

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE YUMA COUNTY FLOOD CONTROL DISTRICT AND THE
CITY OF YUMA
FOR THE IMPROVEMENT OF
NORTH CENTRAL BASIN STORM WATER LIFT STATION**

This Intergovernmental Agreement ("AGREEMENT") is between the Yuma County Flood Control District of Yuma, Arizona, a political body ("DISTRICT") 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 DISTRICT and the CITY are sometimes hereafter referred to individually as the "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the DISTRICT 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 DISTRICT to enter into an Agreement to construct flood control and drainage facilities including a storm water lift station, force main and appurtenances appropriate thereto for the disposal of storm water accumulating within the CITY at the North Central Basin. 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 DISTRICT 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, during the detention of storm water in the basin, certain valve and pump operations will be required to empty the basin; and,

WHEREAS, the storm water from the PROJECT shall discharge into the CITY's existing 15 inch Storm Drain System in the alley between 3rd Street and 4th Street just north of the North Central Retention Basin; 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 design and construction of the PROJECT conforming to Yuma County Public Works Standards, CITY of Yuma Construction Standards, financing, and the subsequent operation and maintenance of the PROJECT for the benefit of the citizens and residents of the DISTRICT 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 DISTRICT 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 DISTRICT; provided however, that the maintenance responsibilities of the parties will survive this Agreement.

SECTION 3. DESIGN AND CONSTRUCTION. The PROJECT shall be designed and constructed by the DISTRICT in accordance with Federal, State, CITY and County requirements. The parties acknowledge and agree that the DISTRICT shall, at its sole expense, pay for any and all costs associated with the PROJECT design, construction and construction administration.

SECTION 4. PROPERTY ACQUISITION. No property acquisitions are required to construct the project. All necessary right-of-way, including the North Central Retention Basin as shown on Exhibit A, has been acquired previously.

SECTION 5. MANNER OF FINANCING. The DISTRICT shall fund the design, construction and administrative costs of the PROJECT.

SECTION 6. OBLIGATIONS OF THE PARTIES.

A. DISTRICT 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 DISTRICT shall cause the PROJECT to be constructed in accordance with the design plans and bid documents approved by the CITY.
3. The DISTRICT shall approve all PROJECT requirements, and documents, and advertise, bid, award and administer the construction of the PROJECT.
4. Provide to the CITY one (1) set of mylar, reproducible record drawings within sixty (60) days after the completion of the PROJECT.
5. 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. Grant the DISTRICT, 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.
3. The CITY may inspect the PROJECT to ensure it is completed in accordance with the final design plans upon giving appropriate notice to the DISTRICT and prime contractor.
4. Upon completion of construction of the PROJECT, the CITY shall inspect the PROJECT in accordance with the approved PROJECT design plans and bid documents. The CITY shall issue a written "CITY Acceptance" of the PROJECT when no punch-list items, missing documentation, and

- construction-related liens exist.
5. The CITY shall be responsible for the operational electrical costs required to operate the lift station.

SECTION 7. OWNERSHIP AND MAINTENANCE. Upon completion of the PROJECT, the CITY will be responsible for maintenance of the PROJECT improvements and the storm water lift station which includes site cleaning, inspection, servicing, exercising, clearing, painting, lubricating, and otherwise keeping the facilities in good working order and in compliance with agreements, manufacturer's recommendations, and discharge requirements for the standard life of the facility. Replacement of the PROJECT improvements such as lift station pumps are subject to reimbursement by the DISTRICT upon request of the CITY and availability of DISTRICT funds. For purposes of this Agreement, the PROJECT shall be deemed complete when the CITY has issued a written "CITY Acceptance" of the PROJECT as set forth Section 6(B) (4).

SECTION 8. STORM WATER SYSTEM. The CITY agrees the PROJECT's storm water may be discharged into the CITY's existing 15 in. storm drain system.

SECTION 9. 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 10. 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 11. 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 DISTRICT awarding the construction contract for the PROJECT.

SECTION 12. COMPLIANCE WITH LAW. The DISTRICT and the CITY must comply with all federal, state and local laws, regulations, and ordinances applicable to its performance under this Agreement.

SECTION 13. 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 14. 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 15. 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 16. 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 17. 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 negligence or misconduct of the party.

SECTION 18. 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 19. 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. 14th Street
Yuma, Arizona 85364

Yuma County Flood Control District
Flood Control Manager
2351 W. 26th 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 20. 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 21. 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 22. 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 23. 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 _____, 2021

Dated _____, 2021

CITY OF YUMA

**YUMA COUNTY FLOOD CONTROL
DISTRICT**

By _____
Philip A. Rodriguez
CITY Administrator

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

ATTEST:

ATTEST:

Lynda L. Bushong
CITY Clerk

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:

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

By: Edward P. Feheley, Flood Control District Attorney

Exhibit "A"
Project Vicinity Map - #CIP 3.1803

