



Resolution

RESOLUTION NO. 897

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS,
ARIZONA APPROVING AMENDMENT TO THE INTERGOVERNMENTAL
AGREEMENT BETWEEN THE CITY OF SAN LUIS, ARIZONA AND THE YUMA
COUNTY FLOOD CONTROL DISTRICT RELATING TO THE AVE. J STORM SEWER
AND DETENTION BASIN AND DISPOSAL OF STORM WATER INTO THE YUMA
VALLEY DRAINAGE SYSTEM

Whereas, the City of San Luis desires to enter into an amendment of the
intergovernmental agreement with the Yuma County Flood Control District dated
February 5, 1996;

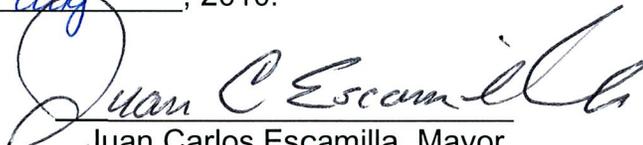
Whereas, the parties to the Intergovernmental Agreement desire to enter said
amendment; and

NOW THEREFORE BE IT RESOLVED, by the Mayor and Council of the City of San
Luis, State of Arizona, as follows:

Section 1: That Amendment No. 1 to the Intergovernmental Agreement between the
Yuma County Flood Control District and the City of San Luis relating to the Avenue J
Storm Sewer and Detention Basin and Disposal of Storm Water into the Yuma Valley
Drainage System, as attached hereto as Exhibit "A", is hereby approved.

Section 2: That the appropriate City officials are hereby authorized and directed to
enter into said agreement on behalf of the City and take any all actions as may be
necessary to effectuate said agreement.

PASSED AND ADOPTED by the Mayor and Common Council of the City of San
Luis, Arizona, this 25th day of Aug, 2010.


Juan Carlos Escamilla, Mayor

ATTEST:



Sonia Cuello, City Clerk

APPROVED AS TO FORM:



Glenn Gimbut, City Attorney

**AMENDMENT #1 TO INTERGOVERNMENTAL AGREEMENT
BETWEEN THE YUMA COUNTY FLOOD CONTROL DISTRICT and CITY OF SAN
LUIS RELATING TO THE AVENUE J STORM SEWER & DETENTION BASIN AND
DISPOSAL OF STORM WATER INTO THE YUMA VALLEY DRAINAGE SYSTEM**

This Amendment #1 is to amend the aforementioned intergovernmental agreement between the Yuma County Flood Control District and the City of San Luis executed on the 5th day of February, 1996.

RECITALS

WHEREAS, the District and the City desires to add a connection to the Avenue J detention basin to drain existing City retention basins.

WHEREAS, section IV.2. of the aforementioned agreement provides for changes or modifications to the agreement.

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

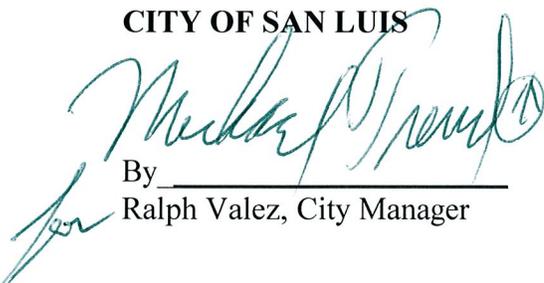
1. The "Avenue J Storm Sewer" as defined in the aforementioned agreement shall now include the "Merrill Avenue Storm Drain Connection" as shown on Exhibit C attached hereto and made a part of.
2. Section I, the following is added:
 9. The District shall pay all applicable project costs for the Merrill Avenue Storm Drain. The District will provide direction and approve all project requirements, process project documents as necessary, and administer all construction contracts. The City shall approve the Project's improvement plans and provide the District all permits, variances, and any other approvals necessary to construct the project.
3. Section II, the following is added:
 10. In lieu of connection fees, the City shall provide for, at its own cost, proper maintenance or replacement and pay electrical costs on the Merrill Avenue Storm Drain System and Pump Station regardless of ownership at no cost to the District. Upon completion of construction, the City shall be the owner of the Project, within the City owned basins and road right of way.
4. The following shall be added to the existing Section III.5 of the aforementioned agreement "Both parties mutually agree that the District does not warrant future and/or continuous discharges to the Drain System pursuant to the Drainage Agreement."
5. The remainder of the aforementioned agreement is not changed by this Amendment #1 and remains in full force and effect.

