



**CITY OF YUMA  
REGULAR CITY COUNCIL MEETING AGENDA  
COUNCIL CHAMBERS – YUMA CITY HALL  
ONE CITY PLAZA, YUMA, ARIZONA  
WEDNESDAY, NOVEMBER 05, 2014  
5:30 P.M.**

---

---

**CALL TO ORDER**

**INVOCATION**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

**FINAL CALL** for submission of Speaker Request Forms for agenda related items.

**PRESENTATIONS**

**I. MOTION CONSENT AGENDA**

All items listed on the Motion Consent Agenda will be considered and enacted with one motion. There will be no separate discussion of these items unless a Councilmember so requests. In which event, the item will be removed from the Motion Consent Agenda and the vote or action will be taken separately.

**A. Approval of minutes of the following City Council meeting(s):**

- |     |                                 |              |
|-----|---------------------------------|--------------|
| 7.  | 1. City Council Citizen's Forum | July 1, 2014 |
| 8.  | 2. Regular Worksession          | July 1, 2014 |
| 13. | 3. Regular City Council Meeting | July 2, 2014 |

**B. Approval of Staff Recommendations:**

**Page Item**

1. Executive Sessions may be held at the next regularly scheduled Special Worksession, Regular Worksession and City Council Meeting for personnel, legal, litigation and real estate matters pursuant to A.R.S. § 38-431.03 Section A (1), (3), (4), and (7). (City Attorney)

**21. 2. Special Event Liquor License: Yuma Ballet Theatre & Performing Arts Company, Inc. - Night Suites**

Approve a Special Event Liquor License application submitted by Noemi Magana, on behalf of the Yuma Ballet Theatre & Performing Arts Company, Inc., for the Night Suites event. The event will be held at the Gowan building, located at 370 S. Main Street, on Saturday, November 15, 2014 from 6:00 p.m. to 9:00 p.m. (SP14-27) (City Administration/City Clerk) (Lynda L. Bushong)

**23. 3. Agreement: Catholic Community Services in Western Arizona**

Authorize the City Administrator to execute a five-year agreement with Catholic Community Services in Western Arizona (CCSWA) to use the North End Community Center (Center). (Parks & Recreation/Administration) (Debbie Wendt)

**31. 4. Intergovernmental Agreement: Yuma County Public Health Services District**

Authorize the execution of an intergovernmental agreement ("IGA") with the Yuma County Public Health Services District ("YCPHSD") for the Arizona Nutrition Network Program to provide nutritional and physical activity programs to low-income children. (Parks & Recreation/Administration) (Debbie Wendt)

**37. 5. Mayor's Certificate: Industrial Development Authority Bonds**

City staff recommends approval of this motion authorizing the Mayor of the City of Yuma to sign the attached certificate concerning the issuance of the Industrial Development Authority bonds by the Industrial Development Authority of the City of Phoenix, Arizona. (City Administration/Economic Development) (Ricky Rinehart)

**SUGGESTED MOTION: To approve the MOTION CONSENT AGENDA as recommended:**

**M/\_\_\_\_\_ S/\_\_\_\_\_ VV/\_\_\_\_\_**

## II. RESOLUTION CONSENT AGENDA

All items listed on the Resolution Consent Agenda will be considered and enacted with one motion. There will be no separate discussion of these items unless a City Councilmember so requests or a Speaker Request Form has been submitted. In which event, the item will be removed from the Resolution Consent Agenda and the vote or action will be taken separately.

**40. A. Resolution R2014-34 Preannexation Development Agreement: Iglesia Betania of the Assemblies of God**

Authorize a Preannexation Development Agreement with Iglesia Betania of the Assemblies of God, an Arizona non-profit corporation, for property located at 3615 W. 8th Street (Community Development/Community Planning) (Laurie Lineberry)

**55. B. Resolution R2014-37 Streetlight Pole Use License Agreement: Arizona Public Service Company**

Authorize execution of a license agreement (Pole Use Agreement) with Arizona Public Service Company (APS) to allow the City to attach streetlight fixtures on APS power poles when necessary. (Public Works/Street Maintenance) (Joel Olea)

**84. C. Resolution R2014-38 Streetlight Energy Agreement: Arizona Public Service Company**

Authorize execution of a Streetlight Energy Agreement (Energy Agreement) with Arizona Public Service Company (APS) to provide electricity for City streetlights. (Public Works/Street Maintenance) (Joel Olea)

**135. D. Resolution R2014-39 Development Fee Deferral: Terraces Townhomes, L.L.C.**

Approve a Development Agreement request with Terraces Townhomes, L.L.C., permitting the deferral of City of Yuma (City) Development Fees and water and sewer capacity charges for properties in the Sunset Terrace Townhomes Subdivision. (Public Works/Engineering) (Joshua Scott)

**144. E. Resolution R2014-40 Development Fee Deferral: Elliott Construction, Inc.**

Approve a Development Agreement request with Elliott Construction, Inc, permitting the deferral of City of Yuma (City) Development Fees and water and sewer capacity charges for properties in the Araby Crossing Subdivision. (Public Works/ Engineering) (Joshua Scott)

**SUGGESTED MOTION: To adopt the RESOLUTION CONSENT AGENDA as recommended:**

**M/**\_\_\_\_\_ **S/**\_\_\_\_\_ **RV/**\_\_\_\_\_

**III. ADOPTION OF ORDINANCES CONSENT AGENDA**

All items listed on the Ordinances Consent Agenda will be considered and enacted with one motion. There will be no separate discussion of these items unless a City Councilmember so requests or a Speaker Request Form has been submitted. In which event, the item will be removed from the Ordinance Consent Agenda and the vote or action will be taken separately.

**154. A. Ordinance O2014-30 Rezoning of Property: Southwest Corner of Maple Avenue and 16th Street, Yuma, AZ.**

Rezone approximately 0.47 acres from the Light Industrial (L-I) District to the General Commercial (B-2) District. The property is located at 1610 S. Maple Avenue, Yuma, AZ. (ZONE-6787-2014) (Community Development/Community Planning) (Laurie L. Lineberry)

**SUGGESTED MOTION: To adopt the ORDINANCES CONSENT AGENDA as recommended:**

**M/**\_\_\_\_\_ **S/**\_\_\_\_\_ **RV/**\_\_\_\_\_

#### **IV. INTRODUCTION OF ORDINANCES**

The following ordinance(s) is presented to the City Council for introduction. No vote or action by the City Council is necessary. However, the City Council may, at its option, vote or take action where appropriate. Ordinances given introduction are generally presented to the City Council for adoption at the next Regular City Council meeting.

**169. A. Ordinance O2014-31 Rezoning of Property: Northwest corner of 32nd Street and Talon Avenue, Yuma, AZ.**

Rezone approximately 0.74 acres from the General Commercial/Aesthetic Overlay (B-2/AO) District to the General Commercial (B-2) District. The property is located at the northwest corner of 32nd Street and Talon Avenue, Yuma, AZ. (ZONE-7131-2014) (Community Development/Community Planning) (Laurie L. Lineberry)

#### **V. PUBLIC HEARINGS & RELATED ACTIONS**

There are no public hearings scheduled at this time.

**FINAL CALL** for submission of Speaker Request Forms for Call to the Public.

#### **VI. ANNOUNCEMENTS AND SCHEDULING**

Discussion and possible action on the following items:

1. Announcements:
  - City Council report on meetings/events attended – City Council report on issues discussed in meetings/events attended by a City Council representative in their official capacity as the City's representative during the period of October 16, 2014 through November 5, 2014. City Council questions regarding the update must be limited solely for clarification purposes. If further discussion is warranted, the issue will be added to a future agenda for a detailed briefing.
  - City Council report of upcoming meetings.
  - City Council request for agenda items to be placed on future agendas.
2. Scheduling: Motion to schedule future City Council meetings pursuant to Arizona Revised Statutes Section 38-431.02 and the Yuma City Code, Chapter 30.

## **VII. SUMMARY OF CURRENT EVENTS**

This is the City Administrator's opportunity to give notice to the City Council of current events impacting the City. Comments are intended to be informational only and no discussion, deliberation or decision will occur on this item.

## **VIII. CALL TO THE PUBLIC**

Members of the public may address the City Council on matters that are not listed on the City Council agenda. The City Council cannot discuss or take legal action on any matter raised unless it is properly noticed for discussion and legal action. At the conclusion of the Call to the Public, individual members of the City Council may respond to criticism made by those who have addressed the City Council, may ask staff to review a matter or may ask that a matter be placed on a future agenda. All City Council meetings are recorded and videotaped.

## **IX. EXECUTIVE SESSION**

An Executive Session may be called during the public meeting for the purpose of receiving legal advice for items on this agenda pursuant to A.R.S. Section 38-431.03 A (3 and/or 4) and the following items:

*There are no items scheduled at this time.*

## **ADJOURNMENT**

In accordance with the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 the City of Yuma does not discriminate on the basis of disability in the admission of or access to, or treatment or employment in, its programs, activities, or services. For information regarding rights and provisions of the ADA or Section 504, or to request reasonable accommodations for participation in City programs, activities, or services contact: ADA/Section 504 Coordinator, City of Yuma Human Resources Department, One City Plaza, Yuma, Arizona 85364-1436; (928) 373-5125 or TTY (928) 373-5149.

**MINUTES**  
**CITY COUNCIL CITIZEN'S FORUM**  
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA  
CITY COUNCIL CHAMBERS - YUMA CITY HALL  
ONE CITY PLAZA, YUMA, ARIZONA  
**July 1, 2014**  
**5:30 p.m.**

**CALL TO ORDER**

**Mayor Nicholls** called the Regular City Council Worksession to order at 5:36 p.m.

Councilmembers Present: Wright, Knight, McClendon, Thomas, Craft and Mayor Nicholls  
Councilmembers Absent: Beeson  
Staffmembers Present: City Administrator, Gregory K. Wilkinson  
Various department heads or their representatives  
City Attorney, Steven W. Moore  
City Clerk, Lynda Bushong

**I. EMERGENCY ROAD PLANNING**

No discussion was held as the speaker was absent.

**II. ADJOURNMENT/EXECUTIVE SESSION**

**Motion** (Thomas/Knight): To adjourn the meeting into Executive Session. Voice vote: approved 6-0  
the meeting adjourned at 5:37 p.m.

---

Lynda L. Bushong, City Clerk

APPROVED:

---

Douglas J. Nicholls, Mayor

**MINUTES**  
**REGULAR WORKSESSION**  
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA  
YUMA CITY HALL  
ONE CITY PLAZA, YUMA, ARIZONA  
**July 1, 2014**  
**6:00 p.m.**

**CALL TO ORDER**

**Mayor Nicholls** called the Regular City Council Worksession to order at 6:00 p.m.

Councilmembers Present: Wright, Knight, Beeson, McClendon, Thomas, Craft and Mayor Nicholls  
Councilmembers Absent: none  
Staffmembers Present: City Administrator, Gregory K. Wilkinson  
Purchasing Manager, Robin Wilson  
Finance Director, Pat Wicks  
Director DCD, Laurie Lineberry  
Associate Planner, Doug Thomsen  
Various department heads or their representatives  
City Attorney, Steven W. Moore  
City Clerk, Lynda Bushong

**I. REGULAR CITY COUNCIL MEETING AGENDA OF JULY 2, 2014**

**Motion Consent Agenda Item B3: Cooperative Purchase Agreement Information Technology Products and Services**

**Knight** inquired how this amount compares to last year's amount. **Wilson** explained the amount of the contract is considerably lower than the previous years and is incorporated in the approved budget. **Wilkinson** added that several pieces of IT equipment was purchased last year from grant funding; the decrease is a reflection on the decreased availability of grants moneys.

**Ordinance O2014-18 Adopt the 2014-2015 Primary Property Tax Levy and Mall Maintenance District Property Tax Levy**

**Wicks** explained that the levy is designed to balance the amount of citizen's taxes with consideration of the property assessments increasing and decreasing. He added the incline over time is a reflection of the increased number of tax payers, populations, businesses coming to town and more parcels causing the tax base to broaden and services to increase. Over the years, this has resulted in a steady increase in the levy. Over the last couple of years there has been a significant drop in assessed tax values. When the values decline the rate must go up in order to maintain the same levy as before. We need a stable property tax base in order to assure we have a relatively stable general fund base. The truth in taxation rate worksheet determines the tax rate needed to maintain the same amount of levy as the previous year. The new rate is determined by taking the levy from the previous year and dividing it by this year's value of last year's tax payers. Any increase in the levy will be due to new tax payers. The Council has been less then excited about letting the rate rise because of the fear and the general

misunderstanding that an increasing rate means increasing taxes. However, by leaving the rate the same, it will apply to a lower dollar value and the levy will decrease. By using the truth in taxation formula, a new rate of \$1.8282 will be needed to produce the same amount of levy as last year.

Discussion:

- The use of the truth in taxation formula in future years will result in producing essentially the same levy as the previous year, thus preventing any drastic fluctuation and the need to raise taxes.
- If the rate is left at the previous amount of \$1.7387 approximately \$470,000 less would be collected.
- The amount of levy collected is determined by the rate set. The rate set is determined by the truth in taxation formula which is designed to produce the same amount as the previous year. The variable in the formula is the assessed values of properties. If the values go down, the rate will need to rise to obtain the same amount of levy and if the values go up the rate would then decrease.

**Motion Consent Agenda Item B9: 2014 Community Development Block Grant**

**Hoogendoorn** explained that Community Development Block Grant (CDBG) funds are usually used to expand programs that provide services to low and moderate income people. The grant funds are disbursed annually. Organizations must submit an application to be considered for funding. The applications then go through the Citizen Advisory Board for review and recommendation for funding based on the priority of need. Due to a cap on funds for public services allotted, the provision in the grant allowing extensions beyond the single year is not typical. The provision is typically used for construction projects that take longer than anticipated. **Hoogendoorn** also advised recipients are required to follow federal procurement rules and all funds are disbursed on a reimbursement bases. All subrecipients of the grant must have the ability to track and prove financial eligibility for who they are assisting and are required to submit a quarterly performance report. The quarterly reports submitted by recipients are used to produce the end of year Consolidated Annual Performance Evaluation Report (CAPER), which is then published in the paper and available for public review.

Motion Consent Agenda Item B4: Outside Agency Agreement: Greater Yuma Economic Development Corporation

**Wright** requested quarterly presentations to include how the agency is utilizing funds from the agreement with the City with a breakdown of operational and marketing costs.

**Ordinance O2014-19 Zoning Code Text Amendment: Automotive Repair in Light Industrial (L-I)**

**Lineberry** explained this amendment will allow for automotive repair businesses that are currently in light industrial areas to operate without having to obtain conditional use permits. The only exception noted is when the use is in close proximity to a residential area. The businesses would still be subject to other permits and restrictions related to the type of work they are doing, such as auto body spraying.

## **Ordinance O2014-20 Zoning Code Text Amendment: Mobile Food Vending**

**Lineberry** and **Thomsen** presented the following.

- The ordinance will address and regulate the growing mobile food vending trend that is happening not just locally, but nationally as well. Currently units are allowed to operate in the city only nine days a year unless they fully develop a private piece of property.
- The food vending unit is defined as an apparatus used to deliver the food.
- The mobile vending site is where the food vending unit is located.
- Mobile vendor is defined as operating from a single piece of property for the duration of their operating hours.
- Transient food vendors will spend no more than 90 minutes per site and will probably travel to multiple sites per day.

### Mobile Food Vendor

- Requires paved surfaces and three paved parking spaces in addition to the primary business' parking requirements.
- Must have property owner's written permission and access to a restroom that meets the current building codes.
- Must obtain Yuma County Health Department's approval.
- Conditional use permit required if more than one vendor will operate on same site.
- Required to be located a minimum of 100 feet from a customer entrance of a business that has a primary use classified as restaurant.
- Operational restrictions include:
  - All units must be removed when not in operation.
  - Sites must be kept clean.
  - No visible or audible disturbances allowed.
  - Restriction on operating between midnight and 5:00 a.m.

### Transient Food Vendor

- No additional parking spaces required.
- Must obtain Yuma County Health Department's approval.
- Will be allowed a maximum of 90 minutes per day per site.
- Table and chairs are not allowed.
- Operational restrictions are the same as Mobile Food Vendor.

### The Permitted Zoning Districts

- Principal use is permitted in B-2 General Commercial Districts.
- Accessory use will be allowed in B2 and B1 Commercial Districts, Planned Shopping District, and the Industrial Districts.
- Multiple food vendors on the same site in the commercial districts will require a conditional use permit.
- Vendors are required to pay Federal, State and Local taxes as well as the 2% hospitality tax.

### Discussion

- Ordinance O2014-20 will increase the current allowable operational days from nine to 365 days per year.

