

**AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF YUMA AND THE YUMA COUNTY FLOOD CONTROL DISTRICT
FOR CONSTRUCTION OF SMUCKER PARK RETENTION BASIN**

This Amended and Restated Intergovernmental Agreement ("Agreement") is between the City of Yuma, Arizona, a municipal corporation of the State of Arizona ("City") and the Yuma County Flood Control District (District), a political subdivision of the State of Arizona, pursuant to A.R.S. § 11-951 through § 11-954, as amended. This Agreement replaces in the entirety, a prior Intergovernmental Agreement dated December 20, 2002 and recorded as Yuma County Recorder's Fee #2003-06079.

RECITALS

WHEREAS, The District is empowered by A.R.S. § 48-3603(c)(3) and A.R.S. §11-952 to enter into this Agreement and the City is empowered by A.R.S. § 11-953 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 address a long standing storm drainage flooding problem that impacts the East Main Canal at the Smucker Park Area in the City of Yuma; and

WHEREAS, the District had the "West Yuma Mesa Storm Drainage Discharge System Design Report" completed which identified the retention basin project as being a high priority flood control project needed along the East Main Canal; and

WHEREAS, the City has existing right-of-way and property for a retention basin at the Smucker Park area; and

WHEREAS, the City has a consulting engineer, Dibble and Associates, who is currently under contract and has prepared plans for the Smucker Park Retention Basin and the District will contract for the preparation of plans for fencing and slope stabilization of Smucker Park Retention Basin, collectively referred to as the "Project"; and

WHEREAS, by joint efforts, the Project, a major storm drainage and flood control facility, may be built and provide health and safety benefits to the public; and

WHEREAS, the City and District have worked cooperatively to develop the Project and wish to continue to work cooperatively to complete the Project.

PROVISIONS

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the parties agree as follows:

Section 1. Purpose. The purpose of this Agreement is to provide for storm drainage and flood control for the benefit of the citizens and residents of the City and the District and the public in general.

Section 2. Duration. This Agreement shall become effective on the date on which it has been adopted and approved by both the City and the District and shall continue in force and effect until terminated in accordance with Section 14.

Section 3. Contractual Obligations. The District and the City respectfully agree that each shall be contractually obligated under the terms of this Agreement.

Section 4. Manner of Financing. The manner of financing the joint undertaking provided for under this Agreement shall be as hereinafter set forth. There shall not be a joint budget. The City and District have budgeted sufficient funds to meet their own monetary obligations under this Agreement.

Section 5. Project Plans. The City, at its expense, shall cause its consulting engineer, Dibble and Associates, to complete the engineering plans, specifications and bid documents for the Project; obtain State, District, and all approvals and pay fees.

The District, at its expense, shall cause its consulting engineer to complete the engineering plans, specifications and bid documents for fencing and slope stabilization in accordance with District standards.

As a condition precedent to this agreement it is agreed that all plans and specifications must be approved by both the City and the District.

Section 6. Agreement to Construct the Project. The parties shall cause the Project to be constructed in accordance with the plans and bid documents. The District shall administer the construction contract and shall have primary responsibility for the actions set forth in Section 8.

Section 7. Right-of-Way. The City at its expense will provide the necessary property right-of-way, easement and permits required to construct the Project.

Section 8. Project Administration. The Project is to be administered in accordance with State, City, and District requirements. The District will provide direction and approve all project requirements, process project documents as necessary, advertise, award, administer the construction contracts, and handle construction inspection. The awarding of all bids and major contract changes that will add to the cost of construction shall be done with the written concurrence of the City Engineer. Major contract changes are defined as impacting the City's cost of the project more than 5%.

Section 9. Payment of Costs for the Project. The District will pay all construction costs for flood control related improvements including those required by permitting as described in Exhibit A. Any additional costs for non-flood control related improvements such as relocation of the sanitary sewer lines, landscaping, or irrigation as shown on the plans or additional items requested by the City such as testing or the warranty described in Section 10 shall be paid by the City. On the occurrence of the awarding of the construction contract for the project, the District shall determine the City's share of the cost of the project, invoice the City, and the City, within sixty (60) days of demand by the District, shall pay to the District said amount. Upon completion of the project, the District shall compute the total actual cost of the project. Any payments due, or credit, shall be reconciled within sixty (60) days.

Section 10. Ownership, Operation and Maintenance. During construction of the Project, the City at City expense shall have the right upon giving appropriate notice to the District and prime contractor, to monitor, inspect, and test any and all work of the prime contractor or any subcontractor. The City shall also have the right to specify a warranty from the prime contractor to the City on terms and conditions acceptable to the City within the plans and specifications that will be part of the bid documents and the contract. The City will bear any additional costs to the contractor resulting from the City's monitoring, inspecting, testing, and warranties. District will contribute the pro rata cost of the standard 1 year warranty as specified by Yuma County Public Works Standards.