6. This amendment runs concurrently with the aforementioned agreement and will terminate with that agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment 1 to be duly executed the day and year last here written.

DATED this 25th day of August, 2010

CITY OF SAN LUIS


By _____
Ralph Valez, City Manager

YUMA COUNTY FLOOD CONTROL DISTRICT

By _____
Kathryn "Casey" Prochaska, Chairman
Board of Directors

ATTEST:



Sonia Sanchez, City Clerk
Cuello

ATTEST:

Robert L. Pickels, Jr,
County Administrator/Clerk of Board

**AMENDMENT #1 TO INTERGOVERNMENTAL AGREEMENT
BETWEEN THE YUMA COUNTY FLOOD CONTROL DISTRICT and CITY OF SAN
LUIS RELATING TO THE AVENUE J STORM SEWER & DETENTION BASIN AND
DISPOSAL OF STORM WATER INTO THE YUMA VALLEY DRAINAGE SYSTEM**

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



for Glenn Gimbut, San Luis City Attorney

Pursuant to §11-952, the foregoing 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 County of Yuma:

Edward P. Feheley, Deputy County Attorney

P: engr/pat/iga/Merrill

21 May 2010 draft

District Copy

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE
YUMA COUNTY FLOOD CONTROL DISTRICT
AND
CITY OF SAN LUIS
RELATING TO THE AVENUE J STORM SEWER & DETENTION BASIN
AND DISPOSAL OF STORM WATER INTO
THE YUMA VALLEY DRAINAGE SYSTEM**

THIS AGREEMENT entered into this 5 day of February, 199~~8~~⁶, by and between the YUMA COUNTY FLOOD CONTROL DISTRICT, hereinafter referred to as the "DISTRICT" and the CITY OF SAN LUIS, hereinafter referred to as "CITY", pursuant to A.R.S. § 11-951, sets out the mutual covenants governing the construction use, operation and maintenance of the Avenue J Storm Sewer and Detention basin and the use of the Yuma Valley Drainage System for the disposal of storm water collected in the Avenue "J" Detention Basin.

WITNESSETH

WHEREAS, a stormwater flooding problem has existed for years with residences on the East side of Avenue J getting flooded repeatedly; and

WHEREAS, the DISTRICT has developed a project to address the flooding problem, and proposes to construct flood control and drainage facilities including a detention basin for the temporary detention of storm water accumulating within the DISTRICT, as shown in Exhibit A; and

WHEREAS, the DISTRICT will purchase real property described in Exhibit "B", with the use of said real property for flood control and drainage purposes when in use, its use is primary and mandatory to the exclusion of all other uses; and,

WHEREAS, said real property and improvements need to be maintained on a regular basis and the site is of a location as to make a good open area recreational site for the residents of the City of San Luis; and,

WHEREAS, the CITY maintains and operates a Public Works Department; and,

WHEREAS, the DISTRICT and CITY believe a use of the property as a flood control and drainage facility and an open area recreational facility is compatible, maximizes the use of public property and provides regular maintenance of the property; and,

WHEREAS, during the detention of storm water in the basin certain valving operations will be required to empty the basin, and,

WHEREAS, the YUMA COUNTY WATER USERS' ASSOCIATION an Arizona non-profit corporation hereinafter referred to as the "ASSOCIATION" believe that a portion of the Yuma Valley Drainage System ("DRAINAGE SYSTEM"), may be utilized to assist in the disposal of storm water during those times when flood conditions exist in the Yuma Valley; without significantly interfering with the conveyance of irrigation and groundwater seepage, the primary purpose of the DRAINAGE SYSTEM; and

WHEREAS, the ASSOCIATION and the DISTRICT have agreed that scheduling of discharges and operation of the inlet structures and related facilities necessary for the conveyance of flows from the Avenue J detention basin is to be done by the DISTRICT, and they have entered into a Drainage Agreement dated 5 November 1990, Contract No: ~~3-07-30-W0036~~, available from the District, and made a part hereof; by reference; and,

WHEREAS, SAID drainage agreement provides for the construction of connections and disposal of storm water by the DISTRICT into the DRAINAGE SYSTEM according to its terms; and,

WHEREAS, an Encroachment License has, in compliance with the terms of said Drainage Agreement, been executed by the DISTRICT and the ASSOCIATION for this specific disposal facility, a copy of which is attached hereto as Exhibit C and made a part hereof;