- Menu boards are allowed to be placed within five feet of the food truck.
  - Sign walkers are allowed on sidewalks by state law and cannot be regulated.
- Parking spaces may be shared with the business on the property as long as the hours of operation do not overlap and must not take away from the primary business' parking requirements.
- The distance requirement of a minimum of 100 feet away from a business is from the customer entrance to the building.
- The requirement of no operations between 12:00 a.m. to 5:00 a.m. was created to protect residential areas from disturbances.
- Requires the removal of all units nightly.
- Written permission from property owners is required prior to obtaining a business license.
- Conditional use permits will go before the Hearing Officer.
  - The City's two Hearing Officers are attorneys.
- A concrete surface is considered a paved surface.
- Business license applications may require vendors to indicate their understanding of all rules and regulations.
- The County Health Department is responsible for inspecting vending stations and to provide food safety training.
- The City is responsible for fire code and general building inspections.
- The mobile food vending industry is very competitive and it is anticipated they will be self-regulating.
- The City does not require food vendors to obtain insurance on their units.
- The City will not be held liable in the event of an injury at a mobile food site.
- The definition of a Mobile Food Truck includes trucks, trailers or anything on wheels or that is portable.
- To prevent traffic issues there is a 300 foot distance requirement from freeways and schools.
- Mobile vendors are not permitted on a property that has a vacant building.
- Temporary restrooms are not permitted.
- Transient vendors are required to provide a list of all site locations of where they will operate.
- All vendors will have to follow the current smoking ordinance which states a person must be at least 20 feet from the doorway of an enclosed building.
- Business licenses are issued for a specific location.
- A vendor may simultaneously hold a transient license and a mobile license.
- Location of all vendors will be maintained in the GIS program.

Potential Conflict of Interest was declared on the following agenda items:

- **Thomas** stated he would be declaring a perceived conflict of interest on Motion Consent Agenda items B6 and B7 due to his employment.
- **McClendon** and **Beeson** stated they would be declaring a perceived conflict of interest on Motion Consent Agenda item B5 due to employment.
- **Thomas** declared a conflict of interest Ordinances O2014-21 and O2014-22, due to his employment.

## II. ADDITIONAL ITEMS FOR POSSIBLE DISCUSSION - NONE

**III. ADJOURNMENT/EXECUTIVE SESSION**

**Motion** (Beeson /Wright): To adjourn the meeting to Executive Session. Voice vote: **adopted** 7-0.  
The meeting adjourned at 8:03 p.m.

---

Lynda L. Bushong, City Clerk

APPROVED:

---

Douglas J. Nicholls, Mayor

DRAFT

**MINUTES**  
**REGULAR CITY COUNCIL MEETING**  
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA  
CITY COUNCIL CHAMBERS, YUMA CITY HALL  
ONE CITY PLAZA, YUMA, ARIZONA  
**JULY 2, 2014**  
**5:30 p.m.**

**CALL TO ORDER**

**Mayor Nicholls** called the City Council meeting to order at 5:33 p.m.

**INVOCATION/PLEDGE**

**George Boundney**, Pastor of Yuma Central 7<sup>th</sup> Day Adventist Church, gave the invocation.  
**Charles Flynn**, led the City Council in the Pledge of Allegiance.

**ROLL CALL**

Councilmembers Present: Wright, Knight, Beeson, McClendon, Thomas, Craft, and Mayor Nicholls  
Councilmembers Absent: none  
Staffmembers Present: City Administrator, Gregory K. Wilkinson  
Director of Financial Services, Pat Wicks  
Various Department Heads or their representative  
City Attorney, Steven W. Moore  
City Clerk, Lynda L. Bushong

**FINAL CALL**

**Mayor Nicholls** made a final call for the submission of Speaker Request Forms for agenda related items from members of the audience.

**PRESENTATIONS - NONE**

**I. MOTION CONSENT AGENDA**

**Motion** (Knight/McClendon): To amend Motion Consent Agenda item B.4, the Outside Agency Agreement with Greater Yuma Economic Development Corporation, in Section II [Roman numeral 2] (C), Subsection 2, to change the reference of "Subsection C" to "Subsection D." Voice vote: **approved** 7-0.

**Motion** (Knight/Craft): To approve the Motion Consent Agenda item B.5 as recommended. Voice vote: **approved** 5-0-2; McClendon and Beeson declared a conflict of interest due to employment.

**Motion** (Knight/McClendon): To approve the Motion Consent Agenda item B.6 and B.7 as recommended. Voice vote: **approved** 6-0-1; Thomas declared a conflict of interest.

**Motion** (Craft/McClendon): To approve the Motion Consent Agenda with the exception of item B.5, B.6, and B.7 as recommended. Voice vote: **approved** 7-0.

A. Approval of minutes of the following City Council meeting(s):

Regular City Council Meeting	April 23, 2014
Citizen's Forum	May 6, 2014
Regular Worksession	May 6, 2014
Regular City Council Meeting	May 7, 2014

B. Approval of Staff Recommendations:

1. Executive Sessions may be held at the next regularly scheduled Special Worksession, Regular Worksession and City Council Meeting for personnel, legal, litigation and real estate matters pursuant to A.R.S. § 38-431.03 Section A (1), (3), (4), and (7). (Attny)
2. Authorize the purchase of one ambulance, utilizing the cooperative purchase agreement issued by the Houston-Galveston Area Council, for an estimated amount \$150,028.00 (excluding tax) to: Braun NW, Inc., Chehalis, Washington. (YFD - Bid #2015-20000005)
3. Authorize the purchase of Information Technology Products and Services utilizing any of the below listed cooperative purchase agreements, at an estimated amount of \$3,406,505.00 to:
  1. Mohave Educational Services Cooperative
  2. State of Arizona
  3. The Cooperative Purchasing Networks (TCPN)
  4. US Communities
  5. Western States Contracting Alliance (WSCA)
  6. General Service Administration (GSA)
  7. National Intergovernmental Purchasing Alliance (NIPA)
  8. Strategic Alliance for Volume Expenditures (SAVE)
  9. National Joint Powers Alliance (NJPA)  
(ITS - #2015-20000001)
4. Authorize the execution of an agreement with Greater Yuma Economic Development Corporation providing for Fiscal Year 2014-2015 funding in the amount of \$232,000.00 and setting performance standards for Greater Yuma Economic Development Corporation. (Admin)
5. Authorize the execution of an agreement with the Yuma Visitors Bureau, Inc. providing for Fiscal Year 2014-2015 funding in the amount of \$650,000.00 and setting performance standards for the Yuma Visitors Bureau, Inc. (Admin)
  - o Approved by separate motion; see above.
6. Authorize the City Administrator and other City staff to enter into an agreement with the Arizona Department of Homeland Security for reimbursement of funds expended for equipment in support of Operation Stonegarden. (YPD/Patrol)
  - o Approved by separate motion; see above.
7. Authorize the City Administrator and City Staff to sign the Grant Agreement with the City of Tucson for the High Intensity Drug Trafficking Area (HIDTA) Grant. (YPD/Patrol)
  - o Approved by separate motion; see above.

8. Authorize the City Administrator to execute an agreement with the Yuma Crossing National Heritage Area Corporation (YCNHAC) for the operation of the Yuma Quartermaster Depot State Historic Park (QMD); to provide funding in support of park operations in the amount of \$150,000 for Fiscal Year 2014-2015; and to provide performance standards for YCNHAC. (Admin/YCNHA)
9. Authorize the City Administrator to execute Subrecipient Agreements in the amount of \$381,627 in accordance with the 2014 Community Development Block Grant (CDBG) Action Plan. (CD/Neighborhood Svcs)

## II. RESOLUTION CONSENT AGENDA

### Discussion

**Knight** stated that after reviewing the Yuma City Charter (YCCharter) he believes that City Council does not have the authority to abdicate authority to the City Attorney to handle litigations and employ outside legal counsel on behalf of the City Council. **Knight** recommended that a Charter Review Committee be put together to review this section of the YCCharter and make recommendations to City Council. **Mayor Nicholls** disagreed with Knight's interpretation of the YCCharter and stated that this action does not remove the responsibility of litigation from City Council but rather serves as a mechanism to allow the City to be responsive and then bring issues back to City Council for approval and direction. **Mayor Nicholls** has no objection with the formation of a Charter Review Committee. **Thomas** added that this section of the YCCharter was reviewed by the last Charter Review Committee and one of the biggest concerns was that City Council would not be able to provide the City Attorney with guidance in timely manner in every legal matter.

**Motion** (Beeson/McClendon): To adopt the Resolution R2014-22 as recommended.

**Bushong** displayed the following title(s):

### **Resolution R2014-22**

**A resolution of the City Council of the City of Yuma, Arizona, authorizing the City Attorney to obtain outside legal counsel to assist the City Attorney and authority to settle claims up to \$25,000 (Authority of City Attorney) (Attny)**

Roll call vote: **adopted** 5-2; Wright and Knight voting Nay.

## III. ADOPTION OF ORDINANCES CONSENT AGENDA

**Motion** (Thomas/McClendon): To amend Ordinance O2014-18 Primary Tax Levy at Section 1 to a primary property tax rate of \$1.8281 on each \$100 of assessed valuation, and be re-introduced as amended.

### Discussion

**Knight** clarified that City Council is not voting to raise taxes. **Wicks** explained that the new tax rate is determined on last year's levy with last year's taxpayers applied to this year's value. So there is a slight

increase in the levy, possibly due to new taxpayers. **Thomas** added that the City's percentage of property taxes is minimal compared to the taxes imposed by other entities.

Roll vote: **approved** 5-0.

**Bushong** displayed the following title(s):

**Ordinance O2014-18**

**An ordinance of the City Council of the City of Yuma, Arizona, fixing, levying, and assessing primary property taxes upon property within the City of Yuma subject to taxation, each in a certain sum upon each one hundred dollars (\$100) of valuation, sufficient to raise the amount estimated to be required in the Annual Budget for the Fiscal Year 2014-2015 less the amounts estimated to be received from other sources of revenue and the unencumbered balances from the previous Fiscal Year, providing a General Fund; and fixing, levying, and assessing upon property within the boundaries of the Main Street Mall and Offstreet Parking Maintenance District No. 1 subject to taxation, each in a certain sum upon each one hundred dollars of valuation, sufficient to raise the amount estimated to be required for the operation, maintenance, repair and improvement of the facilities of said district, all for the Fiscal Year ending June 30, 2015**

(Adopt the 2014-2015 Primary Property Tax Levy and Mall Maintenance District Property Tax Levy)  
(Finance/Admin)

**IV. INTRODUCTION OF ORDINANCES**

**Mayor Nicholls** declared a conflict of interest due to employment on Ordinance O2014-21 and O2014-22.

**Ordinance O2014-20 Zoning Code Text Amendment: Mobile Food Vending**

Speakers

**Julie Fritz-Feinbery** spoke in opposition of allowing mobile food vendors to operate within City of Yuma city limits because of the following reasons:

- The restaurant business is a very competitive industry.
- Restaurants in permanent buildings must not only pay for a businesses license but also have to pay taxes, regulation fees, and insurance.
- Restaurants in permanent buildings must adhere to regulations regarding advertisement on vehicles and mobile food trucks will be exempt from these regulations.
- Mobile food units will become an eye sore for the City as they have become in the County down 8<sup>th</sup> Street and Pacific Avenue.
- If patrons get sick from food served by a mobile food vendor it might be difficult to locate the mobile food vendor.

**Dr. Dale Feinberg** spoke in opposition of allowing mobile food vendors to operate within the City of Yuma city limits. The restaurant business is a hard business to stay in and the proof are the many restaurants in Yuma that have recently closed for business. Yuma is now known as a community of chain restaurant.

Discussion

- Allowing mobile food vendors inside City limits will provide new business opportunities.

- Mobile food vendors will be required to have annual health inspections on their vending unit and attend food vendor training.
- It will be difficult to track the income for mobile food vendors that primarily handle cash transactions.
- City staff elected to require permanent restrooms versus port-a-potties because enforcement of this requirement would be manageable and then mobile food vendors would have the same requirement as restaurants of being ADA accessible.
  - Property owners are the deciding factor of leasing their property and sharing their restrooms with a mobile food vendor.
- The ordinance surrounding mobile food vendors is very strict that only a minimal amount of locations will meet all the requirements and be able to lease to a mobile food vendor.
- Public safety is one of the City's biggest concerns.
- The City must be cautious and ensure that all food establishments have the same operating requirements.
- The ordinance provides the City the opportunity to take advantage of sales tax revenue.
- If a brick mortar restaurant were to open for business next to a lot where a mobile food vendor is operating, both establishments would be allowed to operate. The mobile food vendor would operate as a nonconforming business under the City's zoning code until the business stopped renewing their business license.

**Bushong** displayed the following title(s):

**Ordinance O2014-19**

**An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, as amended, relating to zoning regulations, providing for changes to the Zoning Code to add automotive repair to the list of permitted principal uses in the Light Industrial (L-1) Zoning District**

(Zoning Code Text Amendment: Automotive Repair in Light Industrial (L-1) (ZONE-6056-2014))  
(CD/Planning)

**Ordinance O2014-20**

**An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, as amended, relating to zoning regulations, to add definitions for mobile food vending operations, add provisions to allow mobile food vending, and providing penalties for violations thereof**

(Zoning Code Text Amendment: Mobile Food Vending) (CD/Planning)

**Ordinance O2014-21**

**An ordinance of the City Council of the City of Yuma, Arizona, authorizing and directing that a certain parcel of real property, hereafter described, be acquired by purchase for improving the walking path system and for other public purposes, and authorizing payment therefor, together with costs necessary for the acquisition thereof, and ratifying City staff actions in acquiring the tax lien (Ratification: Thacker Canal Acquisition) (Admin)**

**Ordinance O2014-22**

**An ordinance of the City Council of the City of Yuma, Arizona, reserving an easement for aesthetic enhancement purposes in a certain portion of City-owned real property, declaring the underlying fee of the aesthetic enhancement easement and certain other City-owned property located at the southeast corner of 16<sup>th</sup> Street and 4<sup>th</sup> Avenue surplus for City use, and authorizing and directing that**

**three other parcels of real property, hereafter described, be acquired by the City of Yuma through an exchange for the City-owned surplus real property, for the reason that the three parcels are required to improve the public roadway and utility infrastructure and other public purposes as may be related thereto, and authorizing payment of certain costs necessary for the acquisition and exchange**  
(Real Property Exchange: Yuma Mesa, LLC) (Admin)

**V. PUBLIC HEARINGS – NONE**

**VI. BID PROTEST HEARING**

**Beeson** opened the public hearing at 6:37 p.m.

**Wicks** presented the following information:

- The City received five bids in response to the Catalina Drive Reconstruction Project from 8<sup>th</sup> Avenue to 4<sup>th</sup> Avenue.
- City Council was presented with two of the bids for consideration.
- City Council decided to use local preference and awarded the project to the second bidder DPE Construction.
- The protesting vendor made the following points in the bid protest:
  - Disagreement with the City Council’s use of local preference
  - The Yuma City Code states that bids shall be evaluated based on the requirements set forth in the Invitations to Bid.
    - There was no mention in the Invitation to Bid that City Council could apply local preference.
  - A bid may not be rejected except on the basis of criteria as noted in that Invitation to Bid.
- The City responded that not every applicable ordinance or reference is included in the Invitations to Bid. However, the City does expect vendors that want to do business with the City to be familiar with the ordinances under which that business is conducted.
- The protesting vendor has also expressed concern regarding the lack of competition that is promoted by allowing local preference.
- In every bid opportunity staff tries very hard to promote competition between all available vendors so that the City can have free competition and make the selection that best suits the City.

There were no representatives from CEMEX available to comment.

**Jim Allen**, 1555 W. 34<sup>th</sup> Street, Vice President of DPE Construction, spoke in opposition of the bid protest and agreed with the City that it is the vendor’s responsibility to know the City’s ordinances.

**Motion** (Thomas/Knight): To close the Hearing. Voice vote: **approved** 6-0-1; Mayor Nicholls declared a conflict of interest due to employment; Hearing closed at 6:45 p.m.

**Motion** (McClendon/Craft): To deny the Bid Protest and reaffirm the award for the Catalina Drive Reconstruction Project to DPE Construction, Inc. Voice vote: **approved** 6-0-1; Mayor Nicholls declared a conflict of interest due to employment.

[Mayor Nicholls returned to chair the meeting]

## FINAL CALL

**Mayor Nicholls** made a final call for the submission of Speaker Request Forms from members of the audience for the Call to the Public agenda item.

## VII. APPOINTMENTS, ANNOUNCEMENTS AND SCHEDULING

### Appointments

**Motion** (Knight/Beeson): To appoint JoAnne Mowczko to an unexpired term on the Community Tree Board expiring December 31, 2017. Voice vote: **approved 7-0.**

**Motion** (Craft/Thomas): To appoint J. Glendon Moss to an unexpired term on the Housing Authority of the City of Yuma expiring December 31, 2015. Voice vote: **approved 7-0.**

**Motion** (Knight/McClendon): To re-appoint Vinod Mohindra and Brian D. Ewing to the Water and Sewer Commission with term expirations of December 31, 2018. Voice vote: **approved 7-0.**

### Announcements

City Council reported on the following events:

#### **Knight**

- June 26, 2014: Along with Deputy Mayor Beeson and Councilmember Thomas, attended the Yuma Metropolitan Planning Organization meeting. During the meeting results of a destination study completed at the San Luis Port of Entry were discussed.

