



# *Resolution*

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

## RESOLUTION NO. 479

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS APPROVING A DELIVERY AGENT CONTRACT BETWEEN THE YUMA COUNTY WATER USERS ASSOCIATION AND THE CITY OF SAN LUIS; AUTHORIZING EXECUTION THEREOF; AND PROVIDING FOR SEVERABILITY.**

**Whereas**, the Yuma County Water Users Association, an Arizona non-profit corporation ("Association") is the agent for the delivery of water for irrigation purposes and for the satisfaction of related uses to certain lands belonging to members of the Association ("Entitlement Holders") located in Yuma County, Arizona; and

**Whereas**, the City of San Luis ("City") is engaged in the delivery and distribution of water within the City's water service area ("WSA") which includes lands in the Valley Division of the Yuma Reclamation Project south of County 19<sup>th</sup> Street, Yuma County, Arizona; and

**Whereas**, pursuant to the agreement between the Association and the United States Bureau of Reclamation ("USBR") dated August 24, 1996 ("USBR Contract") the Association and the United States of America have agreed to a procedure whereby Entitlement Holders may irrevocably elect to convert the use of their entitlement from irrigation to other authorized uses and appoint the Association as their delivery agent for the purposes of effectuating or arranging for water deliveries to other lands (a "Conversion Election"), in exchange for the release of the Entitlement Holder from the obligation of payment to the Association of future charges and annual operation and maintenance charges; and

**Whereas**, the Association and the City have agreed that the City shall be designated as the exclusive Delivery Agent, in perpetuity, for all Converted Water available to the City for delivery because of Conversion Elections by Entitlement Holders whose lands are located in the WSA as well as for lands located outside the WSA under circumstances described in the form of agreement attached hereto, and by this

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reference incorporated herein ("Agreement").

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

**SECTION 1:** That the form of agreement ("Agreement") between the City and the Association attached hereto, and by this reference incorporated herein, is hereby authorized and approved, and that the terms of said Agreement shall be in force and effect beginning July 1, 2002.

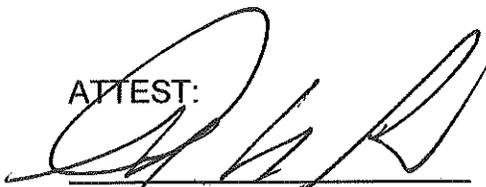
**SECTION 2:** That the Mayor is hereby authorized to execute the Agreement on behalf of the City of San Luis.

**SECTION 3:** If any section, subsection, sentence, phrase, clause or portion of this resolution is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

**PASSED AND ADOPTED** by the Mayor and Council of the City of San Luis, Arizona, this 13<sup>th</sup> day of March, 2002.

APPROVED this 13<sup>th</sup> day of March, 2002.

ATTEST:

  
\_\_\_\_\_  
City Clerk

  
\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

Exhibit D-2  
Supplementary Contract to  
Contract No. 176r-671 and  
Contract No. 14-06-300-621

Yuma County Water Users' Association

**YUMA COUNTY WATER USERS' ASSOCIATION**  
**CITY OF YUMA DELIVERY AGENT CONTRACT**

This contract is made between the Yuma County Water Users' Association, an Arizona non-profit corporation (the "Association"), and the City of San Luis, Arizona, a municipal corporation (the "City").

**RECITALS**

The Association is an Arizona non-profit corporation organized under the laws of the Arizona Territory for the purpose of contracting with the United States Government for the construction of the Valley Division of the Yuma Reclamation Project (the "Project").

Under contract with the United States, the Association is the agent for delivery of water for irrigation purposes and for the satisfaction of related uses to lands owned by members who are Entitlement holders ("Entitlement Holders").

The City is and has been engaged in the delivery and distribution of water within the boundaries of the City's water service area ("WSA") which includes, but is not limited to, all lands within the Project south of County 19th Street as the WSA it was situated on the date this contract. The WSA overlaps, in part, with the boundaries of the Project.