Upon completion of construction of the Project, the City Engineer shall inspect the project in accordance with the project plans. The City Engineer shall issue a written "City Acceptance" of the project when no punch-list items, missing documentation or construction-related liens exist. The City shall be the owner of the Project and shall, at its own cost, operate the facility and provide proper maintenance or replacement of the Project.

Section 11. Authorization. This Intergovernmental Agreement has been approved by actions taken by the governing bodies of each of the District and the City. In such respective action, the undersigned were authorized and directed to execute this Intergovernmental

Agreement.

Section 12. Cancellation. To the extent applicable by provision of law, all parties acknowledge that this Intergovernmental Agreement is subject to cancellation pursuant to Section 38-511, Arizona Revised Statutes, as amended, the provisions of which are incorporated herein.

Section 13. Recording. This Intergovernmental Agreement shall become effective upon execution by the appropriate officials of each party hereto and shall be recorded in the office of the County Recorder of Yuma County, Arizona.

Section 14. Termination. This Intergovernmental Agreement shall terminate upon the completion of all actions necessary with regard to the Project as described herein or by either party at any time prior to the award of bid.

Section 15. Compliance with Law. The District, City and engineering consultant must comply with all federal, state and local laws and ordinances applicable to its performance under this Agreement.

Section 16. 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 17. 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 18. 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 19. 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 20. District's Duty of Care in Project Administration. The parties agree that the District shall cause its engineers, officers, employees, servants and agents to use their best efforts to administer the construction contract. District shall have no monetary liability to City by reason of any mistakes, delays or deficiencies related to Project Administration except those resulting from negligence, willful misconduct or a bad faith refusal of the District to perform its obligations under this Agreement.

Section 21. Plan Modifications. Any additions, modifications or re-engineering of the Plans that may be necessary or appropriate to complete the Project, that change the intent of the plans, shall be approved by the City Engineer and District Manager.

Section 22. 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 Administrator
City of Yuma
One City Plaza
Yuma, Arizona 85364

Yuma County Flood Control District
Manager
2351 W 26th Street
Yuma, Arizona 85364

Section 23. City Hold Harmless/Indemnification Clause. The City agrees to defend, indemnify, and hold harmless the District 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 City, except to the extent same are caused by the negligence or willful misconduct of the District. It is the intent of this section to require the City to indemnify the District to the extent permitted under Arizona law.

Section 24. District Hold Harmless/Indemnification Clause. The District agrees to defend, indemnify, and hold harmless the City 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 District, except to the extent same are caused by the negligence or willful misconduct of the City. It is the intent of this section to require the District to indemnify the City to the extent permitted under Arizona law.

Section 25. Future Discharges. Future discharges to the Project shall be jointly approved by the City Engineer and the District Manager in writing. Neither party shall unduly withhold approval of a connection.

Dated this _____ day of _____, 2015.

CITY OF YUMA

YUMA COUNTY FLOOD CONTROL
DISTRICT

By _____
Gregory K. Wilkinson
City Administrator

By _____
Russell McCloud
Chairman, Board of Directors

ATTEST:

By _____
Lynda L. Bushong
City Clerk

By _____
Robert Pickels, Jr.
Clerk of the Board

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT DETERMINATION BETWEEN
THE CITY OF YUMA AND THE YUMA COUNTY FLOOD CONTROL DISTRICT FOR
CONSTRUCTION OF THE SMUCKER PARK RETENTION BASIN

Pursuant to A . R . S . §11-952, this Amended and Restated Intergovernmental 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:

Steven W. Moore
Yuma City Attorney

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT DETERMINATION
BETWEEN THE CITY OF YUMA AND THE YUMA COUNTY FLOOD CONTROL DISTRICT FOR
CONSTRUCTION OF THE SMUCKER PARK DETENTION BASIN

Pursuant to A.R.S. §11-952, this Amended and Restated Intergovernmental Agreement has been submitted to the undersigned 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 Yuma County Flood Control District.

Jon R. Smith
Yuma County Attorney

EXHIBIT A
SMUCKER PARK RETENTION BASIN & 28TH STREET SYSTEM
All Items as defined by plans, specifications and change orders

Item No.	Item Description	Flood Control Related	Non Flood Control Related	As Related
	Mobilization & General Conditions			X
	Survey and Construction Staking			X
	Traffic Control			X
	Site Clearance & Removal of Existing Improvements			X
	Protection of Existing Improvements			X
	Dewatering			X
	Basin, Spillway, Embankment, and Berms	X		
	Access Road	X		
	Access Barriers	X		
	Basin Outlets	X		
	Emergency Spillway	X		
	Flood Wall & Gates	X		
	Storm Drain	X		
	Catch Basins	X		
	Valley Gutters	X		
	Transition Boxes	X		
	Slope Stabilization per District Standard	X		
	Perimeter Fencing	X		
	Retaining Walls	X		
	Stormdrain Manholes	X		
	Riprap for basin Construction	X		
	Utility Relocation		X	
	Irrigation Systems		X	
	Landscaping		X	
	City Requested Change Orders		X	
	City Requested Enhancements		X	
	Site Utilities		X	