#### **Mayor Nicholls**

- June 19, 2014: Along with several Councilmembers, attended the Yuma Proving Ground Change of Command from Colonel Young to Colonel Murray.
- June 19, 2014: Attended the Greater Yuma Economic Development Corporation Board meeting.
- June 20, 2014: Attended the Arizona Mexico Commission in Phoenix.
  - Attended the Border Mayor's meeting with Governor Brewer and Governor Padres from Sonora.
    - Mayor Sanchez from San Luis reported for this area and did a very effective job in communicating some of the port crossing issues, particularly the pedestrian crossing issues all along the border.
- June 30, 2014: Along with Councilmember Knight, attended the 100<sup>th</sup> birthday of Audrey Winsauer and presented her with a Centennial coin to commemorate the City and her both turning 100 in the same year.

### Scheduling

**Knight** requested an update regarding the silent zone for Avenue 9E railroad crossing.

**Motion** (Craft/Knight): To schedule a Special City Council Meeting on Tuesday, July 8, 2014, to be held at 5:30 p.m. in City Council Chambers. Voice vote: **approved 7-0.**

**VIII. SUMMARY OF CURRENT EVENTS**

**Wilkinson** announced the following upcoming events:

- July 7, 2014: Kids' activities soccer clinic, kids' kayaking class, flag football clinic, and dodge ball clinic
- July 10-12 and 17-19: "The Odd Couple" play will be playing at the Historic Yuma Theatre
- July 12, 2014: Indoor Swap Meet at the Yuma Civic Center
- July 12, 2014: Household Hazardous Waste collection at the old APS yard across from the Time Warner building.

**IX. CALL TO THE PUBLIC - NONE**

**X. EXECUTIVE SESSION/ADJOURNMENT**

There being no further business, **Mayor Nicholls** adjourned the meeting at 6:58 p.m. No Executive Session was held.

---

Lynda L. Bushong, City Clerk

APPROVED:

---

Douglas J. Nicholls, Mayor



City of YUMA

# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:** November 5, 2014

**DEPARTMENT:** City Administration

**DIVISION:** City Clerk

- Motion
- Resolution
- Ordinance - Introduction
- Ordinance - Adoption
- Public Hearing

**TITLE:**  
 Special Event Liquor License: Yuma Ballet Theatre & Performing Arts Company, Inc. - Night Suites

**SUMMARY RECOMMENDATION:**  
 Approve a Special Event Liquor License application submitted by Noemi Magana, on behalf of the Yuma Ballet Theatre & Performing Arts Company, Inc., for the Night Suites event. The event will be held at the Gowan building, located at 370 S. Main Street, on Saturday, November 15, 2014 from 6:00 p.m. to 9:00 p.m. (SP14-27)

**REPORT:**  
 Noemi Magana, on behalf of the Yuma Ballet Theatre & Performing Arts Company, Inc., has applied for a Special Event Liquor License for the Night Suites event. The event will be held at the Gowan building, located at 370 S. Main Street, on Saturday, November 15, 2014 from 6:00 p.m. to 9:00 p.m.

The application has been sent to Community Development, the Police Department, the Fire Department, Risk Management, and City Engineering (Traffic) for review. No objections have been received.

Upon City Council's recommendation of approval, this application will be forwarded to the Arizona Department of Liquor Licenses and Control for final processing.

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	\$0.00		
	FISCAL IMPACT STATEMENT: Application fee revenue: \$20.00			
ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK: 1. Special Event Liquor License Application 2. 3. 4. 5.			
	IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?  <input checked="" type="checkbox"/> Department <input checked="" type="checkbox"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			10/28/2014
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			10/28/2014
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
Lynda L. Bushong			10/20/2014	
WRITTEN/SUBMITTED BY:			DATE:	
Jasmin Rodriguez			10/20/2014	



City of YUMA

# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:**

November 5, 2014

**DEPARTMENT:**

Parks & Recreation

**DIVISION:**

Administration

- Motion
- Resolution
- Ordinance - Introduction
- Ordinance - Adoption
- Public Hearing

**TITLE:**

Agreement: Catholic Community Services in Western Arizona

**SUMMARY RECOMMENDATION:**

Authorize the City Administrator to execute a five-year agreement with Catholic Community Services in Western Arizona (CCSWA) to use the North End Community Center (Center).

**REPORT:**

CCSWA prepares and serves nutritious meals for local senior and disabled citizens at the Center. These services help promote the health, welfare and safety of the community. CCSWA has utilized the Center for over 30 years and seeks to continue using the Center to provide these services.

Staff requests authorization for the City Administrator to execute the agreement allowing CCSWA to use the Center to provide this valuable community service.

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	\$0.00		
	FISCAL IMPACT STATEMENT:			
ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK: 1. 2. 3. 4. 5.			
	IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?  <input checked="" type="checkbox"/> Department <input checked="" type="checkbox"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			10/28/2014
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			10/28/2014
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
Debbie Wendt			10/23/2014	
WRITTEN/SUBMITTED BY:			DATE:	
Anna Martinez			10/1/2014	

**AGREEMENT BETWEEN THE CITY OF YUMA  
AND CATHOLIC COMMUNITY SERVICES  
FOR USE OF CITY FACILITIES**

THIS Agreement is entered into by and between the CITY OF YUMA, an Arizona municipal corporation (hereinafter “CITY”), and CATHOLIC COMMUNITY SERVICES OF SOUTHERN ARIZONA, INC. DBA CCS IN WESTERN ARIZONA, an Arizona non-profit corporation, (hereinafter “CCSWA”).

WHEREAS, CCSWA has been providing a Senior Nutrition Program for senior and disabled members of the Yuma community at the CITY’s North End Community Center (“Center”) located at 160 East First Street; and

WHEREAS, CCSWA wishes to continue its use of the CITY’s Center to prepare and provide nutritious meals for the local senior and disabled population; and

WHEREAS, such services promote the health, safety and welfare of the community; and

WHEREAS, the City wishes to continue to make the Center available to CCSWA for this valuable community service,

NOW THEREFORE, the parties hereto, in consideration of the above recitals and the following mutual covenants and stipulations, agree as follows:

**I. CITY responsibilities:**

- A. The CITY will make facilities available at the Center to CCSWA to prepare and serve meals to senior and disabled residents of the community.
- B. The CITY is responsible for building maintenance and repair, including HVAC, electrical, plumbing, damages to the interior or exterior of the building, and utility costs including water, sewer, and trash; however, if the building is damaged such that the CITY, in its sole discretion, determines that repair costs would exceed the value of the building, the CITY has no obligation to repair or rebuild and this Agreement will terminate.
- C. The CITY will maintain fire insurance on the building.

**II. CCSWA responsibilities:**

- A. CCSWA will operate a Title III-C Senior Nutrition Program consistent with the goals of the Older Americans Act of 1965, as amended, including CCSWA’s Home Delivered Meals program.
- B. CCSWA will provide meals containing at least 1/3 of the USDA dietary nutrition recommendations, for the seniors and/or adults with disabilities, enrolled and residing within the CITY.

- C. CCSWA will maintain all necessary food preparation certifications and licenses and ensure that all food preparation and serving staff will have the appropriate Yuma County Department of Public Health Services Food Handler's Card.
- D. CCSWA is responsible for maintaining, repairing, and/or replacing any and all equipment owned or installed by CCSWA, including but not limited to, food preparation and storage equipment, fixtures, and appurtenances.
- E. CCSWA will maintain food preparation and storage areas in a clean and sanitary condition in compliance with the Yuma County Department of Public Health Services standards.
- F. CCSWA shall pay the CITY \$1.00 annually for the use of the Center.
- G. CCSWA will provide meals, as set forth in section II(C) of this Agreement, in both a congregate setting and/or through home delivered services;
- H. CCSWA will adhere to all applicable federal, state and local laws, rules and regulations pertaining to the use of the Center;
- I. CCSWA will adhere to all applicable contractual and licensure standards in the provisions of all services;
- J. CCSWA will adhere with all applicable provisions of the Americans with Disabilities Act of 1990;
- K. CCSWA will support a "Congregate Site Council", established by and for the clients of the congregate setting, to provide the clients with a voice about services;
- L. CCSWA will conspicuously post at the Center all contact information that supports clients enacting their rights to file grievance and/or contact the Program Coordinator, and/or Executive Director regarding service delivery;
- M. CCSWA will continue to seek improvements in service delivery and program enhancement through continuous program evaluation and feedback through the use of surveys; and
- N. CCSWA will insure its own personal property within the Center from any damage or destruction, whatever the cause.

**III. TERM AND TERMINATION:**

- A. The term of this Agreement shall be for five years commencing on July 1, 2014 and ending on June 30, 2019.
- B. This Agreement may be terminated by either party upon 45 days' written notice to the other party.

#### **IV. INDEMNIFICATION:**

To the fullest extent permitted by law, CCSWA shall indemnify, defend, and hold harmless the CITY, its agents, employees, officers, officials, and volunteers from and against all claims, liabilities, allegations, damages, losses, expenses, and injury to property or persons (including death), including but not limited to attorney's fees, caused in whole or in part by any negligent or intentional acts, mistakes, errors, or omissions of CCSWA, or anyone directly or indirectly employed by or volunteering for CCSWA for whose acts any of them may be liable, whether authorized by CCSWA or not, including theft by CCSWA or any of its officers, agents, employees, guests, patrons, invitees or trespassers, arising out of or resulting from this Agreement.

#### **V. INSURANCE:**

CCSWA shall, at its own cost expense, secure and maintain during the term of this Agreement commercial general liability insurance including bodily injury, property damage, contractual, personal injury, and products/completed operations. Liability limits shall be no less than \$1,000,000, per occurrence/per location, combined single limit. Certificates of Insurance shall be delivered to the CITY prior to the commencement of this Agreement. Policies shall include endorsements naming the CITY and its employees as additional insureds.

CCSWA must carry Worker's Compensation Insurance to cover obligations imposed by federal and state statutes having jurisdiction of employees engaged in the performance of the work or services, and Employer's Liability Insurance of not less than \$100,000.00 for each accident, \$100,000.00 disease for each employee, and \$500,000.00 disease policy limit.

CCSWA must carry Commercial/Business Automobile Liability with a combined single limit for bodily injury and property damages of not less than \$1,000,000.00 for each occurrence on all vehicles CCSWA uses, whether owned or leased, in the performance of the work or services under this Agreement. Certificates of Insurance shall be delivered to the CITY prior to the commencement of this Agreement. Policies shall include endorsements naming the CITY and its employees as additional insureds.

The policies of insurance required under Section V of this Agreement are to be primary insurance policies and any insurance policy maintained by the City is considered excess insurance. The existence of excess insurance policies should in no way be construed to limit the requirements of insurance described herein.

Failure to provide required coverage and failure to comply with the terms and conditions of this Agreement shall not waive the contractual obligations herein. If the policy or policies are canceled or not renewed, the insurance company shall provide thirty (30) days written notice to the CITY prior to the effective date of such cancellation or termination.

## **VI. GENERAL CONDITIONS:**

- A. **Nondiscrimination.** CCSWA shall not discriminate against any person on the basis of race, religion, color, age, sex, disability, or national origin in the performance of this Agreement, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964), and with the Americans with Disability Act of 1990. In addition, CCSWA shall include similar requirements of subcontractors in any contracts entered into for performance of obligations under this Agreement.
- B. **Compliance With Law.** CCSWA shall comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. In addition, CCSWA shall include similar requirements of subcontractors in any contracts entered into for performance of obligations under this contract.
- C. **Binding on Successors.** The covenants and conditions herein contained apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto.
- D. **Attorney Fees and Costs.** In the event any action, suit or proceeding is brought for failure to observe any of the terms, covenants, or conditions of this Agreement, the prevailing party shall be entitled to recover as part of such action or proceeding, all litigation, arbitration and collection expenses, including, but not limited to, witness and expert fees and costs, court costs, and reasonable attorney fees.
- E. **Laws Governing.** This Agreement shall be governed by the laws of the State of Arizona, as to validity, interpretation and performance.
- F. **Venue.** Any and all suits for any and every breach of this Agreement, or other judicial proceeding for the enforcement or interpretation of this Agreement shall be instituted and maintained in any court of competent jurisdiction in the County of Yuma, State of Arizona.
- G. **Waiver.** The failure of either party to insist upon strict performance of any of the provisions of this Agreement, or to exercise any of the rights or remedies provided by this Agreement, or any delay in the exercise of any rights or remedies, shall not release either party from any of the responsibilities or obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of either party to insist upon strict performance of this Agreement.
- H. **Severability.** If any court finds or holds that any part, term or condition of this Agreement is illegal or in conflict with any law of the State of Arizona, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- I. **Integration.** This Agreement contains the entire Agreement between the parties. Any oral or written statement, promises, or inducements made by either party or agent of either

party that is not contained in this Agreement, or specifically referred to in this Agreement shall not be valid or binding; and this contract may not be enlarged, modified, or altered except in writing signed by the parties and endorsed hereon.

- J. No Partnership. Nothing in the Agreement is intended or shall be construed to constitute a partnership or joint venture between the parties, and neither party shall be deemed the principal, agent, officer, or member of the other.
- K. Time of the Essence. Time is of the essence in this Agreement. Unless otherwise specifically provided in this Agreement, any consent to delay in the performance of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not be applicable to any other obligation or transaction.
- L. Conflict of Interest. This Agreement shall be subject to the Conflict of Interest provisions of A.R.S. § 38-511, as amended.
- M. Environmental Conditions. CCSWA shall take all steps necessary to ensure compliance with all applicable federal, state, and local environmental laws, regulation and ordinances, and shall indemnify and hold the CITY harmless for any remediation required and from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death to any person or damage to any property or the environment of any nature whatsoever arising out of violations of such laws, regulations and ordinances.
- N. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery, or mailing by United States mail, postage prepaid, registered or certified, return receipt, addressed as follows:

To CITY:  
City of Yuma  
Attn: City Administrator  
One City Plaza  
Yuma, Arizona 85364

To: CCSWA  
Catholic Community Services in  
Western Arizona  
Attn: Eva J. Mendez-Counts  
Executive Director  
690 E. 32<sup>nd</sup> Street  
Yuma, Arizona 85365

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF YUMA  
municipal corporation

CATHOLIC COMMUNITY SERVICES  
OF SOUTHERN ARIZONA, INC. DBA CCS IN  
WESTERN ARIZONA, an Arizona non-profit  
corporation

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

By \_\_\_\_\_  
Eva J. Mendez-Counts, Executive Director

ATTEST:

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Steven W. Moore  
City Attorney

\_\_\_\_\_  
Date



City of YUMA

# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:** November 5, 2014

**DEPARTMENT:** Parks & Recreation

**DIVISION:** Administration

- Motion
- Resolution
- Ordinance - Introduction
- Ordinance - Adoption
- Public Hearing

**TITLE:**  
Intergovernmental Agreement: Yuma County Public Health Services District

**SUMMARY RECOMMENDATION:**  
Authorize the execution of an intergovernmental agreement ("IGA") with the Yuma County Public Health Services District ("YCPHSD") for the Arizona Nutrition Network Program to provide nutritional and physical activity programs to low-income children.

**REPORT:**  
This IGA between the YCPHSD specifically the Arizona Nutrition Network Program, and the city of Yuma Parks and Recreation Program will provide vital health and nutrition information and instruction to hundreds of participants in the City's Parks and Recreation programs. Working with the YCPHSD gives the City the nutritional expertise necessary to address the epidemic of childhood obesity affecting the children in our community.

Yuma County Public Health Services District will finance all staffing and materials needed in the performance of its services to the City. Services are provided by YCPHSD at no cost to the City.

The IGA is effective October 1, 2014 through September 30, 2015 with automatic annual renewal through September 30, 2020 unless cancelled by either party.

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	\$0.00		
	FISCAL IMPACT STATEMENT:			
ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK: 1. 2. 3. 4. 5.			
	IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?  <input checked="" type="checkbox"/> Department <input checked="" type="checkbox"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			10/28/2014
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			10/28/2014
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
Debbie Wendt			10/23/2014	
WRITTEN/SUBMITTED BY:			DATE:	
Anna Martinez			9/15/2014	

## **Intergovernmental Agreement for Arizona Nutrition Network Program**

This intergovernmental agreement (“Agreement”) is entered into between the Yuma County Public Health Services District (“YCPHSD”), specifically the Arizona Nutrition Network Program, and the City of Yuma Parks and Recreation Department (the “City”) pursuant to A.R.S. §§ 11-951 through 11-954, as amended, each acting through its respective governing bodies, undersigned.

- 1. Purpose.** To be an Arizona Nutrition Network partner that would provide nutrition and physical education support to participants in all programs within the City that are at or below 185% of the Federal Poverty Level.
- 2. Goal.** To provide nutrition and physical education programs to children from low-income families.
- 3. Term of Agreement.** This Agreement shall be effective October 1, 2014, through September 30, 2015 with automatic annual renewal through September 30, 2020 unless cancelled by either party according to Termination of Agreement.
- 4. Yuma County Public Health Services District Responsibilities.** The YCPHSD shall provide nutrition and physical education programs to children.
- 5. City Responsibilities.** The City shall allow the YCPHSD to provide nutrition and physical education programs to children participating in the City’s parks and recreations programs.
- 6. Funding.** The YCPHSD shall finance its responsibilities under this Agreement with funds allocated for nutrition and physical education programs from the United States Department of Agriculture (“USDA”). Funds distributed to the YCPHSD shall be handled and accounted for in accordance with the regular operating procedures established by the YCPHSD.
- 7. Modification and Termination.**

### A. Termination

Either party may terminate this Agreement if in its judgment such action is necessary due to: (a) funding availability; (b) statutory changes; or (c) either party’s non-compliance with this Agreement.