WHEREAS, portions of the CITY lie within the Yuma Valley and are within the DISTRICT and, further, approximately 4.8 acres in the City of San Luis, comprising portions of Escondido Beach and Los Portales Del Alamo 3, Subdivisions has need for disposal of storm water that is collected and stored in the Avenue J detention basin. Further, that it is proposed that this storm water be disposed of by discharging the stored water into the Valley Drain System;

NOW THEREFORE, IT IS AGREED BETWEEN THE DISTRICT AND THE CITY AS FOLLOWS:

I. **The DISTRICT agrees to:**

1. Purchase the properties and easements required for the project.
2. Prepare engineering plans to construct the drainage and flood control facilities.
3. Construct a storm sewer, pavement improvements and a detention basin, and appurtenances in accordance with engineering plans prepared for Yuma County entitled "Avenue J Storm Sewer" dated September 1995 included by reference.
4. Inspect all construction work and conduct final inspection prior to operation.

5. Operate the gating facility in order to regulate, monitor and coordinate with the Association the stormwater discharge into the DRAINAGE SYSTEM.
6. Lease to the CITY, pursuant to its powers under A.R.S. §48-3603 (c) (7) & (9), the real property known as the Avenue "J" detention basin more particularly described in Exhibit B attached hereto for a period of fifty (50) years, to be used for storm water detention and open space recreational facilities for the benefit and use by the CITY and the public.
7. Review and approve all plans submitted for proposed construction, reconstruction or alteration of improvements.
8. Defend, hold harmless and indemnify the CITY from any claim arising out of any negligence of the DISTRICT or any of its employees, agents, directors or assigns.

II. The CITY agrees to:

1. Obtain and provide to the District all permits, variances and any other approvals necessary to construct the facility.
2. Maintain the Avenue J Storm Sewer system at no cost to the District.
3. Maintain at no cost to the DISTRICT the detention basin as an open space recreational facility subordinate and secondary to the use as a flood control and drainage facility.
4. Pay all charges with no cost to the DISTRICT for repair and maintenance of the facilities including irrigation water charges and repair to the gating structure and sewer pipe.
5. Submit to the DISTRICT all plans and obtain approval for construction for reconstruction of improvements prior to any work taking place.
6. To not inhibit entry to the property by the DISTRICT for the purpose of operation, construction, reconstruction, modification, or expansion of flood control and drainage facilities. In the event any improvements of the CITY actually or substantially interfere or conflict with the DISTRICT'S construction, reconstruction, modification, or expansion of flood control and drainage facilities, the CITY shall move or remove such CITY improvements within ninety (90) days of receiving written notice of a request to move or remove same. If they are not removed within 90 days, they become the property of the DISTRICT.
7. Close and secure the basin when there is eminent storm conditions, storms or detention of water within the basin.

8. When the basin has been closed due to imminent storms, actual storms or water detention, the property shall be inspected within a reasonable time thereafter by designated representatives of the CITY who shall agree and certify that the property is safe for public use before any recreational activity shall resume.
9. Defend, hold harmless and indemnify the DISTRICT, its officers, agents and employees from any all claims arising out of the use of the property as a storm water detention facility, a park or a recreational facility, flooding of the site and adjacent areas or resulting from any negligence of the CITY, its officers, agents, employees or assigns. The CITY of San Luis is the sole agency responsible for any claims resulting from flooding of the facility and at any areas adjacent to the facility.

III. Mutual Terms:

1. This Agreement is subject to that certain Drainage Agreement and Encroachment License between the ASSOCIATION and the DISTRICT described above and any terms herein inconsistent or in contravention of said Drainage Agreement and Encroachment License are null and void.
2. The parties mutually agree that the primary use of the demised premises is the use for flood control and drainage and that the use by the CITY for open area recreation shall at all times be secondary and subservient to the primary use. In no event or circumstance shall use by the CITY under this agreement interfere with the use of the property for flood control and drainage purposes.
3. The parties mutually agree that they shall insure that water quality in the storm drainage system be maintained and any substances introduced into the storm drainage system will not exceed salinity or chemical pollutant levels acceptable under Federal Treaty obligations or applicable Federal or State water quality laws. Upon a final determination by any governmental agency of competent jurisdiction, that allowable pollutant levels have been exceeded due to use by the CITY and from storm water entering from CITY streets, the CITY'S use of the property shall immediately cease and shall not resume until the CITY takes such steps as are determined necessary by the Federal and State standards.