Entitlement Holders are entitled to delivery of irrigation water by the Association if they pay the Association the amounts and fixed by the Board of Governors of the Association.

Some of the Entitlement Holders located within the WSA are delinquent in the payment of assessments, other charges and interest imposed by the Association and accordingly are not entitled to water deliveries by the Association until such delinquencies are paid.

Pursuant to the agreement between the Association and the United States, by and through the Bureau of Reclamation (the "USBR"), dated August 24, 1996, (the

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"USBR Contract"), the Association and the United States have agreed to a procedure whereby Entitlement Holders may irrevocably elect to convert the use of their Entitlement from irrigation to other authorized uses and appoint the Association as their Delivery Agent for purposes of effectuating or arranging for water deliveries to other lands ( a "Conversion Election"), in exchange for the release of the Entitlement Holder from the obligation of payment to the Association of future assessments and annual operation and maintenance charges.

Under the USBR Contract, water subject to a Conversion Election may be delivered by the Association, or by a Delivery Agent appointed by the Association, at rates and charges fixed by the Association or the Delivery Agent, as the case may be, for Domestic Use.

The Association and the City have agreed that the City shall be designated as the exclusive Delivery Agent, in perpetuity, for all Converted Water available to the City for delivery because of Conversion Elections by Entitlement Holders whose lands are located within the WSA, as well as for lands located outside the WSA under the circumstances hereinafter specified.

NOW, THEREFORE, in consideration of the premises and mutual covenants and conditions herein contained, the parties have agreed as follows:

1. **INCORPORATION OF DEFINITIONS:** Unless a different definition is provided in this contract, or unless the context otherwise requires, all defined terms in this contract shall have the same meaning ascribed to those terms in the USBR Contract.

2. **APPOINTMENT OF DELIVERY AGENT:**

a. The Association hereby irrevocably appoints the City as the exclusive Delivery Agent for all Converted Water available for delivery under the USBR Contract because of Conversion Elections by Entitlement Holders whose lands are located within the WSA. The City hereby irrevocably accepts the appointment as Delivery Agent under the remaining terms and conditions of this Agreement; provided, however, that the City is not required to deliver Converted Water used by Entitlement Holders for irrigation or related landscaping purposes where such Entitlement Holders have expressly reserved the right, as provided in Section 7.b., to continue to divert water

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from the Association's facilities for those purposes.

b. The City may (but is not obligated to), if offered by the Association, accept appointment as Delivery Agent for any Converted Water available for delivery because of Conversion Elections by Entitlement Holders whose lands are located outside of the WSA. With the City's consent, the Association may deliver Converted Water or appoint a Delivery Agent other than the City to deliver Converted Water within the WSA. With respect to Entitlement Holders located outside the WSA, the Association may, in its discretion, appoint the City or another Delivery Agent for Entitlements subject to Conversion Elections.

c. The Association shall extend the offer of a Conversion Election to any Entitlement Holder whose land is located within the WSA. The offer shall remain open until accepted by the Entitlement Holder. If accepted by the Entitlement Holder, the Conversion Election shall be accepted by the Association, subject to rules and regulations of uniform application attached to the USBR Contract as Exhibit C. The Association may extend the offer of a Conversion Election to Entitlement Holders whose lands are located outside the WSA, consistent with the Association's regulations attached to the USBR Contract as Exhibit C.

d. The Association shall notify the City in writing of the Association's receipt of a Conversion Election relating to an Entitlement located within the WSA, within 30 days of the date of the election. The City's designation as Delivery Agent for lands within the WSA is effective 30 days after the date of delivery of the notice of election to the City by the Association. For Entitlements outside the WSA, offered by the Association to the City, the City shall have 90 days after the date of notice of election from the Association to accept or decline appointment as Delivery Agent for such Entitlement. The City's designation as Delivery Agent for Entitlements outside the WSA is effective upon receipt by the Association of the City's written acceptance of such designation. Any offer of appointment for Entitlements outside the WSA not accepted by the City within the 90 day period is deemed rejected.

e. The City may act as Delivery Agent for all Entitlements located within the WSA as the same exists on the effective date of this contract as depicted on Exhibit A to this contract. The WSA may be changed by the City from time to time in the future, but no change in the WSA shall affect or expand the scope of this contract

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unless the WSA expansion is agreed to by the Association in writing.