Any party wishing to terminate this Agreement shall state in writing the reason(s) therefore and notify the other party, effective thirty (30) days after notice to the other party. Except as otherwise required by law, upon the termination of this Agreement, the parties shall return any property to its original owner, including, but not limited to, any documentation or records of one party in the possession of the other; in which case, either party will return such documentation or records or certify that all such documentation and records have been destroyed.

## B. Modification

Any modification to this Agreement must be in writing and signed by both parties.

- 8. Non-Appropriation.** This agreement's validity is based upon the availability of funding from the USDA. If funding from the USDA is not available and/or not appropriated to the YCPHSD, this Agreement shall expire without penalty to the YCPHSD after written notice in accordance with this Agreement. The YCPHSD shall only use this provision as a fiscal measure and not for its convenience or to circumvent the requirements of this Agreement.
- 9. Non-Waiver of Enforceability.** Failure of the YCPHSD to enforce, at any time, any of the provisions of this Agreement, or to request the City to perform any of the provisions in the Agreement shall not be construed as a waiver of the provisions, nor affect the validity of this Agreement, or the right of the YCPHSD to enforce each and every provision.
- 10. Employment Status.** Except as otherwise provided by law, in the performance of this Agreement, all parties will be acting in their individual governmental capacities and not as agents, employees, partners, joint ventures, or associates of each other. The officers, employees, agents, or subcontractors of one party shall not be deemed or construed to be the employees or agents of the other party.
- 11. Compliance with Immigration Laws.** The parties warrant and represent to each other, that they are in compliance with all federal immigration laws and regulations that relate to their employees and compliance with A.R.S. §§ 41-4401 and 23-214, the Federal Immigration and Nationality Act, and all other federal immigration laws and regulations.
- 12. Worker's Compensation.** An employee of either party will be deemed to be an "employee" of both public agencies while performing work under this Agreement, for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer will be solely liable for the workers' compensation benefits that may accrue.

Each party will post a notice in accordance with the provisions of A.R.S. § 23-1022 in substantially the following form:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of worker's compensation."

- 13. Compliance with Non-Discrimination Laws.** The parties shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 99-4 and 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The parties shall comply with the Rehabilitation Act

of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, and the Americans with Disabilities Act.

- 14. Indemnification.** To the fullest extent permitted by law, each party agrees to indemnify, defend, and hold harmless the other party and other party's officers, officials, agents, employees and volunteers from all claims, damages, liabilities, losses, injuries, and causes of actions (collectively referred to as "Claims") arising out of, resulting from, or in any manner connected with this Agreement, but only to the extent such Claims are caused or contributed to by the negligent, reckless, or intentional acts, errors or omissions of the indemnifying party, its officers, officials, employees, agents, and/or volunteers.
- 15. Conflict of Interests.** This Agreement may be cancelled by either party for conflict of interest in accordance with A.R.S. § 38-511, which is incorporated herein by reference and made part hereof.
- 16. Notice and Requests.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given and received if:
- A. personally delivered to the undersigned representatives listed below at the addresses set forth below;
  - B. deposited in the U.S. Mail, postage prepaid, certified, return receipt requested, to the addresses set forth below; or
  - C. prepaid and given to a recognized and reputable overnight delivery service, such as UPS or FedEx, to be delivered to the addresses set forth below.
  - D. facsimile, with receipt, to the facsimile number listed below

For City of Yuma:       City of Yuma,  
                                  Attn: Parks & Recreation Director  
                                  One City Plaza  
                                  Yuma, AZ 85364

Fax: (928) 373-5244

For YCPHSD:            Yuma County Public Health Services District  
                                  Attn: Nutrition Program Coordinator  
                                  2200 W. 28<sup>th</sup> Street  
                                  Yuma, AZ 85364

Fax: (928) 726-8465

- 17. Integration Clause.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and will not be changed or modified except upon written agreement of the parties.

**18. Governing Law.** This Agreement shall be construed and interpreted under the laws of the State of Arizona.

In accordance with appropriate action by ordinance, resolution or otherwise attest:

\_\_\_\_\_  
Diana Gomez, Director  
Yuma County Public Health Services District

\_\_\_\_\_  
Mr. Greg Wilkinson, City Administrator  
City of Yuma

Date: \_\_\_\_\_

Date: \_\_\_\_\_

In accordance with A.R.S. § 11-952 this contract has been reviewed by the undersigned who have determined that this contract is in appropriate form and within the powers and authority granted to each respective public body.

\_\_\_\_\_  
Yuma County Attorney

\_\_\_\_\_  
Attorney for City of Yuma

Date: \_\_\_\_\_

Date: \_\_\_\_\_



City of YUMA

# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:** November 5, 2014

**DEPARTMENT:** City Administration

**DIVISION:** Economic Development

- Motion
- Resolution
- Ordinance - Introduction
- Ordinance - Adoption
- Public Hearing

**TITLE:**  
Mayor's Certificate: Industrial Development Authority Bonds

**SUMMARY RECOMMENDATION:**

City staff recommends approval of this motion authorizing the Mayor of the City of Yuma to sign the attached certificate concerning the issuance of the Industrial Development Authority bonds by the Industrial Development Authority of the City of Phoenix, Arizona.

**REPORT:** The Industrial Development Authority (IDA) of Phoenix will issue up to \$15,000,000 in bonds for a multi-family housing project in Yuma. Section 147(f) of the Internal Revenue Code of 1986 requires the approval of the governmental unit having jurisdiction over the proposed bond-financed facility location.

The proceeds from the bonds will be used to make a loan to FHR-Yuma ALF, LLC to: (a) pay the costs of acquiring, constructing, renovating, improving and equipping land and buildings to be used as multi-family housing and related facilities at 2600 South 4th Avenue in Yuma, Arizona, (b) fund any required reserve funds, (c) pay capitalized interest on the bonds, if any, and (d) pay certain expenses relating to issuance of the bonds. There is no pledge of funds from the City of Phoenix, the Phoenix IDA, or the City of Yuma. Repayment of bonds is the sole obligation of the borrower.

The attached certificate states that “the City is not the issuer of the Bonds, that the Bonds will not be a general obligation of the City and will not be a pledge or involve the faith and credit or the taxing power of the City.” The certificate further states “that nothing in this Certificate addresses the quality of the Bonds as investments or the likelihood of repayment of the Bonds or success of the Project.”

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	\$0.00		
	FISCAL IMPACT STATEMENT:			
ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK: 1. 2. 3. 4. 5.			
	IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?  <input checked="" type="checkbox"/> Department <input checked="" type="checkbox"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			10/28/2014
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			10/28/2014
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
Ricky Rinehart			10/23/2014	
WRITTEN/SUBMITTED BY:			DATE:	
Kevin Wilkins			10/7/2014	

CERTIFICATE OF THE MAYOR OF THE CITY OF YUMA, ARIZONA  
APPROVIING THE PLAN OF FINANCE FOR THE ISSUANCE OF  
MULTIFAMILY HOUSING REVENUE BONDS BY THE INDUSTRIAL DEVELOPMENT  
AUTHORITY OF THE CITY OF PHOENIX, ARIZONA

For the purposes of compliance with Section 147(f) of the Internal Revenue Code of 1986 (the “Code”), the Mayor of the City of Yuma, Arizona (the “City”), is an “applicable elected representative,” authorized to consent to the plan of finance for the issuance of multifamily housing revenue bonds by The Industrial Development Authority of the City of Phoenix, Arizona (the “Issuer”), at the request of, and for the benefit of FHR-Yuma ALF, LLC, an Arizona limited liability company, as borrower (the “Borrower”), the sole member of which is Family Housing Resources, Inc., an Arizona nonprofit corporation. The Issuer has indicated that it proposes to issue, from time to time, in one or more series, its multifamily housing revenue bonds in the aggregate principal amount not to exceed \$15,000,000 (collectively, the “Bonds”) and that the proceeds from the sale of the Bonds will be used to make a loan to the Borrower and used by the Borrower to (a) pay the costs of acquiring, constructing, renovating, improving and equipping land and buildings to be used as multifamily housing and related facilities to be owned by the Borrower and located at 2600 S. 4<sup>th</sup> Avenue in Yuma, Arizona, (b) fund any required reserve funds for the Bonds, (c) pay capitalized interest on the Bonds, if any, and (d) pay certain expenses relating to issuance of the Bonds (collectively, the “Project”).

The Issuer has further indicated that on August 18, 2014, a notice of the hearing concerning the issuance of the Bonds and the nature and location of the Project was published in a newspaper of general circulation in the City (Yuma Sun) and that on September 2, 2014, Ms. Minda M. Greene of the law firm of Byrne & Benesch P.C., conducted a public hearing (the “Hearing”) at the law firm’s offices located at 230 W. Morrison Street, Yuma, Arizona, 85364, at which interested persons were given an opportunity to express their views for or against the issuance of the Bonds and the nature and location of the Project.

Subject to the foregoing, the undersigned, Douglas J. Nicholls, Mayor of the City, hereby certifies as follows:

1. I am the Mayor of the City, elected directly by the people of the City; and
2. a summary of the Hearing has been made available to me, and

on behalf of the City and pursuant to, and for purposes of, Section 147(f) of the Code only, approves the issuance by the Issuer of the Bonds.

Any person relying on this Certificate does so acknowledging that the City is not the issuer of the Bonds, that the Bonds will not be a general obligation of the City and will not be a pledge of or involve the faith and credit or the taxing power of the City and that nothing in this Certificate addresses the quality of the Bonds as investments or the likelihood of repayment of the Bonds or success of the Project.

Dated: November \_\_\_\_, 2014

\_\_\_\_\_  
DOUGLAS J. NICHOLLS  
Mayor of the City of Yuma, Arizona



City of YUMA

# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:**

November 5, 2014

**DEPARTMENT:**

Community Development

**DIVISION:**

Community Planning

- Motion
- Resolution
- Ordinance - Introduction
- Ordinance - Adoption
- Public Hearing

**TITLE:**

Preannexation Development Agreement: Iglesia Betania of the Assemblies of God

**SUMMARY RECOMMENDATION:**

Authorize a Preannexation Development Agreement with Iglesia Betania of the Assemblies of God, an Arizona non-profit corporation, for property located at 3615 W. 8<sup>th</sup> Street

**REPORT:**

*Clerk Note: Continued from the October 15, 2014, Regular City Council Meeting per the Applicant's Request.*

The Iglesia Betania of the Assemblies of God church is the owner of property located at 3615 W. 8<sup>th</sup> Street (APN 664-01-128). The property is developed with a church and recently has been expanded. The expansion of the assembly area has prompted the need for a new water connection for fire sprinklers. The property is outside the Yuma City limits. The church currently has domestic water service but the fire sprinklers will require a new connection. The owner is requesting a connection to City water for fire safety. The attached resolution authorizes a Preannexation Development Agreement with the property owner to provide for a new City water connection.

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	\$0.00		
	FISCAL IMPACT STATEMENT:			

ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK:			
	<ol style="list-style-type: none"> <li>1.</li> <li>2.</li> <li>3.</li> <li>4.</li> <li>5.</li> </ol>			
IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?				
<input checked="" type="checkbox"/> Department <input type="checkbox"/> City Clerk's Office				

SIGNATURES	CITY ADMINISTRATOR:	DATE:
	Gregory K. Wilkinson	10/28/2014
	REVIEWED BY CITY ATTORNEY:	DATE:
	Steven W. Moore	10/28/2014
RECOMMENDED BY (DEPT/DIV HEAD):	DATE:	
Laurie Lineberry	10/2/2014	
WRITTEN/SUBMITTED BY:	DATE:	
Jennifer L. Albers	9/10/2014	

**RESOLUTION NO. R2014-34**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA,  
ARIZONA, AUTHORIZING AND APPROVING THE EXECUTION OF A  
PREANNEXATION DEVELOPMENT AGREEMENT WITH THE OWNER  
OF REAL PROPERTY LOCATED AT 3615 W. 8TH STREET**

WHEREAS, the City of Yuma (City) is authorized under Arizona Revised Statutes Section 9-500.05 to enter into development agreements with owners of real property situated in unincorporated lands; and,

WHEREAS, the City adopted its General Plan in 2012, and the use and development of the property is consistent with the goals and objectives of the City of Yuma General Plan, as amended; and,

WHEREAS, the property is located in unincorporated lands which is territory that is desired by the City to be annexed into the boundaries of the City; and,

WHEREAS, the property owner desires certain assurances and commitments from the City prior to and upon annexation of the property into the City of Yuma.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma as follows:

SECTION 1: The Preannexation Development Agreement between the property owners and the City of Yuma, attached as Exhibit A and incorporated as part of this Resolution by this reference, is approved according to its terms.

SECTION 2: The City Administrator is authorized and directed to execute the attached Preannexation Development Agreement on behalf of the City of Yuma.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

APPROVED:

\_\_\_\_\_  
Douglas J. Nicholls  
Mayor

ATTESTED:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven W. Moore  
City Attorney

## RESOLUTION NO. R2014-34

### EXHIBIT A PREANNEXATION DEVELOPMENT AGREEMENT

This Preannexation Development Agreement (“Agreement”), made and entered into pursuant to Arizona Revised Statutes (A.R.S.) § 9-500.05, is by and between Iglesia Betania of the Assemblies of God (“Owner”), an Arizona non-profit corporation, as owner of the real property located at 3615 W. 8<sup>th</sup> Street (APN 664-01-128), more particularly described and depicted in **Exhibit 1** attached and incorporated by reference (the “Property”), and the City of Yuma (“City”), an Arizona municipal corporation. Owner and City shall be referred to collectively as the “Parties” and individually as a “Party.”

### RECITALS

WHEREAS, the City adopted its General Plan in 2012, and the use and development of the Property is consistent with and in conformance to the goals and objectives of the City of Yuma General Plan, as amended; and,

WHEREAS, Owner desires to annex the Property into the City limits and seeks certain assurances and commitments from the City following annexation; and,

WHEREAS, the Parties have entered into this Agreement to provide for the annexation and use of the Property upon the terms and conditions contained herein.

NOW THEREFORE, in consideration of the above recitals, the Parties agree as follows:

1. Development Agreement. This Agreement, together with all attached exhibits, is a Development Agreement within the meaning of Arizona Revised Statutes § 9-500.05. On the condition that all of the terms and covenants of the Agreement are complied with in a prompt and timely manner, this Agreement shall also constitute a contractual commitment of the City to furnish water, sewer and fire service (water) to the Property outside of the City’s municipal boundaries pursuant to *Yuma Valley Land Co., LLC. v City of Yuma*, 227 Ariz. 28 (2011).

2. Term. In consideration of the City’s commitment to furnish fire service (water) to the Property for the operation of a church facility, as well as water and sewer service to any additional future buildings on the Property, it is the intent of the Parties that this Agreement will commence and become operative on the date of its execution (the “Effective Date”), and will terminate when the obligations of the Parties with respect to annexation are fully complied with, or the Parties mutually provide for termination in writing, whichever occurs first.

3. Annexation. Owner agrees to petition for and hereby consents to annexation of the Property into the City of Yuma pursuant to A.R.S. § 9-471. Owner’s agreement to annex shall operate as a covenant upon the Property, and upon recording this Preannexation Development Agreement, such covenant shall run with the land and with title to the Property until annexation is complete and no longer subject to referendum or appeal.

3.1. Owner and any subsequent owners agree that within 10 days of written request by an authorized representative of the City of Yuma, Owner or any subsequent owners or Owners’ successors will sign an

annexation petition seeking to annex any part or portion of the Property into the City of Yuma municipal boundaries. Upon receipt of the signed annexation petition, the City agrees to proceed with the annexation procedures established in the provisions of A.R.S. § 9-471 *et seq.* and, if determined to be in the best interest of the City, adopt the final ordinance annexing the property into the City corporate limits.

3.2. Upon annexation City Staff will bring forward to City Council a request for rezoning the Property to the zoning district in the City's Zoning Code that is consistent with (A.R.S.) § 9-471(L) which will permit densities and uses no greater than those permitted by the County of Yuma immediately before annexation.

4. Development Standards. The development and use of the Property shall be subject to all City, county, state and federal laws, regulations, rules, policies, fees in effect at the time of development ("Applicable Laws").

