole expense, pay for any and all costs associated with the Project design, and such costs shall not be included with the total Project construction cost.

SECTION 4. PROPERTY ACQUISITION. The necessary right-of-way, including the storm-water detention basins as shown on Exhibit A, have been acquired for the Project by the County at no cost to the Project. The County, through the County Engineer, shall transfer the ownership of the detention basin parcels to the City within thirty (30) days after receiving the City's final payment as set forth in Section 6(B)(8). The County retains a storm water easement until the contributing roadways are annexed by the City of Yuma.

SECTION 5. MANNER OF FINANCING. The County and the City shall each bear fifty percent (50%) of the total actual cost upon completion of the Project. The total actual cost of the Project shall be the sum of the actual costs for the construction, construction administration (as set forth in Section 6 of this Agreement), and for the relocation of utilities subject to pre-existing rights (referred to hereafter as "Total Project Cost"). The manner of financing the joint undertaking as provided for under this Agreement shall be as hereinafter set forth. There will not be a joint budget. The parties have budgeted sufficient funds for the costs required for the Project construction, including utility relocation. The estimated Total Project Cost is three million dollars (\$3,000,000.00). The aforementioned are estimated costs that will be adjusted following the approval of the Project construction documents, construction contract award, and upon completion of the Project.

SECTION 6. OBLIGATIONS OF THE PARTIES.

A. COUNTY OBLIGATIONS

1. Provide a copy of the design plan submittals and the Project's final design plans to the City for review and approval.
2. The County shall cause the Project to be constructed in accordance with the design plans and bid documents approved by the City.
3. The County shall approve all Project requirements, and documents, and advertise, bid, award and administer the construction of the Project. The County's cost of administering the Project shall be included in the Total Project Cost. The County's cost of administering the Project shall not exceed ten percent (10%) of the total construction costs of the Project.
4. The County will be responsible for fifty percent (50%) of the Total Project Cost.
5. The County shall cause to be moved all utilities, except the City's water distribution and wastewater collection system as set forth in Section 6(B)(3 and 4) below, as required to construct the Project. Any cost incurred by the County in fulfilling this provision shall be a cost of the Project and shall constitute a credit toward the County's portion of the Total Project Cost, as set forth in Section 6(A)(4).
6. When the County awards the construction contract for the Project, the County shall estimate the City's share of the Total Project Cost and

invoice the City.

7. Upon completion of the Project, the County shall compute the Total Project Cost and invoice or credit the City as necessary. Any payments due, or credit, shall be reconciled within sixty (60) days.
8. Provide to the City one (1) set of mylar, reproducible record drawings within sixty (60) days after the completion of the Project.
9. Grant the City, its agents and/or contractors, the right to observe and inspect the construction of the Project.

B. CITY OBLIGATIONS

1. Shall review and provide comments on the design plan submittals and approve the final Project design plans, not to be unreasonably withheld.
2. The City will be responsible for fifty percent (50%) of the Total Project Cost.
3. The City at its sole expense and at no cost of the Project is responsible for all costs associated with the water distribution or sanitary sewer utility relocation or modification expenses for the Project, except that the final adjustment of meters, valves, valve boxes, and manhole frames to grades indicated on the final Project design plans shall be a Project expense and included in the Total Project Cost.
4. The City shall cause to be moved or relocated the City's water distribution and wastewater collection system, as required to construct the Project. Any cost incurred by the City in fulfilling this provision shall be a cost of the City. The City will bear all additional costs to the contractor for any delay due to the relocation or adjustment of City's water distribution and wastewater collection system.
5. Grant the County, its agents and/or contractors, without cost, the right to enter City's right-of-way as required to conduct any and all construction and pre-construction related activities for said Project, including without limitation, temporary construction easements or temporary rights of entry. Notwithstanding the foregoing, the County's agents and/or contractors shall obtain an encroachment permit from the City prior to beginning any work in the City's right-of-way. The City shall issue said permit, not to be unreasonably withheld.
6. The City may inspect the Project to ensure it is completed in accordance with the final design plans upon giving appropriate notice to the County and prime contractor. The City will bear any additional costs to the contractor resulting from the City's monitoring, inspecting and testing. These City costs shall not be included within the Project costs for purposes of cost sharing.
7. Upon completion of construction of the Project, the City Engineer shall inspect the Project in accordance with the approved Project design plans and bid documents. The City Engineer shall issue a written "City Acceptance" of the Project when no punch-list items, missing documentation, and construction-related liens exist.
8. The City shall pay the County the City's estimated portion of the Total Project Cost within thirty [30] days of written demand by the County. The City's estimated portion of the cost of the Project shall be a credit to the City's share in the Total Project Cost. When the County determines the

Total Project Cost, any refund or additional payments owed by the parties shall be paid within sixty [60] days thereafter.

SECTION 7. OWNERSHIP AND MAINTENANCE. Upon completion of the Project, the City will be responsible for the Project improvements within the City boundaries, and the storm water force main. The County shall be responsible for the Project improvements outside the City, unless otherwise noted. For purposes of this Agreement, the Project shall be deemed complete when the City Engineer has issued a written "City Acceptance" of the Project as set forth Section 6(B)(7).

SECTION 8. LAWLER LATERAL. The Yuma County Water Users' Association (YCWUA) issued to Yuma County encroachment license #002-11-002, for encroachment, installation, operation and maintenance for the reconstruction of the Lawler Lateral irrigation crossing across County 8th Street. The City of Yuma agrees to execute a new license with the YCWUA for the Lawler Lateral irrigation crossing. License No. #002-11-002 granted to Yuma County will then be terminated.