**3. ASSOCIATION CHARGES AND ASSESSMENTS:**

a. As a condition subsequent to the City's appointment as Delivery Agent for Entitlements either inside or outside the WSA, and as more fully provided for in Section 3.b., the City shall advance to the Association all past due Association assessments and interest owed by the Entitlement Holders with respect to such Entitlement (hereinafter "Past Due Charges"). The Association shall not increase or decrease the interest rate applicable to the Past Due Charges assumed by the City. In addition, subject to the provisions of Section 3.d., the City agrees to assume responsibility for payment of all future charges and assessments with respect to Entitlements for which the City is appointed as Delivery Agent, based on the amount of the City's delivery entitlement (on an acre-foot basis) specified in Section 7.a.

b. All Past Due Charges, assumed by the City with respect to Entitlements for which the City is appointed as Delivery Agent within the first calendar year of the execution of this Agreement, shall be advanced by the City to the Association in payments not to exceed \$100,000 per year, the first of which is due on or before December 20 of the calendar year in which this contract is executed. Payments not to exceed \$100,000 per year are due on December 20th of each calendar year thereafter until all Past Due Charges with respect to Entitlements for which the City is appointed as Delivery Agent have been paid to the Association. Current and future charges and assessments shall, in all cases, be paid as provided in Section 3(e).

c. Notwithstanding payment of advances by the City, all Past Due Charges due at the time of the City's appointment as Delivery Agent shall remain a valid debt of the Entitlement Holder to the City until paid in full by the Entitlement Holder. The Association agrees to pay the City all amounts actually collected by the Association from or on behalf of any Entitlement Holder for Past Due Charges on Entitlements for which the City has been appointed Delivery Agent. Sums collected by the Association under this Section are payable to the City within 60 days of actual receipt by the Association.

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d. The amount of all Past Due Charges, and, except as provided in Section 4, the amount of all future charges or assessments to be paid by the City under this contract, shall be the same (on an acre-foot basis) as for any other agricultural irrigation or municipal and industrial water user supplied by the Association, whichever amount is less.

e. Current and future payments due under Section 3(a) are payable semi-annually, in advance, on or before December 20 and June 20 of each year.

**4. DELIVERY OF WATER:**

a. The Association shall deliver to the City a quantity of Converted Water, not to exceed the amount set forth in Section 7, according to a schedule to be mutually agreed upon by the Association and the City. The City and the Association shall cooperate in developing an acceptable delivery schedule. The City's priority, for purposes of Converted Water deliveries under this contract, shall be the same as all other water users supplied by the Association.

b. As Delivery Agent, the City is entitled to receive for delivery, the quantity of Converted Water set forth in Section 7. If Converted Water deliveries to the City by the Association on behalf of an Entitlement Holder do not exceed Converted Water available to that Entitlement Holder, any excess amount may be delivered by the City to other users (either inside or outside the WSA) to the fullest extent permitted by law, other contracts between the City and the Association, or the USBR Contract.

c. The Association may, after providing written notice to the City 30 days in advance, temporarily suspend Converted Water deliveries to the City for maintenance and repairs associated with water conveyance and distribution facilities utilized in making deliveries to the City. The Association shall cooperate with the City and use its best efforts in scheduling interruptions in Converted Water deliveries to the City so as to avoid interruptions in domestic water service. In case of a system emergency, the Association shall attempt to notify the City of the emergency and use reasonable efforts to minimize the duration of any interruption of deliveries to the City caused by the emergency; provided, however, that in the event of such emergency, the Association may temporarily suspend Converted Water deliveries to the City without advance notice.