5. City of Yuma Development Fees and Water and Sewer Capacity Charges. A material consideration for the Parties' willingness to enter into this Agreement is to make City fire service (water) available to the Property and water and sewer service available in the future to any additional construction on the same terms and conditions as any other development within the City. To accomplish this, beginning on the Effective Date, any development and use of the Property is eligible to connect to City water and sewer service in accordance with the terms of this Agreement. Any fire service connection to City water, additional water connections, or other development of the Property, regardless of whether the initial building permit was issued by the County of Yuma prior to annexation of the Property, shall require the payment to the City of all City of Yuma Development Fees for any new construction (defined as any building construction commenced within two years prior or anytime after the Effective Date), including the streets facilities development fee, the police facilities development fee, the fire facilities development fee, the general government facilities development fee, water and sanitary sewer capacity and connection charges, water system development charges, sanitary sewer interceptor charge, any water or sewer payback amounts, and a payment to the City in lieu of tax ("PILOT") on any new construction that would otherwise have been due to the City if the building permit had been issued and the construction had occurred after annexation, equivalent to 1.7% of 65% of the total construction cost. In order to calculate the PILOT, Owner shall require each contractor and subcontractor having taxable activities in connection with development of the Property furnish the City with a worksheet showing all gross income received by them for the construction. If Owner provides satisfactory documentation showing that the City tax on construction has already been paid, no payment in lieu of City taxes on construction shall be due. Upon annexation of the Property, water and sanitary sewer service to the Property shall be available in accordance with Applicable Laws, and City of Yuma Development Fees, water and sanitary sewer capacity and connection charges, water system development charges, the sanitary sewer interceptor charge, and City tax on construction activity shall be collectable by the City in accordance with Applicable Laws and this contract provision. Monthly water and any sanitary sewer service charges shall be paid in accordance with and governed by the City of Yuma Utility Regulations. Until such time as annexation is complete, Owner and City acknowledge that Emergency Medical Service, Police, and Emergency Fire Response to the Property shall be through a Yuma County provider, but that upon annexation, such services shall be provided by the City of Yuma in accordance with Applicable Laws.

6. Additional Requirements. Prior to conveyance or transfer of any portion of the Property to a third party or the issuance of any water meter, fire service (water) connection, sewer connection, or any other permit for the Property, Owner shall record against title to the Property, utilizing the City's standard forms for such matters:

6.1 Median Covenant. A median covenant notifying future owners that a median may be constructed within the public right-of-way which may limit turning motions into and out of their lot or parcel.

6.2 Avigation and Range Disclosure, Easement & Waiver. An Avigation and Range Disclosure, Easement & Waiver against title to the Property notifying future owners of the proximity and activities of military facilities.

6.3 Encroachment and Right-of-Way Permits and Licenses Required. Owner acknowledges and agrees that any work performed in the public right-of-way, or the construction, installation or maintenance of any facility or other improvement in the public right-of-way requires a permit, license, franchise, or similar authorization issued by the controlling agency (the “Permitting Agency”) through the Permitting Agency’s normal and customary process for such issuance. Owner further acknowledges and agrees that City approval of any Site Plan or Plat over all or any portion of the Property does not constitute authorization for work or improvements in the public rights-of-way or any grant or waiver of any permitting requirements of the Permitting Agency. Owner shall meet all permitting requirements of the Permitting Agency, and shall obtain all necessary permits prior to commencing such work or improvements in the public rights-of-way.

## 7. Construction and Dedication of Public Improvements

7.1 Construction of Improvements. Any public improvements required for development of the Property shall be designed, constructed, and dedicated in accordance with Applicable Laws, including, without limitation, City’s normal plan submittal, review and approval processes, day-to-day inspection requirements, insurance requirements, and financial assurance requirements. Owner’s construction and installation of public improvements shall occur within the time-frames specified under Applicable Laws.

8. Utility Services. The City acknowledges that the property is within the City of Yuma potable water and sanitary sewer franchise service area, as approved by Yuma County. Upon application to the State of Arizona, Department of Environmental Quality, for a Notice of Intent, the City will issue the appropriate “Authorization to Connect to Public Sewer” and “Authorization to Connect to Public Water Service” letters for both water service and provided that Subsection 8.3 is complied with, sewer service.

8.1 Assignment of Water Rights. Owner and any subsequent owners shall sign an application or otherwise fully cooperate with the City to convert, transfer or assign any water or water delivery entitlements associated with the Property to the City.

8.2 Non-Potable Water. Nothing contained in this Agreement shall be construed as obligating owner to accept City water services for any non-potable water demand on the Property, provided that such non-potable water demand is served by the appropriate irrigation district.

8.3 Septic System. The Parties acknowledge that Owner has obtained permitting and installed a septic system pursuant to County of Yuma regulations and requirements. This Agreement shall not be interpreted to require the Property to connect to City sanitary sewer service until such time as the existing septic tank system is declared unserviceable as defined in City of Yuma Utility Regulations, as amended, or the Parties agree that such a connection shall be made.

9. City and Owner Cooperation.

9.1 Cooperation in Development Approvals. Subject to the terms of this Agreement and compliance with Applicable Laws including without limitation City's compliance with all required notice and public hearing requirements, City and Owner will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by Owner in connection with development of the Property.

9.2 Annexation requests. City agrees that City staff will support any annexation request by Owner for the Property that is consistent with this Agreement, the General Plan, and Applicable Laws.

10. Notice. Except as otherwise required by law, any notice, demand or other communication given hereunder, shall be in writing and shall be given by personal delivery or be sent by certified or registered U.S. Mail, return receipt requested, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph, or by electronic mail, facsimile machine or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid:

To City:  
City Administrator  
One City Plaza  
Yuma, Arizona 85364-1436

To Owner:  
Iglesia Betania of the Assemblies of God  
3615 W. 8<sup>th</sup> Street  
Yuma, AZ 85364

All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee, and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer (in each case regardless of whether such notice, demand or other communication is received by any other person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this paragraph). Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Any notice sent by email or facsimile machine shall be deemed effective upon confirmation of the successful transmission by the sender's electronic mail system or facsimile machine. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee.

11. Default. If either party defaults (the "Defaulting Party") with respect to any of such party's obligations, then the other party (the "Non-Defaulting Party") shall give written notice in the manner described in Section 10 above to the Defaulting Party. The notice shall state the nature of the default claimed and make demand that such default be corrected. The Defaulting Party shall then have:

- a. twenty (20) days from the date of receipt of such notice within which to correct such default if it can be reasonably corrected by the payment of money, or
- b. sixty (60) days from the date of receipt of such notice to cure such default if action other than payment of money is reasonably required, or
- c. if any such non-monetary default cannot reasonably be cured within sixty (60) days for reasons beyond its control (financial inability, construction delays and market conditions excepted), then

such longer period as may be reasonably required, provided and so long as such cure is promptly commenced within such period and diligently prosecuted to completion.

11.1 Remedies. If the default is not corrected within the time periods described in Section 11 above, the Non-defaulting Party shall have all remedies available to it at law or in equity, subject to the limitations set forth herein. Owner or City, or any successor-in-interest or assignee, may institute a legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including but not limited to suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages, provided that claims for damages shall be limited to actual damages as of the time of entry of judgment. The Parties hereby waive any right to seek consequential, punitive, multiple, exemplary or any damages other than actual damages.

11.2 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default by the non-defaulting Party or with respect to the particular default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the default involved.

11.3 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other default by the other Party.

## 12. Representations

12.1 Owner Representations. Owner represents and warrants that:

a. Owner has the full right, power and authorization to enter into and perform this Agreement and the obligations and undertakings of Owner under this Agreement, and the execution, delivery and performance of this Agreement by Owner has been duly authorized, agreed to, and is in compliance with any organizational documents of Owner.

b. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

c. Owner will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

d. As of the date of this Agreement, Owner knows of no litigation, proceeding or investigation pending or threatened against or affecting Owner, which could have a material adverse effect on Owner's performance under this Agreement that has not been disclosed in writing to City.

e. This Agreement (and each undertaking of Owner contained herein) constitutes a valid, binding and enforceable obligation of Owner according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether

considered at law or in equity.

f. The execution, delivery and performance of this Agreement by Owner is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Owner is a party or to which owner is otherwise subject.

g. Owner has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects.

h. Owner has had opportunity for independent legal review of this Agreement by counsel of its choosing prior to the execution hereof.

13. City representations. City represents and warrants to Owner that:

a. City has the right, power and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the Yuma City Charter and the Yuma City Code.

b. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

c. City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

d. City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Owner.

e. This Agreement (and each undertaking of City contained herein), constitutes a valid, binding and enforceable obligation of City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditor's rights and by equitable principles, whether considered at law or in equity.

f. The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject.

g. City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

14. Rights of Lenders. Financing or refinancing for acquisition, development and/or construction of the Property and/or improvements may be provided, in whole or in part, from time to time, by one or more Third Parties (individually a "Lender", and collectively the "Lenders"). If a Lender is permitted, under the terms of a non-disturbance agreement with City to cure the event of default and/or to assume Owner's position with

respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Owner under this Agreement.

15. Successors and Assigns. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors in interest and assigns of each of the Parties pursuant to A.R.S. § 9-500.05D, and will run with the land during the Term of the Agreement as defined in Section 2.

16. Attorneys' Fees. In the event of commencement of a legal action in an appropriate forum by a Party to enforce any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing Party in any such action shall be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Party and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

17. Miscellaneous.

17.1 Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Yuma (or, as may be appropriate, in the Justice Courts of Yuma County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 17.1.

17.2 A.R.S. § 38-511. Notice is hereby given of the applicability of A.R.S. § 38-511.

17.3 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.

17.4 Recordation. Upon receipt of the recording fee from Owner, the City shall record a copy of this Agreement no later than ten (10) days from date of entering into this Agreement pursuant to A.R.S. § 9-500.05.

17.5 Estoppel Certificate. The Parties agree that, upon not less than twenty one (21) business days prior written request from a Party to this Agreement, a requested Party shall execute, acknowledge and deliver to the Party making such request a written statement certifying to the current status of the Agreement, including whether or not, the requested Party has actual knowledge that any Party is in default of any obligation or duty set forth in this Agreement. Any such certificate may be relied on by a prospective purchaser of any lot within the Property, or any prospective Lender.

17.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

17.7 Headings. The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning of construction of any of the provisions hereof.

17.8 Exhibits and Recitals. Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof. The Recitals set forth at the beginning of this Agreement are hereby acknowledged and incorporated herein and the Parties hereby confirm the accuracy thereof.

17.9 Further Acts. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (i) this Agreement as in full force and effect, and (ii) the performance of the obligations hereunder at any time.

17.10 Time is of the Essence. Time is of the essence in implementing the terms of this Agreement.

17.11 No Partnerships; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person or entity not a Party hereto, and no such other person or entity shall have any right or cause of action hereunder, except for transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Owner under this Agreement.

17.12 Amendment. No change or addition is to be made to this Agreement except by written amendment executed by City and Owner. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Yuma County, Arizona.

17.13 Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses City or Owner from undertaking any contractual commitment to perform under any provision hereunder, the remaining portions of this Agreement shall remain in full force and effect, and the Parties will negotiate diligently in good faith for such amendments of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.

17.14 Business Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

17.15 Individual Nonliability/Damages. No City Council member, official, representative, agent, attorney or employee shall be personally liable to any of the other Parties hereto, or to any successor in interest to such Parties, in the event of any default or breach by City or for any amount which may become due to a Party or its successor, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Owner shall be limited to the Property and any improvements thereon, and shall not extend to or be enforceable against the individual assets of any member, officer, or trustee of Owner.

17.16 Proposition 207 Waiver. Owner hereby waives and releases City from any and all claims under Arizona Revised Statutes § 12-1134, et seq., including any right to compensation for reduction to the fair market value of the Property or any portion thereof, as a result of City's approval or failure to approve this Agreement,

the Annexation Ordinance, or adoption or failure to adopt the zoning designation, and all related annexation, zoning, land use, building and development matters arising from, relating to, or reasonably inferable from this Agreement, including the approval, rejection or imposition of conditions or stipulations upon the approval of the zoning designation. The terms of this waiver shall run with the land and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement through their authorized representatives.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

APPROVED:

CITY OF YUMA

IGLESIA BETANIA OF THE ASSEMBLIES OF GOD

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

By \_\_\_\_\_  
Victor Venalanzo  
President

ATTEST:

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

APPROVED AS TO FORM:

By \_\_\_\_\_  
Steven W. Moore  
City Attorney



## **EXHIBIT 1**

### **Legal Description and Depiction of the Property**

A portion of the Northwest quarter (NW1/4) of the Northwest quarter (NW1/4) of Section 30, Township 8 South, Range 23 West of the Gila and Salt River Base and Meridian, Yuma County, State of Arizona more particularly described as follows:

The North 36 feet of Lot 3, Block 2; the South 50.5 feet of Lot 1, Block 2 and all of Lot 2, Block 2, WILLIAMS SUBDIVISION, according to the plat of record in the office of the County Recorder of Yuma County, State of Arizona in Book 2 of Plats, page 58;

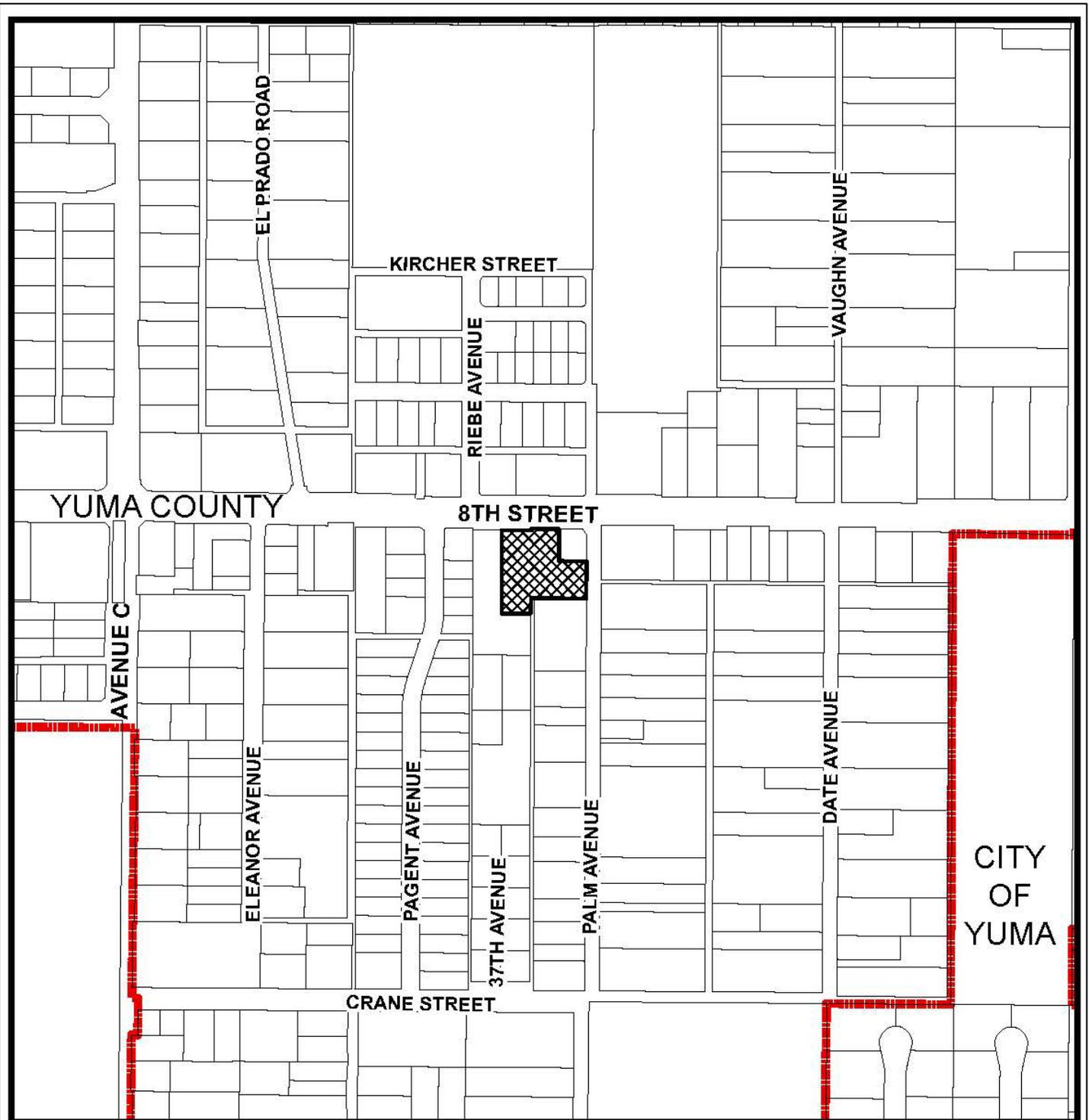
TOGETHER with the 10 foot alley lying adjacent to the North line of said Lot 3 , as abandoned by Yuma County Board of Supervisors in Resolution No. 3-21, recorded in Fee No. 2005-20605;

EXCEPT the North 12 feet deeded to the County of Yuma in instrument recorded in Fee No. 2007-10977.

AND the East 80 feet of the North 276 feet of the West half of the East half of the East half of Government Lot 1, Section 30, Township 8 South, Range 23 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;

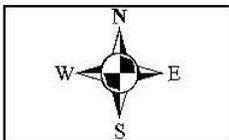
EXCEPT the North 33 feet to the County of Yuma for road Right-of-Way

EXCEPT the North 12 feet deeded to the County of Yuma in instrument recorded in Fee No. 2007-10977.  
The above described parcel contains 39,646 square feet or 0.910 acres more or less.



## LOCATION MAP

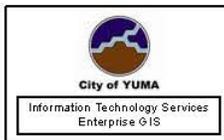
LOCATION OF SUBJECT PROPERTY



Prepared by: J.W.B.