SECTION 9. STORM WATER SYSTEM. The County agrees the Project's storm water may be discharged into the County's County 8<sup>th</sup> Street storm sewer system during no flow conditions upon the City entering into an agreement with the Yuma County Flood Control District for the disposal of the Project's storm water into the Avenue C Conduit System.

SECTION 10. ANNEXATION. Pursuant to A.R.S. § 9-471(N), the County agrees to transfer a portion of County 8<sup>th</sup> Street, described in Exhibit B attached and incorporated by reference ("Transfer Property"), and the City agrees to annex the Transfer Property. In order to effect the agreements in this Section 10, the Parties shall present the agreed upon transfer to their respective governing bodies before or within sixty (60) days after the Effective Date of this Agreement.

SECTION 11. AUTHORIZATION. This Agreement has been approved by actions taken by the governing bodies of each party. In such respective action, the undersigned were authorized and directed to execute this Agreement.

SECTION 12. CONFLICT OF INTEREST. This Agreement is subject to the conflict of interest provisions of the A.R.S. § 38-511, as amended, the provisions of which are incorporated herein.

SECTION 13. TERMINATION. This Agreement shall terminate upon the completion of all actions necessary with regard to the Project as described herein. The Agreement may be terminated by either party at any time prior to the County awarding the construction contract for the Project.

SECTION 14. COMPLIANCE WITH LAW. The County and the City must comply with all federal, state and local laws, regulations, and ordinances applicable to its performance under this Agreement.

SECTION 15. ATTORNEY FEES AND COSTS. If either party brings an action or proceeding for failure to observe any of the terms or provisions of this Agreement, the prevailing party is entitled to reasonable attorney fees and costs.

SECTION 16. SEVERABILITY. If any terms, parts, or provisions of this Agreement are for any reason invalid or unenforceable, the remaining terms, parts, or provisions are nevertheless valid and enforceable.

SECTION 17. INTEGRATION. This Agreement contains the entire agreement between the parties, and no oral or written statements, promises, or inducements made by either party or its agents not contained or specifically referred to in this Agreement is valid or binding. All modifications to this Agreement must be in writing, signed and endorsed by the parties.

SECTION 18. NO PARTNERSHIP. Nothing in this Agreement constitutes a partnership or joint venture between the parties, and neither party is the principal or agent of the other.

SECTION 19. HOLD HARMLESS/INDEMNIFICATION CLAUSE. To the fullest extent permitted by law, each party agrees to defend, indemnify, and hold harmless the other party, and the other Party's departments, agencies, agents, officials, officers, directors, and employees (collectively "Indemnatee") from all losses, liability, claims or expenses (including reasonable attorney's fees) arising from bodily injury, including death or property damage, to any person or persons caused in whole or in part by the gross negligence or misconduct of the party, except to the extent same are caused by the negligence or willful misconduct of the other party.

SECTION 20. ARBITRATION. In the event of any controversy which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in A.R.S. § 12-1518, as amended.

SECTION 21. NOTICES. All notices or demands upon any Party to this Agreement shall be in writing and all shall be delivered in person or sent by mail addressed as follows:

City of Yuma  
Attn: City Engineer  
155 W. 14<sup>th</sup> Street  
Yuma, Arizona 85364

County of Yuma  
County Engineer  
2351 W. 26<sup>th</sup> Street  
Yuma, Arizona 85364

Notices will be presumed received at the time of actual receipt, evidenced by a receipted copy (in the case of notices that are personally delivered), or by the postal service receipt; or five (5) calendar days after mailing, whichever comes first, in the case of notices that are mailed.

SECTION 22. EMPLOYMENT ELIGIBILITY. Each party 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 Agreement. The parties retain the legal right to inspect the papers of any party or subcontractor employee who provides services under the Agreement, to ensure that the other party or its subcontractors are complying with this warranty.

SECTION 23. THIRD-PARTY BENEFICIARIES. 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. Nothing expressed herein, shall affect the legal liability of either party to this Agreement by imposing any standard of care different from the standard of care imposed by law.

SECTION 24. ASSIGNMENT; DELEGATION. No right or interest in this Agreement shall be assigned or delegated by either party without prior, written permission of the other party, signed by a person authorized to sign such documents. Any attempted assignment or delegation by a party in violation of this provision shall be a breach of this Agreement by such party. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both parties.

SECTION 25. APPLICABLE LAW; VENUE. 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 United States District Court for the District of Arizona, if, and 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.

Dated\_\_\_\_\_, 201\_\_\_\_\_

**CITY OF YUMA**

By\_\_\_\_\_  
Gregory K. Wilkinson  
City Administrator

ATTEST:

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

Dated\_\_\_\_\_, 201\_\_\_\_\_

**COUNTY OF YUMA**

By\_\_\_\_\_  
Marco A. "Tony" Reyes, Chairman  
Board of Supervisors

ATTEST:

\_\_\_\_\_  
Susan K. Thorpe  
County Administrator/Clerk of the Board

Pursuant to A.R.S. §11-952, the foregoing Agreement has been submitted to the undersigned City Attorney for the City of Yuma, Arizona. The undersigned has determined that this Agreement is in proper form and is within the powers and authority granted under the Yuma City Charter, Article III, Section 13, and the laws of the State of Arizona to the City of Yuma:

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Richard W. Files, Yuma City Attorney

Pursuant to A.R.S. §11-952, the foregoing Agreement has been submitted to the County Attorney for the County of Yuma, Arizona. The undersigned has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona to the County of Yuma:

Jon R. Smith, County Attorney

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By: Edward P. Feheley, Deputy County Attorney

EXHIBIT "A"