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5. **DELIVERY AND OTHER CHARGES:**

a. In addition to the amounts paid by the City under Section 3, and except as provided in Section 4.b., the City also agrees to pay the Association a charge for each acre-foot of Converted Water actually delivered to the City by the Association under this contract (the "Delivery Charge"), equal to the per acre-foot charge imposed by the Association for delivery of irrigation water to agricultural irrigation users, as amended from time to time.

b. If an amount equal to 20% of the per acre-foot charge established by the City for non-potable water deliveries to an individual industrial water user under this contract (the "20% Delivery Charge") is greater than the amount of the per acre-foot charge imposed by Section 5.a., the City agrees to pay to the Association for Converted Water provided under this contract an amount equal to the 20% Delivery Charge for each acre-foot of non-potable water delivered by the City to the individual industrial water user, in lieu of the delivery charges set forth in Section 5.a.

c. Billing and payment procedures for Converted Water delivery and other charges shall be established by written of agreement between the Association and the City. The procedures may be changed at any time by agreement of the Association and the City, without the concurrence of the United States.

d. Any charge by the United States or other governmental entity for environmental, administrative or other costs or charges imposed on the Association as a result of this contract shall be paid by the City. Any costs or charges paid by the City pursuant to this Section 5.d. may be passed on, in the form of a fee or rate increase or assessment, to users receiving Converted Water from the City as a result of Conversion Election made pursuant to this contract and the USBR Contract.

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e. The City agrees to provide to the Association for its use in computing and verifying amounts due the Association under Sections 5.a. and 5.b., a current listing of all water rates applicable to City users receiving water from the City under this contract.

f. The City may participate fully in any negotiations between the Association and the United States relating to the imposition or amount of any charge referred to in Section 5.d.

6. **QUALITY OF CONVERTED WATER AVAILABLE FOR DELIVERY BY THE CITY:**

All Converted Water made available to the City by the Association for delivery under this contract will be untreated and non-potable. There are no warranties, express or implied as to the quality of Converted Water delivered to the City or its suitability for any purpose or use.

7. **QUANTITY OF CONVERTED WATER AVAILABLE FOR DELIVERY; LOCATION AND PURPOSES OF USE:**

a. The Entitlements of individual Association members are not quantified, but are based upon historical beneficial use. For each acre of land to which a Conversion Election has been made and the City is appointed Delivery Agent, the City is entitled, in accordance with the USBR contract, to delivery of an annual allocation of 5.83 acre-feet; provided, however, that if an Entitlement Holder who has made a Conversion Election reserves the right, pursuant to Section 7.b, to continue to divert water from the Association's facilities for use on the Entitlement Holder's land for irrigation or related landscaping purposes, the City is entitled to receive from the Association an annual allocation of 3.33 acre-feet per acre.

b. An Entitlement Holder making a Conversion Election may reserve the right to continue to divert water through the Association's facilities for irrigation or related

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landscaping purposes. Any such reservation of right shall be made in writing at the time of the Conversion Election. With respect to an Entitlement for which a written reservation of right is made, the City shall pay to the Association annual water charges under Section 3, in an amount sufficient to entitle the Entitlement Holder to divert 2.5 acre feet of water per acre annually from the Association's diversion facilities. The City may charge the Entitlement Holder an annual fee for the diversion of water pursuant to a reservation of right under this Section. The City shall not be required to pay Delivery Charges or other charges pursuant to Section 5 for water diverted pursuant to a reservation of right under this Section. Diversions by the Entitlement Holder pursuant to this Section will not be measured. Therefore, the annual fee charged by the City to the Entitlement Holder will presume a diversion by the Entitlement Holder of 2.5 Acre-feet per acre annually.

c. All water made available to the City under this contract may be used for any authorized purpose at any authorized location.