---

Checked by:



Date: 08-26-14

---

Revised:

---

Revised:

Case #:

---

AGR-7082-2014



City of YUMA

# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:** November 5, 2014

**DEPARTMENT:** Public Works

**DIVISION:** Street Maintenance

- Motion
- Resolution
- Ordinance - Introduction
- Ordinance - Adoption
- Public Hearing

**TITLE:**  
Streetlight Pole Use License Agreement: Arizona Public Service Company

**SUMMARY RECOMMENDATION:**  
Authorize execution of a license agreement (Pole Use Agreement) with Arizona Public Service Company (APS) to allow the City to attach streetlight fixtures on APS power poles when necessary.

**REPORT:**  
APS is updating contracts with its government customers to reflect the changing services APS now provides. Under Resolution R96-40 (adopted by City Council on September 18, 1996), the City acquired title to existing APS streetlights within City limits. Resolution R96-40 also approved a pole use agreement allowing the City to continue to operate streetlights that were affixed to power distribution poles owned by APS. Of the approximately 7,000 streetlights the City operates and maintains within City limits, approximately 650 are affixed to APS power distribution poles.

Pursuant to this Pole Use Agreement, APS will grant a license to the City to attach streetlights to APS power distribution poles. This will allow the City to avoid the expense of purchasing and installing a dedicated streetlight pole for the streetlight fixture if APS has an existing power distribution pole in the area. Affixing streetlight fixtures to existing power distribution poles is especially desirable in higher density developmental areas as the City is able to avoid purchasing additional property to install dedicated streetlight poles to service the area.

By adopting this Resolution R2014-33, City Council will authorize the City Administrator to execute the Pole Use Agreement with APS, which will replace and supersede the former pole use agreement adopted by City Council under Resolution R96-40.

FISCAL REQUIREMENTS	CITY FUNDS:	\$5,000.00	BUDGETED:	\$5,000.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP: 101-40-32.6206	
	TOTAL:	\$5,000.00		
	FISCAL IMPACT STATEMENT:			
ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK: 1. 2. 3. 4. 5.			
	IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?  <input checked="" type="checkbox"/> Department <input checked="" type="checkbox"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			10/28/2014
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			10/28/2014
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
Joel Olea			9/16/2014	
WRITTEN/SUBMITTED BY:			DATE:	
Teresa Blackburn			9/15/2014	

**RESOLUTION NO. R2014-37**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA, AUTHORIZING A LICENSE AGREEMENT FOR THE PURPOSE OF ATTACHING CITY OF YUMA STREETLIGHT FIXTURES ON ELECTRIC DISTRIBUTION POLES OWNED BY ARIZONA PUBLIC SERVICE COMPANY FOR THE OPERATION OF THE CITY OF YUMA STREETLIGHT SYSTEM**

WHEREAS, pursuant to Resolution R96-40, the City of Yuma and Arizona Public Service Company entered into an agreement on September 18, 1996, where title to existing streetlights and the duty to operate streetlights was transferred from Arizona Public Service Company to the City of Yuma; and,

WHEREAS, the City of Yuma currently operates approximately 7,000 streetlights within the city limits of the City of Yuma for the public benefit; and,

WHEREAS, approximately 650 of the City of Yuma's 7,000 streetlights in operation are currently located on Arizona Public Service electric distribution poles; and,

WHEREAS, a license agreement with Arizona Public Service permitting the City of Yuma to attach streetlight fixtures to Arizona Public Service electric distribution poles avoids costs associated with purchasing and installing a dedicated streetlight pole for each streetlight fixture; and

WHEREAS, the cost savings is in the public interest and will be of public benefit.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma as follows:

SECTION 1: The *Streetlight Pole Use License Agreement Between Arizona Public Service Company and City of Yuma*, attached as Exhibit A and by this reference incorporated as part of this Resolution, is approved according to its terms.

SECTION 2: That the City Administrator is authorized and directed to execute the *Streetlight Pole Use License Agreement Between Arizona Public Service Company and City of Yuma* on behalf of the City of Yuma.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

APPROVED:

\_\_\_\_\_  
Douglas J. Nicholls  
Mayor

ATTESTED:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven W. Moore  
City Attorney

STREETLIGHT POLE USE LICENSE AGREEMENT

BETWEEN

ARIZONA PUBLIC SERVICE COMPANY

AND

CITY OF YUMA

APS CONTRACT NO. 201407001

CITY OF YUMA CONTRACT NO. \_\_\_\_\_

Effective Date \_\_\_\_\_

STREETLIGHT POLE USE LICENSE AGREEMENT

BETWEEN

ARIZONA PUBLIC SERVICE COMPANY

AND

CITY OF YUMA

TABLE OF CONTENTS

SECTION	PAGE
1. PARTIES .....	1
2. RECITALS .....	1
3. DEFINITIONS.....	2
4. LICENSE FOR ATTACHMENT TO POLES .....	3
5. TERM .....	7
6. TERMINATION.....	7
7. DESIGNATED REPRESENTATIVES AND NOTICES .....	8
8. FISCAL YEAR.....	9
9. UNCONTROLLABLE FORCES.....	10
10. NON-WAIVER.....	11
11. BILLING, PAYMENT AND TAXES.....	12
12. ANNEXATION AND ACQUISITION OF ADDITIONAL STREETLIGHT FACILITIES .....	13

13.	GOVERNING LAW AND VENUE .....	13
14.	SEVERABILITY .....	13
15.	ASSIGNMENT.....	14
16.	NO THIRD PARTY BENEFICIARIES.....	14
17.	SURVIVABILITY OF OBLIGATIONS AND LIABILITIES .....	15
18.	PRECEDENCE.....	15
19.	ENTIRE AGREEMENT, MODIFICATION .....	15
20.	INDEMNIFICATION.....	16
21.	LEGAL REQUIREMENTS.....	16
22.	EXECUTION AND EFFECTIVE DATE .....	17

**EXHIBITS**

EXHIBIT A – ANNUAL ATTACHMENT FEE .....	A-1
EXHIBIT B – INSTALLATION/REMOVAL COSTS.....	B-1

STREETLIGHT POLE USE LICENSE AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
CITY OF YUMA

1. PARTIES

The parties to this Streetlight Pole Use License Agreement (“License Agreement”) are CITY OF YUMA, an Arizona municipal corporation, (“City”), and ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation (“APS”), hereinafter referred to individually as “Party” and collectively as the “Parties.”

2. RECITALS

2.1 The Parties have entered into a streetlight sales agreement (APS Contract No. 48292 dated February 27, 1997) in which City has purchased streetlight facilities from APS within the existing City boundaries.

2.2 Additionally, the Parties entered into: i) a Streetlight Energy Agreement (APS Contract No. 48287 dated February 27, 1997) pursuant to which APS sells energy to City for the Streetlight Facilities (the “Energy Agreement”); ii) an Operations, Maintenance and Facilities Agreement (APS Contract No. 48289 dated February 27, 1997) pursuant to which APS operates and maintains City’s Streetlight Facilities within APS’ service territory (the “O M & F Agreement”); and iii) a Master License Agreement (APS Contract No. 48288 dated December 11, 1996) pursuant to which City’s Streetlight Facilities are allowed to be attached to APS’ electric distribution poles (the “Original License Agreement”).

2.3 The Parties now desire to enter into this License Agreement pursuant to which the City may attach its streetlights to APS’ electric distribution poles.

2.4 The Parties desire that this License Agreement replace and supersede the Original

License Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the promises, covenants, and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant, promise and agree as follows:

3. DEFINITIONS

When initially capitalized in this License Agreement or amendments thereto, the following words or phrases shall have the meanings specified:

- 3.1 ACC: Arizona Corporation Commission.
- 3.2 Annual Attachment Fee: The fee set forth in Exhibit A assessed annually for attachment of Streetlight Facilities to each APS Pole.
- 3.3 APS Pole(s): Electric distribution poles owned by APS for which APS authorizes the attachment of the Streetlight Facilities.
- 3.4 Due Date: The thirtieth (30th) calendar day after the invoice date.
- 3.5 Effective Date: The date specified in Section 24, Execution and Effective Date.
- 3.6 Interest: The per annum rate of 18% compounded monthly.
- 3.7 Joint Pole Participant: Any entity with whom APS has entered into an agreement or arrangement to reciprocally own and furnish poles for joint use and by which both parties have agreed to a method of pro-rating the fully allocated costs of ownership and maintenance of such joint use facilities, including the safety space and supporting structure.
- 3.8 License: A revocable, nonexclusive authorization to attach Streetlight Facilities to APS Poles, subject to the terms of this License Agreement. Such License(s) shall be issued by APS, in its sole discretion.

- 3.9 Other Licensee(s): Any entity, other than City, whom APS has authorized under any agreement or arrangement to attach its facilities to APS' Poles, for any purpose.
- 3.10 Point of Delivery: The point where energy is delivered shall be where APS' electric service wire connects to (i) City's electric service wire, one foot beyond the end of the mast arm for overhead service to the streetlight or, (ii) at the City's protection fuse installed in the APS-owned secondary junction box for underground service to the streetlight or, (iii) at the City's electric service protection fuse or termination point located in the hand-hole of the City Pole for underground service to the streetlight when no APS-owned secondary junction box exists or, (iv) five (5) feet from the City Pole for underground service when there is no hand-hole on the City Pole or an APS-owned secondary junction box.
- 3.11 Streetlight Facilities: The facilities owned by the City (within APS' service territory) and generally described as metal streetlight poles dedicated only to streetlighting that may support APS' secondary conductors serving the streetlights and no other attachment(s); mast arms; luminaires and lamps; protection fuses; photo controls; external ballasts; and electric service wires which extend from the luminaires of the individual streetlight installation to the Point of Delivery.

#### 4. LICENSE FOR ATTACHMENT TO POLES

- 4.1 Grant of License: Subject to the terms and the other provisions of this License Agreement, APS hereby grants to City a License to maintain the location of those Streetlight Facilities which, on the Effective Date of this License Agreement, are attached to APS Poles, in the location that they are then attached. Further, APS agrees to issue to City, upon its request, from time to time, subsequent to the

Effective Date of this License Agreement, new Licenses authorizing the attachment of City owned Streetlight Facilities to various APS Poles as designated by APS in its sole discretion.

4.2 Other Rights Reserved:

4.2.1 Neither the use of APS Poles as authorized herein nor payment of any fees or charges required under this License Agreement shall create or vest in City any ownership or property rights in such APS Poles. City's right here in shall be and remain a license. Neither this License Agreement nor any License granted, or which may be granted, hereunder shall constitute an assignment of any of APS' rights to use any public thoroughfare or other public or private property at the location of APS Poles.

4.2.2 Nothing contained in this License Agreement shall be construed to compel APS to construct, retain, extend, place, or maintain APS electric distribution poles or other facilities for the benefit of City which are not needed for APS' own service requirements. If it becomes necessary or desirable to relocate or remove APS Poles, APS will notify City of the need to relocate or remove City's Streetlight Facilities located thereon thirty (30) calendar days prior to such relocation or removal; except that in an emergency, the notice will be provided within thirty (30) calendar days after the relocation or removal. APS will perform the relocation or removal of the Streetlight Facilities located on APS Poles. The relocation or removal will be at City's expense in accordance with Exhibit B, unless such relocation or removal is made at APS' request or convenience. If APS relocates or removes its APS Poles at the request of City or a third

party, City or the third party (as the case may be) shall be responsible to pay the costs of relocating or removing the Streetlight Facilities located thereon. Where the APS Pole has been knocked down, all requests for re-installing Streetlight Facilities on the re-installed APS Pole, or installing new Streetlight Facilities on an APS Pole, shall be requested in writing by City. At City's request, APS will provide the City with a project-specific cost estimate or unit cost estimate of the work to be done. APS shall not commence the work until such estimate has been paid by City, except that APS, at its sole option, may accept a letter of understanding (prior to any work being performed by APS) in which City commits to pay APS for such services upon completion of the services.

4.2.3 Nothing contained in this License Agreement shall be construed as a limitation, restriction, or prohibition against APS with respect to any agreement and/or arrangement which APS has previously entered into or may in the future enter into with any third parties regarding the APS Poles covered by this License Agreement. The rights of City shall be subject to an existing agreement and/or arrangement, entered into prior to installation of the Streetlight Facilities, but shall have priority over any such future agreement(s) and/or arrangement(s) entered into after the installation of the Streetlight Facilities.

4.2.4 No License granted hereby or in the future under this License Agreement shall extend to any of APS' electric distribution poles where the placement of the Streetlight Facilities would result in terminating the rights of APS, Other Licensees, and/or Joint Pole Participants, to occupy the property on

which such electric distribution poles are located. If the existence of the Streetlight Facilities on APS Poles would cause a termination of the right of APS, Other Licensees, and/or Joint Pole Participants, or any of them, to occupy such property, upon the written consent of City which shall not be unreasonably withheld, APS shall be authorized to remove the Streetlight Facilities at Cities expense. The removal costs will be in accordance with Exhibit B

4.3 Annual Attachment Fees:

4.3.1 The Annual Attachment Fee shall be as specified in Exhibit A hereto.

4.3.2 The Annual Attachment Fee shall be adjusted by January 1 of each year, and become effective July 1 of that same year. The amount of such adjustments shall be calculated by utilizing the cost index numbers from the most recent edition of the Handy Whitman Index of Public Utility Construction Costs (“H/W Index”), Plateau Region (E-5), Distribution Plant; Poles, Towers and Fixtures (FERC Account No. 364). The percentage of change in the annual average index numbers will be applied to the previous year’s Annual Attachment Fee to determine the current year’s Annual Attachment Fee, effective July 1st of each year. The initial Annual Attachment Fee for attachments in existence prior to the Effective Date of this License Agreement shall be assessed at the annual rate set forth in Section 4.3.1 above, prorated from the effective date of this License Agreement to June 30<sup>th</sup> which is the end of the City’s fiscal year.

4.3.3 The total Annual Attachment Fee assessed as of the beginning of each fiscal year (July 1<sup>st</sup>) shall be based upon the total number of licensed APS

Poles on record, multiplied by the Annual Attachment Fee effective for that year. The total number of pole attachments on record shall be the number of pole attachments for which a License has been issued, less the number of pole attachments whose License has been terminated, as of the last day of the previous year.

Limitation of Liability and Reservation of Rights:

APS shall not be liable to City for any special, incidental, indirect, or consequential loss or damage arising out of City's use of APS Poles and/or Streetlight Facilities being located thereon. APS reserves to itself, its successors and assigns, the right to locate and maintain its poles, including the APS Poles, and to operate its facilities in such a manner as will best enable APS to fulfill its electric service requirements.

5. TERM

This License Agreement shall remain in effect until terminated in accordance with the Termination section below.

6. TERMINATION

6.1 Termination at Will: Either Party has the right to terminate this Agreement at any time and for any reason by giving the other Party ninety (90) days advanced written notice for the termination

6.2 Termination for Default: If City or APS fails to comply with any of the terms and conditions of this License Agreement or defaults in any of its obligations under this License Agreement, and fails within thirty (30) days after the date of written notice from City or APS to correct such noncompliance or default, City or APS may, at its option and in addition to any other rights or remedies it may have,

immediately terminate this License Agreement issued pursuant hereto, under which such noncompliance or default has occurred.

6.3 Removal of Streetlight Facilities Following Termination:

6.3.1 In the event of termination of this License Agreement and/or any License(s), APS may remove City's Streetlight Facilities from APS Poles affected by such termination; provided, however, that City shall be liable for and pay all applicable attachment fees to APS until the Streetlight Facilities are actually removed from APS Poles. City shall pay APS for the removal of City's Streetlight Facilities from APS Poles as specified in Exhibit B.

6.4 Cancellation By City: The Parties hereto acknowledge that this License Agreement is subject to cancellation by the City for a conflict of interest pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

7. DESIGNATED REPRESENTATIVES AND NOTICES

7.1 Designated Representatives: All communications relating to the day-to-day activities under this License Agreement shall be exchanged between the following designated representatives who are authorized to act on behalf of that Party.

Either Party may change said designated representatives from time to time by giving advance written notice.