If the CITY fails to rectify the situation within a reasonable time of not less than 90 days after notice in writing or within the time required under a final determination by any governmental agency of competent jurisdiction, this Agreement shall be deemed terminated for cause and the DISTRICT shall have no further obligation under this agreement.

4. The parties mutually agree that either party may terminate this agreement without cause by giving the other party 120 days written notice of the party's intention to terminate the agreement.

5. It is recognized by the parties hereto that the CITY's right to have storm water placed, as described above, into the Drain System is derivative from the Drainage Agreement and Encroachment License with the Association. It is further understood and agreed that the capacity of the Drain System is limited and that other storm water is now being placed into or may be placed into the Drain System in the future. The DISTRICT does not warrant that the Drain System has sufficient capacity to dispose of all water desired to be placed into the Drain System and, therefore, retains the sole right to determine the priority of storm water disposal into the Drain System.
6. Both parties shall abide by any and all non-discrimination law of the State of Arizona or the United States then in effect in the use of the facility for recreational use.
7. Both parties understand that the flood control facilities described under this agreement have not remedied flooding problem in the general area. Flooding could occur in the areas under certain conditions.

IV. Other Provisions:

1. This agreement is not assignable by either party without the consent of the other.
2. This agreement represents the entire understanding between the parties and any changes or modifications hereof shall be made in writing with the same formality as this Agreement.
3. Any notices required by this agreement shall be delivered as follows:

CITY: Manager, City of San Luis
P.O. Box 5
San Luis, Arizona 85349

DISTRICT: Manager, Yuma County Flood Control District
2703 South Avenue B
Yuma, Arizona 85364

4. This Agreement shall be filed with the Yuma County Recorder pursuant to A.R.S. §11-952.
5. This contract is subject to the conflict of interest provisions of Arizona Revised Statutes §38-511.

APPROVED AS TO FORM:

By: William Michael Smith
Attorney, Yuma County
Flood Control District
William Michael Smith

By: Kathryn Prochaska
Chair, Board of Directors
Kathryn Prochaska

ATTEST:

By: Harold Aldrich
Clerk of the Board
Harold Aldrich

City of San Luis

By: Victor M. Stevens
City Manager **Victor M. Stevens**

APPROVED AS TO FORM:

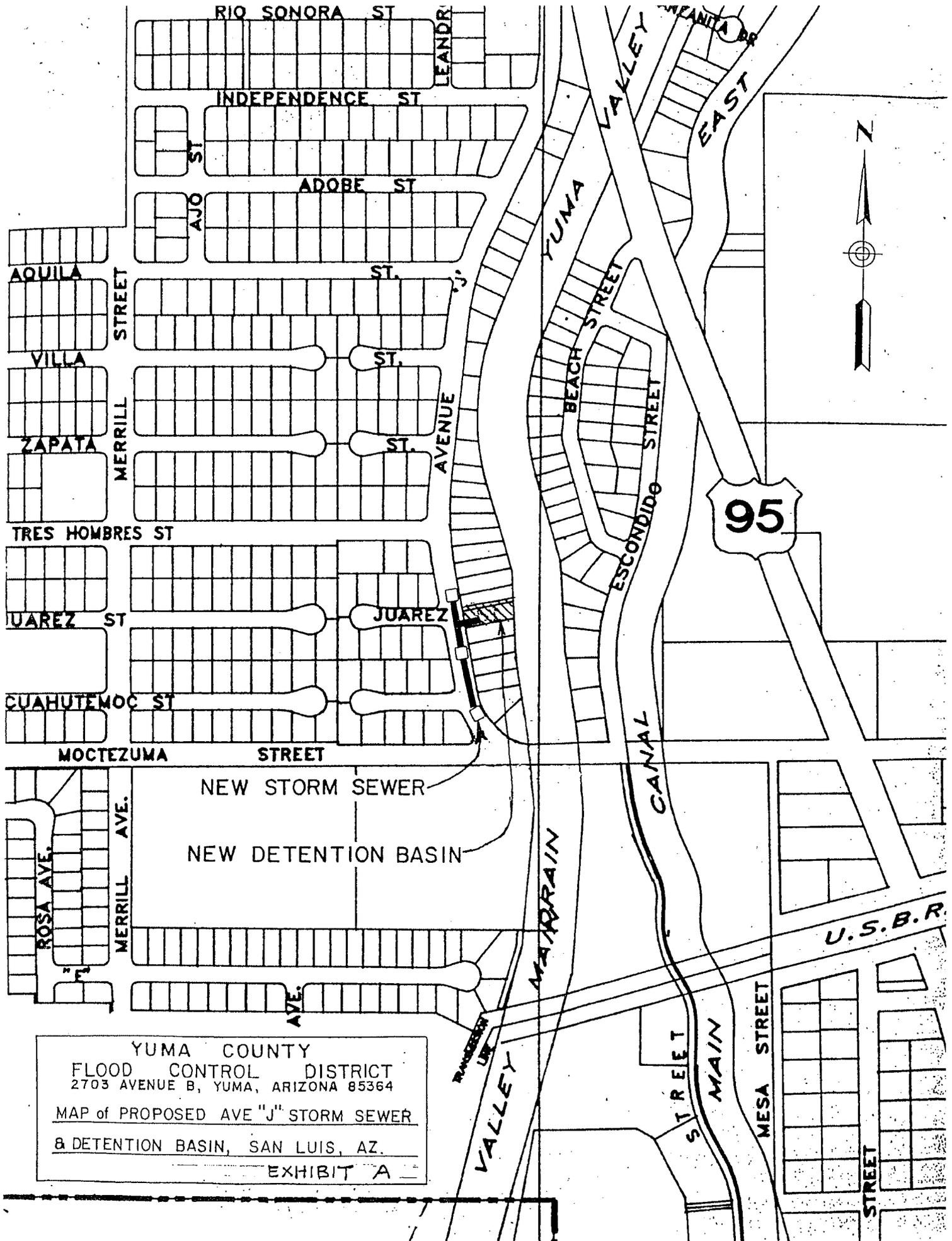
By: Robert C. Clarke
Attorney, City of San Luis
Robert C. Clarke