8. **CITY CHARGES:**

a. All Entitlement Holders with the Project who receive Converted Water from the City or the Association pursuant to this contract are required to comply with City rules and ordinances related to domestic water service by the City, including, but not limited to, compliance with water conversion requirements and payment of City domestic water rates.

b. The City's cost associated with acquiring, treating, and delivering Converted Water under this contract, the City's costs for Converted Water distribution services, and the rates and charges fixed by the City for delivery to users, including users reserving water under Section 7.b., shall not be subject to review or control of the Association, the United States, or the successor(s) of either in the operation of the Project. In the event of nonpayment by an Entitlement Holder or user for Converted Water delivered by the City under this contract, the City may exercise any rights and legal remedies against such Entitlement Holder or user as would be available against any other recipient of domestic water from the City.

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9. **NO RIGHTS TRANSFERRED:**

Nothing in this contract constitutes a transfer of any interest in or right to any Entitlement. All Entitlements, are and shall remain appurtenant to the land which they are related and shall be governed by the laws and documents creating the same.

10. **DELIVERY RESPONSIBILITY:**

a. As between the City and the Association, and except as provided in Section 10.b., the City assumes full responsibility for the cost of distribution and delivery of all Converted Water delivered to the City by the Association under this contract, from the point of delivery from the Association. The City may recover its costs associated with the delivery of Converted Water, including, but not limited to, costs referred to in Sections 5 and 8, through fees or rate increases assessed against or users receiving Converted Water from the City.

b. The City's obligation to deliver Converted Water to lands either within or outside the WSA, as provided in this contract, is contingent upon the existence of water lines or other facilities necessary for the delivery of domestic water to lands subject to a Conversion Election, and compliance with such rules, regulations and ordinances as the City, the State or the United States may reasonably impose. Nothing in this contract obligates the City to construct or pay for the construction of facilities permitting the delivery of Converted Water to lands subject to a Converted Election. Where no such facilities exist, the City's obligation to deliver Converted Water to those lands shall become effective only upon completion of construction by others of such facilities.

11. **CITY'S INDEMNITY:**

The City agrees that it shall indemnify and hold the Association harmless of, for, from and against any and all liability, claims, losses, liens, damages or injuries to any person or to property, and any and all expenses of investigating and defending against the same (including costs and reasonable attorneys' fees), arising from or in any way connected with, in whole or in part: (1) the negligence or willful misconduct of the City, its agents, employees and contractors in performing this contract; or (2) breach of this contract by the City; or (2) claims associated with or based upon the quality of Converted Water delivered to the City by the Association.

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12. **ASSOCIATION'S INDEMNITY:**

The Association agrees that it shall indemnify and hold the City harmless of, for, from and against any and all liability, claims, losses, liens, damages or injuries to any person or to property, and any and all expenses of investigating and defending against the same (including costs and reasonable attorneys' fees), arising from or in any way connected with, in whole or in part; (1) the negligence or willful misconduct of the Association, its agents, employees and contractors in performing this contract; or (2) breach of this contract by the Association; provided, however, that, under no circumstance shall the Association be obligated to indemnify or defend the City regarding any claim associated with or based upon the quality of Converted Water delivered to the City by the Association.

13. **REPORTS AND REPORTING:**

a. The City is responsible for measuring (by meter or otherwise) and reporting monthly (not later than the 10th day of the following month) to the Association all Converted Water, for which the City is Delivery Agent, delivered under this contract to the City by the Association and to make such reports and accountings as may be required from time to time by the Contracting Officer or other State or Federal authority.

b. The Association is responsible for measuring (by meter or otherwise) all Converted Water, delivered by the Association, for which the City is not appointed as Delivery Agent and to make such reports and as may be required from time to time by the Contracting Officer or other State or Federal authority.

14. **POINTS OF DELIVERY:**

The Association shall deliver Converted Water to the City at the points of delivery designated on Exhibit A or at such other point or points of delivery as may be added to Exhibit A by mutual agreement of the City and the Association.