**APS:**  
Arizona Public Service Company  
Attention: Streetlight Management  
P.O. Box 53999, Station 3536  
Phoenix, Arizona 85004  
Telephone: 602-328-1932  
FAX: 602-371-6733

**City:**  
City of Yuma  
Attention: Public Works Director  
155 West 14<sup>th</sup> Street  
Yuma, Arizona 85364-4736

7.2 Notices: Any legal notices and communications required or provided for hereunder shall be in writing and shall be send by first class, registered, certified or express mail, return receipt requested, postage prepaid, or by comparable delivery service, or by hand, or by facsimile (with the original sent by first class mail) to the following:

**To APS:**  
Arizona Public Service Company  
Office of Corporate Secretary  
400 N. 5<sup>th</sup> Street, Station 8602  
Phoenix, Arizona 85004

**To City:**  
City of Yuma  
Attention: City Administrator  
One City Plaza  
Yuma, Arizona 85364-1436

With a copy to:

Arizona Public Service Company  
Attention: Streetlight Management  
Station 3536  
P.O. Box 53999  
Phoenix, AZ 85072-3999

City of Yuma  
Attention: Public Works Director  
155 West 14<sup>th</sup> Street  
Yuma, Arizona 85364-4736

7.3 Invoices and Payments: Invoices and payments pursuant to this License Agreement shall be sent to:

City of Yuma  
Attention: Accounting Division  
One City Plaza  
Yuma, Arizona 85364-1436

Arizona Public Service Company  
P.O. Box 53920, STA 9996  
Phoenix, AZ 85072-3920

8. FISCAL YEAR

The obligation of City to make any payments hereunder is subject to the provisions of the Arizona State Budget Law and City Code provisions which require that the City Council make necessary appropriations for such payments in each fiscal year. City shall take all

steps reasonably available to it to cause such payments to be included in its budget presented to City Council each fiscal year in the form of an appropriation for monies that will be due under this License Agreement during the subsequent year. However, the foregoing does not alter City's obligation to pay for services actually received, nor does it change APS' right to terminate this License Agreement for non-payment in accordance with the Termination section above. To facilitate the budget process, the Annual Attachment Fee shall be adjusted by January 1<sup>st</sup> of each year and become effective July 1<sup>st</sup> of that same year as set forth in Section 4.3.2 above.

9. UNCONTROLLABLE FORCES

9.1 Definition: An "Uncontrollable Force" shall mean any cause beyond the control of the Party affected, including but not restricted to failure of or threat of failure of facilities, flood, earthquake, geohydrologic subsidence, tornado, storm, fire, lightning, epidemic, war, riot, commotion, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority (whether valid or invalid), and action or nonaction by or inability to obtain or keep the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence it shall be unable to overcome. It is the intent of the Parties that the foregoing examples shall not be used as a limitation on the term "uncontrollable force" in interpreting or construing this License Agreement. Rather the Parties intend a liberal interpretation of the term and accordingly intend that in questions of assumption of risk or contingencies, whether foreseen or not, the presumption shall be that risks not explicitly assumed by a Party are not assumed by said Party if, in fact, they are uncontrollable even with foresight.

9.2 Effect of Uncontrollable Force: If either Party, by reason of an Uncontrollable Force, is rendered unable, wholly or in part to perform its obligations under this License Agreement, then upon said Party giving notice and particulars of such Uncontrollable Force in writing to the other Party promptly after learning thereof, the obligations of said Party so far as they are affected by such Uncontrollable Force shall be suspended during the continuance of any inability so caused but for no longer period and the effects of such cause shall, so far as possible, be remedied with all reasonable dispatch. However, nothing contained herein shall be so construed as to require a Party to settle any strike or labor dispute in which it may be involved. The affected Party shall not be responsible for its delay in performance under this License Agreement during delays caused by an Uncontrollable Force nor shall such Uncontrollable Force give rise to a claim for damages or constitute default.

9.3 Uncontrollable Force Limit: If a Party's obligation to perform is suspended for a period of ninety (90) continuous calendar days due to an Uncontrollable Force, or for any other reason, the other Party shall have all rights and remedies of law and equity, including but not limited to, the right to terminate this Agreement.

10. NON-WAIVER

The failure of either Party to insist upon strict performance of any of the provisions of this License Agreement, or to exercise any of the rights or remedies provided by this License Agreement, or any delay in the exercise of any of the rights or remedies, shall not release either Party from any of the responsibilities or obligations imposed by law or by this License Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this License Agreement.

11. BILLING, PAYMENT AND TAXES

11.1 Annual Attachment Fee: The initial total Annual Attachment Fee shall be payable within thirty (30) calendar days of the Effective Date of this License Agreement, and shall be pro-rated through the end of City's current fiscal year. Thereafter, the total Annual Attachment Fee shall be payable in advance, as of July 1<sup>st</sup>, which is the first day of the applicable fiscal year.

11.2 Payment: APS shall receive payment from City on or before the Due Date.

Payment shall be mailed to the address specified in Section 7.3. Amounts which are not paid when due shall bear Interest from the Due Date until such time as payment is received by APS.

11.3 Disputed Bill: If any portion of any bill is disputed, the undisputed amount shall be paid when due.

11.3..1 The Party discovering the error shall notify the other Party in writing of the disputed amount and the reasons the charges are believed to be in error.

Within 60 days, the Parties shall meet to resolve the dispute. If the dispute cannot be resolved within 180 days, either Party may request mediation, or the dispute may be referred to a mediator mutually agreed upon by the Parties to resolve the dispute.

11.4 Delinquent Bill: If City's bill becomes delinquent, due to non-payment for a period of thirty (30) days after the invoice date, APS shall provide the City (30) days written notice of default before APS exercises any remedies. APS shall have the right at its option:

11.4.1 To exercise any remedy provided by law, including immediate termination of this License Agreement. Suspension and/or termination shall not

relieve City of its obligation to pay any amounts previously due nor shall such suspension or cancellation invalidate any other agreement with City.

11.4.2 To charge interest at the rate of 18% per annum for all charges unpaid after the thirty (30) day period until the past due charges, including interest accrued thereon, are paid in full.

The failure of APS to exercise such sanction shall not constitute a waiver by APS of any rights hereunder.

11.5 Taxes: City shall pay any and all applicable sales tax, transaction privilege tax, use tax or like tax assessed or assessable as the result of APS providing services hereunder.

12. ANNEXATION AND ACQUISITION OF ADDITIONAL STREETLIGHT FACILITIES

If City annexes additional property or additional Streetlight Facilities, the terms and conditions of this License Agreement will apply upon the effective date of said annexation or purchase.

13. GOVERNING LAW AND VENUE

This License Agreement shall be governed, construed and enforced in accordance with the substantive laws of the State of Arizona. Any suit to enforce this License Agreement shall be brought in the Superior Court of Maricopa County.

14. SEVERABILITY

If any provision of this License Agreement is determined by a court of competent jurisdiction to be unenforceable or illegal, then said provision(s) or amendments thereto shall be severed from this License Agreement and the remainder shall continue in full force and effect unless otherwise mutually agreed between the Parties.

15. ASSIGNMENT

Neither Party shall assign its rights, nor delegate its duties, or otherwise dispose of any right, title, or interest in all or any part of this License Agreement, or assign any monies due or payable hereunder without the prior written consent of the other Party. Such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may, without the need for consent from the other Party, (a) transfer, pledge, or assign this License Agreement as security for any financing; (b) transfer, assign or delegate this License Agreement or its rights hereunder or delegate or subcontract its obligations hereunder to an affiliated entity, parent entity or subsidiary of such Party, or (c) transfer, assign or delegate this License Agreement to any person or entity succeeding to all or substantially all of the assets of such Party. To the extent a transfer does not require consent, the transferring Party shall provide notice within thirty (30) calendar days to the other Party of the transfer and the effective date thereof. Any transfer in violation of this Section 15 shall be deemed null and void.

16. NO THIRD PARTY BENEFICIARIES

APS acknowledges and represents that Section 15 of this License Agreement entitled, "ASSIGNMENT," is not intended to and does not create any claims, rights, remedies, or benefits exercisable by any third party.

City acknowledges and represents that this License Agreement is not intended to and does not create any claims, rights, remedies, or benefits exercisable by any third party and that neither APS nor City undertakes any responsibility or obligation to any third party by virtue of this License Agreement, and neither shall be liable to any third party by virtue of the nature, location, quality or quantity of streetlights, or other cause arising directly or indirectly out of this License Agreement or its performance by either Party.

17. SURVIVABILITY OF OBLIGATIONS AND LIABILITIES

The covenants, representations, indemnifications and warranties of the Parties unless otherwise expressly provided shall survive the expiration or termination of this License Agreement.

18. PRECEDENCE

18.1 Order of Precedence: In the event of conflict between this License Agreement and any referenced document, the order of precedence shall be this License Agreement followed by any other referenced document, in the order in which they are referenced in the Table of Contents.

18.2 Amended Documents: Any amendment shall have priority over the document it amends, and any amended document shall have the same precedence classification as stated in Section 18.1.

19. ENTIRE AGREEMENT, MODIFICATION

This License Agreement shall constitute the entire agreement between the Parties and shall supersede all prior contracts, proposals, representations, negotiations, or letters pertaining to the subject matter of this License Agreement, whether written or oral, including the Original License Agreement. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind not set forth in this License Agreement and this License Agreement shall only be modified by an amendment signed by both Parties. The terms of this Section shall in no way effect the obligation of City to pay amounts due under the Original License Agreement; provided that the payments are for use of APS Poles rendered before the Original License Agreement was superseded by this License Agreement. This License Agreement

includes all documents attached hereto and incorporated herein by reference. Specifically included as exhibit to this License Agreement and attached hereto are the following:

Exhibit A – Annual Attachment Fee

Exhibit B – Installation/Removal Costs

20. INDEMNIFICATION

Notwithstanding anything to the contrary contained in that certain Franchise Agreement between the Parties hereto, each Party making a covenant, agreement, representation or warranty in this License Agreement shall indemnify and hold harmless the Party for whose benefit such covenant, agreement, representation or warranty is made, against any and all injury, loss, cost, damage, or expense of any kind (including reasonable attorney's fees) resulting from any breach of any such covenant, agreement, representation or warranty; provided however that such injury, loss, cost, damage or expense is not the result of negligence, willful misconduct or a breach of this License Agreement by the Party to be indemnified. In order for the requirements of indemnification to be enforceable, the party wishing to be indemnified must give the other party notice of the event which caused the injury, loss, cost, damage or expense, along with notice of the intent to seek indemnification therefore, within 180 days of the date the Party wishing to be indemnified first learns of the event. City hereby waives the notice requirement of A.R.S. § 12-821.01.

21. LEGAL REQUIREMENTS

21.1 Laws and Regulations: The Parties shall at all times observe and comply with all applicable laws, ordinances, statutes, rules or regulations including without

limitation those of OSHA and the National Electrical Safety Code, which in any manner relate to any rights and obligations under this License Agreement.

21.2 Safety Statute: Nothing contained in this License Agreement shall be construed in any way to limit, restrict, substitute, or waive, in whole or in part, any of the Parties' obligations under Article 6.4, HIGH VOLTAGE POWER LINES AND SAFETY RESTRICTIONS, of Section 1, Title 40, Chapter 2 of the Arizona Revised Statutes, or any other laws, regulations, codes, standards, or industry practices pertaining to activities near overhead electric lines.

## 22. DISPUTE RESOLUTION

If dispute arises between the parties regarding the interpretation or enforcement of this Agreement, the parties agree to work together in good faith to resolve such dispute, including attempting to resolve through mediation. The Parties agree that such mediation shall be non-binding and that all costs and expenses of the mediation shall be borne and paid by the parties in equal shares.

## 23. EXECUTION AND EFFECTIVE DATE

Each Party to this License Agreement hereby represents and warrants that (i) it has full authority to enter this License Agreement and to perform all responsibilities and obligations thereunder and that all necessary actions, if any, to authorize the execution, delivery and performance of this License Agreement have been taken, (ii) the person executing this License Agreement on its behalf has been duly authorized to execute this License Agreement, and (iii) this License Agreement constitutes legally binding and enforceable obligations of such Party. This License Agreement shall be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2014.

**CITY OF YUMA**

**ARIZONA PUBLIC SERVICE COMPANY**

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME: Gregory K. Wilkinson

NAME: \_\_\_\_\_

TITLE: City Administrator

TITLE: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven W. Moore, City Attorney

EXHIBIT A  
STREETLIGHT POLE USE LICENSE AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
CITY OF YUMA

ANNUAL ATTACHMENT FEE

Commencing January 1, 2014, the Annual Attachment Fee for City's fiscal year ending June 30, 2014 shall be \$6.54 per APS Pole.

EXHIBIT B

STREETLIGHT POLE USE LICENSE AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
CITY OF YUMA

INSTALLATION/REMOVAL COST

A project-specific cost estimate or unit cost estimate shall be provided by APS. APS shall supply City at City's request with a cost estimate of the work to be done, but APS shall not commence work until such estimate has been paid by City, except that APS, at its sole option, may accept a letter of understanding (prior to any work being performed by APS) in which City commits to pay APS for such services upon completion of the services.

APS STREETLIGHT ESTIMATING DETAIL				
MAINTENANCE/POLE USE AGREEMENT - EXHIBIT UNIT COST				
4/30/2014				
POST TOP - ACORN	INSTALL		REMOVE	
<b>ACORN POST TOP FIXTURE - 8005</b>				
100W HPS	\$1,258		\$225	
150W HPS	\$1,209		\$225	
86W IND	\$1,483		\$225	
<b>POLES - 12 FT CONCRETE BM - 1926</b>				
12 FT W/BASE*	\$5,363		\$244	
*special order concrete - not included				
<b>POST TOP - DECORATIVE TRANSIT</b>				
<b>DECORATIVE-TRANSIT POST TOP FIXTURE - 8008</b>				
100W HPS	\$1,817		\$225	
<b>POLES - 16 FT TRANSIT BM - 1932</b>				
16 FT W/BASE*	\$2,024		\$222	
*special order concrete - not included				
<b>POST TOP - COLONIAL</b>				
<b>COLONIAL POST TOP FIXTURE BLK/GR - 8010</b>				
100W HPS	\$528		\$225	
88W IND	\$1,008		\$225	
86W LED	\$980		\$225	
<b>POLES - 23 FT B/G STEEL DB BLK/GR- 1933</b>				
23' FT	\$664		\$348	
<b>ARCHITECTURAL</b>				
<b>ARCHITECTURAL FIXTURE W/ 1' ARM - 8030</b>				
100W HPS	\$677		\$204	
150W HPS	\$673		\$204	
250W HPS	\$693		\$204	
400W HPS	\$698		\$204	
55W IND	\$874		\$204	
100W IND	\$900		\$204	
120W IND	\$890		\$204	
150W IND	\$890		\$204	
200W IND	\$1,038		\$204	
250W IND	\$1,102		\$204	
43W LED - scalable R/W Bronze	\$790		\$204	
67W LED - scalable R/W Bronze	\$874		\$204	
106W LED - scalable R/W Bronze	\$1,017		\$204	
130W LED - scalable R/W Bronze	\$1,099		\$204	
258W LED - scalable R/W Bronze	\$1,558		\$204	
<b>ARCHITECTURAL FIXTURE W/ 2' ARM - 8030</b>				
100W HPS	\$659		\$193	
150W HPS	\$657		\$193	
250W HPS	\$677		\$193	
400W HPS	\$682		\$193	
55W IND	\$827		\$193	
100W IND	\$886		\$193	
120W IND	\$1,050		\$193	
150W IND	\$1,057		\$193	
200W IND	\$1,024		\$193	
250W IND	\$1,089		\$193	
43W LED - scalable R/W Bronze	\$777		\$193	
67W LED - scalable R/W Bronze	\$860		\$193	
106W LED - scalable R/W Bronze	\$1,004		\$193	
130W LED - scalable R/W Bronze	\$1,086		\$193	
258W LED - scalable R/W Bronze	\$1,545		\$193	
Page 1				

<b>APS STREETLIGHT ESTIMATING DETAIL</b>				
<b>MAINTENANCE/POLE USE AGREEMENT - EXHIBIT UNIT COST</b>				
4/30/2014				
<b>ARCHITECTURAL</b>	<b>INSTALL</b>		<b>REMOVE</b>	
<b><u>ARCHITECTURAL FIXTURE W/ 4' ARM - 8030</u></b>				
100W HPS	\$704		\$180	
150W HPS	\$702		\$180	
250W HPS	\$722		\$180	
400W HPS	\$726		\$180	
55W IND	\$869		\$180	
100W IND	\$928		\$180	
120W IND	\$919		\$180	
150W IND	\$919		\$180	
200W IND	\$1,066		\$180	
250W IND	\$1,131		\$180	
43W LED - scalable R/W Bronze	\$819		\$180	
67W LED - scalable R/W Bronze	\$903		\$180	
106W LED - scalable R/W Bronze	\$1,046		\$180	
130W LED - scalable R/W Bronze	\$1,046		\$180	
258W LED - scalable R/W Bronze	\$1,587		\$180	
<b><u>ARCHITECTURAL FIXTURE W/ 8' HR ARM - 8030</u></b>				
100W HPS	\$788		\$156	
150W HPS	\$786		\$156	
250W HPS	\$806		\$156	
400W HPS	\$811		\$156	
55W IND	\$953		\$156	
100W IND	\$1,013		\$156	
120W IND	\$1,003		\$156	
150W IND	\$1,003		\$156	
200W IND	\$1,151		\$156	
250W IND	\$1,215		\$156	
43W LED - scalable R/W Bronze	\$903		\$156	
67W LED - scalable R/W Bronze	\$987		\$156	
106W LED - scalable R/W Bronze	\$1,130		\$156	
130W LED - scalable R/W Bronze	\$1,213		\$156	
258W LED - scalable R/W Bronze	\$1,672		\$156	
<b><u>POLES - ARCH BROWN SQUARE DB - 1940</u></b>				
20 FT	\$481		\$342	
30 FT	\$656		\$329	
34 FT	\$783		\$325	
38 FT	\$798		\$321	
<b><u>ROADWAY</u></b>				
<b><u>ROADWAY FIXTURE W/ 6' ARM - 8040</u></b>				
100W HPS	\$487		\$203	
150W HPS	\$490		\$203	
250W HPS	\$498		\$203	
400W HPS	\$540		\$203	
100W IND	\$767		\$203	
120W IND	\$831		\$203	
150W IND	\$1,004		\$203	
200 W IND	\$1,096		\$203	
250W IND	\$1,143		\$203	
43W LED - scalable Gray	\$914		\$203	
67W LED - scalable Gray	\$972		\$203	
106W LED - scalable Gray	\$1,134		\$203	
130W LED - scalable Gray	\$1,224		\$203	
258W LED - scalable Gray	\$1,773		\$203	
	Page 2			