ATTEST:

By: Cynthia Salcido
City Clerk **Cynthia Salcido**
(deputy)

YUMA COUNTY WATER USERS ASSOC.

By: [Signature]
Manager



YUMA COUNTY
 FLOOD CONTROL DISTRICT
 2703 AVENUE B, YUMA, ARIZONA 85364
 MAP of PROPOSED AVE "J" STORM SEWER
 & DETENTION BASIN, SAN LUIS, AZ.
 EXHIBIT A

EXHIBIT B

Lot Twenty (20) and the South Ten (10) feet of Lot Nineteen (19)
ESCONDIDO BEACH, according to the plat of record in the office of the
County Recorder of Yuma County, Arizona in Book 6 of Plats, Page 95.

ENCROACHMENT LICENSE

TO

COUNTY OF YUMA

YUMA COUNTY FLOOD CONTROL DISTRICT (F.C.D.)

(F.C.D.)

Yuma County ~~(XXXXXX)~~ has requested permission to come upon and encroach upon United States Bureau of Reclamation rights-of-way located within the Valley Division of the Yuma Project for the purpose of:

CONSTRUCTION, OPERATIONS AND MAINTENANCE OF A CONCRETE OVERFLOW SPILLWAY AND 12" DIAMETER PVC DRAIN PIPE WITHIN THE RIGHTS-OF-WAY OF THE U.S.B.R. MAIN DRAIN LOCATED ABOUT 500 FEET NORTH OF COUNTY 23RD STREET AND IN THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 11 SOUTH, RANGE 25 WEST, GSRBM.

Pursuant to the provisions of United States Department of the Interior, Bureau of Reclamation, Public Notice No. 77 dated February 12, 1960 (entitled "Public Notice Announcing Procedures for Processing Water Right Applications and Certain Other Contracts"), the Yuma County Water Users' Association (Association) licenses the County to construct, install, operate and maintain facilities encroaching upon rights-of-way of the United States forming a part of the Valley Division of the Yuma Project, a reclamation project constructed under the laws of the United States.

In order to induce the Association, as agent for the United States Bureau of Reclamation, to grant this encroachment license the County agrees as follows:

1. Nature of Right Conferred. The undersigned acknowledges that the lands upon which the facilities of the Valley Division, Yuma Reclamation Project are located are not owned by the Association, and further acknowledge that the consent contained in this permit relates only to the rights of the Association by virtue of its contractual relationship with the United States for the maintenance and operation of federal facilities and it is understood that nothing in this permit shall be considered as a representation by the Association of the authority to grant a right-of-way across any property owned or controlled by any person other than the Association.