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15. **TERM:**

This contract, and the City's designation as the Association's exclusive Delivery Agent under this contract, shall be perpetual in duration; provided, however, that if the Association is unable to perform its delivery obligations to the City under Sections 3 and 6, because of the expiration, termination or final non-appealable interpretation of any of the Association's contracts with the United States, this contract shall automatically terminate. If an Entitlement is temporarily suspended for any reason, other than during the period in which a shortage of Colorado River water is declared by the United States Secretary of the Interior, the City's obligation to pay any fees, charges and assessments for such Entitlement under this contract may be suspended, in the City's sole discretion, for the period of suspension of the Entitlement. If any Entitlement is terminated, the City may, at its sole option, suspend or terminate all payments for such Entitlement under this contract.

16. **APPLICABILITY OF RECLAMATION REFORM ACT:**

By approving this contract, the United States agrees and acknowledges that this contract does not constitute a benefit to the Association or the City within the meaning of Section 203 of the Reclamation Reform Act of 1982 and the Rules and Regulations adopted thereunder. This contract does not subject the Association or the City or any lands served by the Association or the City to the provisions of the Reclamation Reform Act or any of the regulations adopted thereunder which the Association or the City is not otherwise subjected. If any competent authority determines that the execution or performance of this contract subjects the Association, or the City or any lands to which the Association or the City delivers water to the provisions of the Reclamation Reform Act of 1982 or any regulation adopted thereunder, then this contract shall, at the sole option of the Association, or the City, be void and of no force and effect as though it had never been executed. If the Association elects to cancel this contract pursuant to this section, all funds paid by the City to the Association under Section 3.b. for past due assessments not already repaid to the City, shall be refunded by the Association. Refund payments shall be made to the City in annual installments not to exceed \$100,000 due on the 15th day of January of each year beginning in the first year after this contract becomes void and payable on the same day of each year thereafter until fully repaid. Interest shall accrue on amounts to be refunded at the rate of 10% per

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annum from the date the first payment is due until all sums due are fully paid. If the City elects to cancel this contract, no refund is payable.

17. **INSPECTION OF RECORDS:**

The Association agrees to provide the City with reasonable access to the Association's books and records to the full extent necessary to enable the City to verify any amount paid by or owing to the City. Records may be reviewed by the City at the Association's headquarters during normal working hours on reasonable advanced notice to the Association from the City. Any costs incurred in reproducing Association records shall be paid by the City in an amount equal to the charge imposed by the City for reproducing public records.

18. **AUTHORITY TO ACT:**

Each undersigned representative of the parties to this contract certifies that he or she is fully authorized to enter into terms and conditions of this contract and to execute and legally bind such party to this contract.

19. **PART OF USBR CONTRACT:**

This contract shall become Exhibit D-2 to the USBR Contract.

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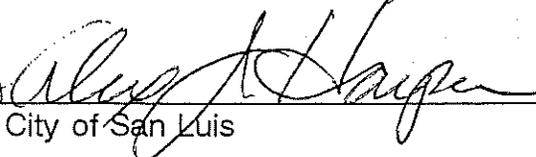
IN WITNESS WHEREOF, all parties hereto have caused this contract to be executed and effective as of the date signed by the last party to sign the same.

DATED this 13 day of March, 2001.

By: \_\_\_\_\_  
Yuma County Water Users' Association

Title: \_\_\_\_\_

DATED this \_\_\_\_ day of \_\_\_\_\_, 2001.

By:   
City of San Luis

Title: MAYOR OF THE CITY OF SAN LUIS

By: \_\_\_\_\_

Title: \_\_\_\_\_

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## **EXHIBIT A**

### **POINTS OF DELIVERY**

The following points of delivery are specified for Converted Water delivery by the Association to the City of San Luis:

East Main Canal and Avenue H

East Main Canal and Avenue I-1/2