2. Hold Harmless Agreement. To the maximum extent provided by law, the undersigned on behalf of himself and his successors agrees to hold forever harmless, indemnify and defend the Association and the United States Government, together with all of their respective officers, employees, successors, and assigns, from any and all claims or liability of whatever character and nature arising out of or in anyway connected with the permission granted by this permit.

3. Third Party Indemnification. In the event any of the aforesaid activity is conducted by employees, servants or independent contractors employed or retained by the undersigned, the undersigned agrees to indemnify and hold the Association and the United States forever harmless from any and all liability for any claim or demand of any nature whatsoever, arising out of or in any way connected with this permit, on behalf of any such third party, including attorney fees.

4. Approval and Conditions.

a. The undersigned further agrees that any construction or operation be in accordance with those plans, specifications and conditions affecting Yuma Project facilities and operations approved in advance by the Association and that the facilities of the United States Bureau of Reclamation to which this encroachment applies will be left, following the encroachment, in as good or better condition than they were before this permit was granted. The undersigned agrees in the event that he fails to make corrections requested by the manager of the Association, that the Association may make such corrections at the undersigned expense, that the undersigned agrees to pay the cost of such corrections in full upon demand of the Association.

b. The encroachment and the erection of structures and facilities under the terms of this license shall be in accordance with the plans, specifications and conditions described below:

1. PLANS ENTITLED "AVENUE J STORM SEWER", PREPARED BY JAMES DAVEY AND ASSOCIATES, DATED SEPTEMBER, 1995, SHEETS 1,2,5,6 AND 11.

2. FENCING OR A BARRICADE SHALL BE INSTALLED ACROSS THE SPILLWAY TO THE MAIN DRAIN SUCH AS TO PREVENT ACCESS TO THE MAIN DRAIN FROM THE RETENTION BASIN.

3. TERMS AND CONDITIONS OF THE "YUMA VALLEY DRAIN SYSTEM AGREEMENT", AS EXECUTED BY THE ASSOCIATION, YUMA COUNTY AND THE USBR, APPROVED 10/25/91.

5. Additional Approval.

a. This license and consent to encroachment are subject to the approval of:

Project Manager
Yuma Projects Office
United States Bureau of Reclamation
P.O. Bin 12487
Yuma, Arizona 85365

and the County shall take no action nor commence any activities hereunder until such consent is approved as provided in this paragraph.

b. A copy of this license with all attachments shall be mailed by the Association to the Project Manager at the above address on the next working day after the date it is fully executed by the County and the Association. The license shall be deemed approved by the Project Manager unless the same is disapproved in writing (with a copy to the Licensor) within twenty (20) working days after the date it is fully executed.

6. Administrative Fee. Upon submission of this license to the Association, the County agrees to pay the Association and administrative fee in the amount of \$250.00. Of this amount, \$200.00 is non-refundable and shall be retained by the Association as compensation for costs incurred in processing and administering this license. The remaining \$50.00 shall be paid to the USBR as compensation for their costs incurred pursuant to paragraph 5. In the event this license is not forwarded to the USBR for approval, the \$50.00 shall be refunded to the County.

7. Attorney Fees. In the event the Association commences a legal action to enforce any of the terms and conditions, the undersigned agrees to pay such reasonable and additional sums as and for attorney fees and costs incurred in such enforcement.

8. Acknowledgement. The undersigned acknowledges that all of the foregoing constitute conditions precedent to the Association granting the permit herein requested and understands that the permit would not have been granted in the absence of said conditions.

9. Notification of Commencement of Work. The undersigned agrees to provide the Association with a minimum of two (2) working days notification prior to the actual encroachment and commencement of work. Failure to provide said notification can be sufficient cause to terminate this license.

10. Expiration. Should actual work not commence within one year from the date of this license, this license shall automatically expire unless extended by the Association in writing. However, this license may be terminated by the Association upon notice, either letter or verbal, to the undersigned.

YUMA COUNTY
FLOOD CONTROL DISTRICT

YUMA COUNTY WATER USERS'
ASSOCIATION

5/ Roger E. Schoenherr
Roger E. Schoenherr

[Signature]
Manager

Name
Manager
Title

Date 5/6/96

Date 5/2/96

(Sign and forward three copies,
one to be returned to County)