<b>APS STREETLIGHT ESTIMATING DETAIL</b>				
<b>MAINTENANCE/POLE USE AGREEMENT - EXHIBIT UNIT COST</b>				
4/30/2014				
<b>ROADWAY</b>	<b>INSTALL</b>		<b>REMOVE</b>	
<b><u>ROADWAY FIXTURE W /8' ARM - 8040</u></b>				
100W HPS	\$671		\$200	
150W HPS	\$674		\$200	
250W HPS	\$682		\$200	
400W HPS	\$724		\$200	
100W IND	\$954		\$200	
120W IND	\$1,017		\$200	
150W IND	\$1,014		\$200	
200 W IND	\$1,106		\$200	
250W IND	\$1,153		\$200	
43W LED - scalable Gray	\$921		\$200	
67W LED - scalable Gray	\$940		\$200	
106W LED - scalable Gray	\$1,145		\$200	
130W LED - scalable Gray	\$1,234		\$200	
258W LED - scalable Gray	\$1,783		\$200	
<b><u>ROADWAY FIXTURE W/ 8' HR ARM - 8040</u></b>				
100W HPS	\$750		\$200	
150W HPS	\$756		\$200	
250W HPS	\$765		\$200	
400W HPS	\$807		\$200	
100W IND	\$1,037		\$200	
120W IND	\$1,100		\$200	
150W IND	\$1,096		\$200	
200 W IND	\$1,184		\$200	
250W IND	\$1,236		\$200	
43W LED - scalable Gray	\$1,004		\$200	
67W LED - scalable Gray	\$1,022		\$200	
106W LED - scalable Gray	\$1,227		\$200	
130W LED - scalable Gray	\$1,208		\$200	
258W LED - scalable Gray	\$1,702		\$200	
<b><u>ROADWAY FIXTURE ONLY - LED SCALABLE GR/BR - 8153</u></b>			<b>Fixture Removal</b>	
43W LED	\$793		\$133	
67W LED	\$810		\$133	
106W LED	\$1,016		\$133	
130W LED	\$997		\$133	
258W LED	\$1,491		\$133	
<b><u>POLES - ROUND STEEL DB - 1944</u></b>				
19 FT	\$698		\$345	
30 FT	\$883		\$328	
38 FT	\$1,184		\$304	
<b><u>DECORATIVE TRANSIT</u></b>				
<b><u>DECORATIVE TRANSIT FIXTURE W/ 2' ARM</u></b>				
100W HPS	\$2,767		\$250	
150W HPS	\$2,882		\$250	
250W HPS	\$2,514		\$250	
<b><u>DECORATIVE TRANSIT FIXTURE DBL FIXTURE W/2' ARM</u></b>				
100W HPS	\$4,996		\$240	
150W HPS	\$5,227		\$240	
250W HPS	\$4,489		\$240	
<b><u>POLES - DECORATIVE TRANSIT DB - 1943</u></b>				
41 FT	\$1,025		\$305	
47 FT	\$1,399		\$297	
a Project specific cost estimate or unit cost estimate shall be provided by APS. APS shall supply City at City's request with a cost estimate of the work to be done, but APS shall not commence work until such estimate has been paid by City, except that APS, at its sole option, may accept a letter of understanding (prior to any work being performed by APS) in which City commits to pay APS for such services upon completion of the services.				
Page 3				



City of YUMA

# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:** November 5, 2014

**DEPARTMENT:** Public Works

**DIVISION:** Street Maintenance

- Motion
- Resolution
- Ordinance - Introduction
- Ordinance - Adoption
- Public Hearing

**TITLE:**  
Streetlight Energy Agreement: Arizona Public Service Company

**SUMMARY RECOMMENDATION:**  
Authorize execution of a Streetlight Energy Agreement (Energy Agreement) with Arizona Public Service Company (APS) to provide electricity for City streetlights

**REPORT:**  
APS is updating all of its contracts with its government customers to reflect the changing services APS now provides. Under Resolution R96-40 (adopted by City Council on September 18, 1996), the City acquired title to existing APS streetlights within City limits. Resolution R96-40 approved four agreements with APS, including an energy agreement and an operation/maintenance agreement. In April 2014, the City and APS came to an agreement that operation and maintenance duties would revert to the City. The City now operates and maintains all of its approximately 7,000 streetlights within City limits.

Pursuant to this Energy Agreement, APS will continue to provide electricity to illuminate the City-owned streetlights in accordance with the industry-standard rate approved by the Arizona Corporation Commission set forth as an exhibit to the Energy Agreement. This rate approximates the energy usage for each of the light fixtures based on the type of fixture and the type of luminaire used by the City. The approximation in the Energy Agreement replaces the need to install energy-use meters at streetlights at City expense.

By adopting this Resolution R2014-38, City Council will authorize the City Administrator to execute the Energy Agreement with APS that will replace and supersede the former 1996 energy agreement adopted by City Council under Resolution R96-40.

FISCAL REQUIREMENTS	CITY FUNDS:	\$692,000.00	BUDGETED:	\$692,000.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP: 101-40-32.6602	
	TOTAL:	\$692,000.00		
	FISCAL IMPACT STATEMENT:			
ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK: 1. 2. 3. 4. 5.			
	IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?  <input checked="" type="checkbox"/> Department <input checked="" type="checkbox"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			10/28/2014
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			10/28/2014
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
Joel Olea			9/16/2014	
WRITTEN/SUBMITTED BY:			DATE:	
Teresa Blackburn			9/15/2014	

**RESOLUTION NO. R2014-38**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA, AUTHORIZING AN ENERGY AGREEMENT FOR THE PURPOSE OF PURCHASING ELECTRICITY FROM ARIZONA PUBLIC SERVICE COMPANY FOR THE OPERATION OF THE CITY OF YUMA STREETLIGHT SYSTEM**

WHEREAS, the City of Yuma and Arizona Public Service Company entered into an agreement, adopted by City Council on September 18, 1996 as Resolution R96-40, wherein title to existing streetlights and duty to operate streetlights were transferred from Arizona Public Service Company to the City of Yuma; and,

WHEREAS, the City of Yuma currently operates approximately 7,000 streetlights within the city limits of the City of Yuma for the public benefit; and,

WHEREAS, Arizona Public Service Company provides, and may continue to provide, electric power to illuminate City of Yuma streetlights pursuant to an industry-standard rate approved by the Arizona Corporation Commission without requiring that the City of Yuma to incur the expense to install energy-use meter at streetlights; and,

WHEREAS, the attached contract sets forth the terms and conditions for the City of Yuma's purchase of electricity from Arizona Public Service Company.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma as follows:

SECTION 1: The *Streetlight Energy Agreement Between Arizona Public Service Company and City of Yuma*, attached as Exhibit A and by this reference incorporated as part of this Resolution, is approved according to its terms.

SECTION 2: That the City Administrator is authorized and directed to execute the *Streetlight Energy Agreement Between Arizona Public Service Company and City of Yuma* on behalf of the City of Yuma.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

APPROVED:

\_\_\_\_\_  
Douglas J. Nicholls  
Mayor

ATTESTED:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven W. Moore  
City Attorney

STREETLIGHT ENERGY AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
CITY OF YUMA

APS CONTRACT NO. 201407002  
CITY OF YUMA CONTRACT NO. \_\_\_\_\_

Effective Date \_\_\_\_\_

STREETLIGHT ENERGY AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
CITY OF YUMA

TABLE OF CONTENTS

SECTION	PAGE
1. PARTIES .....	1
2. RECITALS .....	1
3. DEFINITIONS.....	2
4. ELECTRIC SERVICE.....	4
5. STREETLIGHT LEVELS AND LOCATIONS.....	6
6. EXTENSION OF STREETLIGHT FACILITIES .....	6
7. TERM .....	7
8. TERMINATION.....	7
9. DESIGNATED REPRESENTATIVES AND NOTICES .....	8
10. FISCAL YEAR.....	9
11. UNCONTROLLABLE FORCES.....	9
12. NON-WAIVER.....	11

13.	BILLING, PAYMENT AND TAXES.....	11
14.	ANNEXATION AND ACQUISITION OF ADDITIONAL STREETLIGHT FACILITIES .....	12
15.	GOVERNING LAW AND VENUE .....	13
16.	SEVERABILITY .....	13
17.	ASSIGNMENT.....	13
18.	NO THIRD PARTY BENEFICIARIES.....	14
19.	SURVIVABILITY OF OBLIGATIONS AND LIABILITIES .....	14
20.	PRECEDENCE.....	14
21.	ENTIRE AGREEMENT, MODIFICATION .....	15
22.	INDEMNIFICATION.....	15
23.	LEGAL REQUIREMENTS.....	16
24.	EXECUTION AND EFFECTIVE DATE .....	16

**EXHIBIT**

EXHIBIT A – E-59 TARIFF.....	A-1
EXHIBIT B – AVERAGE CONSUMPTIONS FOR VARIOUS LUMINAIRES... ..	B-1
EXHIBIT C – SCHEDULE 1 – TERMS AND CONDITIONS FOR STANDARD OFFER AND DIRECT ACCESS SERVICES.....	C-1
EXHIBIT D – SCHEDULE 5 – GUIDELINES FOR ELECTRIC CURTAILMENT...D-1	

STREETLIGHT ENERGY AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
CITY OF YUMA

1. PARTIES

The parties to this Streetlight Energy Agreement (the “Energy Agreement”) are CITY OF YUMA, an Arizona municipal corporation (“City”), and ARIZONA PUBLIC SERVICE COMPANY, an Arizona corporation (“APS”), hereinafter referred to individually as “Party” and collectively as the “Parties.”

2. RECITALS

2.1 The Parties have entered into a streetlight sales agreement (APS Contract No. 48292 dated February 27, 1997) in which City has purchased streetlight facilities from APS within the existing City boundaries.

2.2 Additionally, the Parties entered into: i) a Streetlight Energy Agreement (APS Contract No.48287 dated February 27, 1997) pursuant to which APS sells energy to City for the Streetlight Facilities (the “Former Energy Agreement”); ii) an Operations, Maintenance and Facilities Agreement (APS Contract No.48289 dated February 27, 1997) pursuant to which APS operates and maintains City’s Streetlight Facilities within APS’ service territory (the “O&M Agreement”); and iii) a Master License Agreement (APS Contract No.48288 dated December 12, 1996) pursuant to which City’s Streetlight Facilities are allowed to be attached to APS’ electric distribution poles (the “License Agreement”).

2.3 The Parties now desire to enter into this Energy Agreement pursuant to which APS will supply energy for the City-owned streetlights.

2.4 The Parties desire that this Energy Agreement replace and supersede the Former Energy Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the promises, covenants, and provisions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant, promise and agree as follows:

3. DEFINITIONS

When initially capitalized in this Energy Agreement or amendments thereto, the following words or phrases shall have the meanings specified:

- 3.1 ACC: Arizona Corporation Commission.
- 3.2 Dawn: The time between full dark and sunrise when a Photocontrol senses sufficient sunlight to turn off streetlights.
- 3.3 Due Date: The fifteenth (15<sup>th</sup>) day after the invoice date.
- 3.4 Dusk: The time between sunset and full dark when a Photocontrol senses the lack of sufficient sunlight and turns on streetlights.
- 3.5 E-59 Tariff: The APS E-59 rate tariff on file with the ACC governing the rate charged for energy to government-owned streetlight facilities, as may be amended from time to time (attached hereto as Exhibit A.).
- 3.6 Effective Date: The date specified in Section 25, Execution and Effective Date.
- 3.7 Interest: The per annum interest rate set forth in Schedule 1.
- 3.8 Monthly Billing Energy: The kilowatt-hours (“kWh”) upon which the monthly billings will be based as set forth in Exhibit A and Exhibit B.

- 3.9 Photocontrol: A photoelectric cell which is designed to turn streetlights on at Dusk and to turn streetlights off at Dawn, which meets the light sensitivity standards specified in American National Standards Institute (ANSI) C136.10 Latest Edition.
- 3.10 Schedule 1: The APS Schedule 1 tariff entitled, "Terms and Conditions for Standard Offer and Direct Access Services," on file with the ACC, as may be amended from time to time (attached hereto as Exhibit C).
- 3.11 Schedule 5: The APS Schedule 5 tariff entitled, "Guidelines for Electric Curtailment," on file with the ACC, as may be amended from time to time (attached hereto as Exhibit D).
- 3.12 Streetlight Facilities: The facilities owned by the City (within APS' service territory) and generally described as metal streetlight poles dedicated only to streetlighting that may support APS' secondary conductors serving the streetlights and no other attachment(s); mast arms; luminaires and lamps; protection fuses; photo controls; external ballasts; and electric service wires which extend from the luminaires of the individual streetlight installation to the Point of Delivery.
- 3.13 Point of Delivery: The point where energy is delivered shall be where APS' electric service wire connects to (i) City's electric service wire, one foot beyond the end of the mast arm for overhead service to the streetlight or, (ii) at the City's protection fuse installed in the APS-owned secondary junction box for underground service to the streetlight or, (iii) at the City's electric service protection fuse or termination point located in the hand-hole of the City Pole for underground service to the streetlight when no APS-owned secondary junction

box exists or, (iv) five (5) feet from the City Pole for underground service when there is no hand-hole on the City Pole or an APS-owned secondary junction box.

4. ELECTRIC SERVICE

4.1 APS' Obligations: APS shall provide electric service for Streetlight Facilities in accordance with the terms and conditions of this Energy Agreement and Schedule 1. In the event of a conflict(s) between any provision of this Energy Agreement and Schedule 1, the provisions of this Energy Agreement shall apply.

4.2 Operation Time: Operation of the Streetlight Facilities shall be from Dusk to Dawn. Notwithstanding the foregoing, City agrees that APS cannot guarantee uninterrupted electric service. APS shall not be liable to City for any damages occasioned by fluctuations, interruptions, or curtailment of electric service, except where due to APS' willful misconduct or gross negligence.

Operation of Streetlight Facilities at times other than from Dusk to Dawn shall be subject to additional energy charges at APS' option. Either Party may notify the other Party of any circumstances which may have caused extended streetlight outages or extended streetlight operation times and the Parties will negotiate in good faith to determine whether an adjustment is appropriate to the City's monthly streetlight bill.

4.3 Point of Delivery: APS shall provide power to the streetlight facilities at the Point of Delivery.

4.4 Rates for Electric Service:

- 4.4.1 The applicable rate and related provisions for electrical service rendered to City shall be computed in accordance with Exhibit A, unless and until changed as provided for in Section 4.4.4 hereof. The rate specified in the Exhibit A shall be increased or decreased as provided in Section 4.4.4; provided, however, that the Parties acknowledge the ACC's jurisdiction to alter the energy rate under this Energy Agreement.
- 4.4.2 The Parties agree that the rate set forth herein will remain in effect until changed in accordance with Section 4.4.4 or by the ACC. However, such rate is subject to: a) adjustments monthly to reflect applicable sales taxes and regulatory assessment to the same extent as such adjustments apply to other APS retail rate schedules on file with the ACC; and b) such changes in the rate as may be authorized by the ACC from time to time.
- 4.4.3 Nothing in this Energy Agreement is intended to limit the ACC's power to order recovery of any stranded costs or system benefit charges determined to be attributable to the City either prior to or after termination of this Energy Agreement, nor will this Energy Agreement be considered a waiver by APS of any right it may have to recover such costs to the extent authorized or ordered by the ACC.
- 4.4.4 Nothing contained herein shall be construed as affecting in any way the right of APS to unilaterally make application to the ACC for a change in electric service rates and charges, classification of service, or any provision, term, rule, regulation, condition or contract relating thereto, under the Rules and Regulations of the ACC.

4.5 Curtailment:

The electric service supplied hereunder may be interrupted or curtailed in accordance with Schedule 5. APS shall not be liable to City for any damages occasioned by fluctuations, interruptions or curtailment of electric service except where due to APS' willful misconduct or gross negligence. APS may, without incurring any liability therefore, suspend City's electric service for periods reasonably required to permit APS to accomplish repairs to or changes in any of APS' facilities. To the extent practicable, APS will provide reasonable advance notice to City of any scheduled interruptions of electric service.

5. STREETLIGHT LEVELS AND LOCATIONS

City acknowledges, represents, warrants, and agrees that by entering into this Energy Agreement, City has not delegated or waived any of its rights, duties, responsibilities, or options regarding streetlight layout or design, but retains sole authority and responsibility for determining the reasonable level or amount of light to be provided along its streets, including the number, type and location of streetlights to be installed.

City further agrees that APS' assistance or recommendations regarding streetlight designs, layouts, or lighting levels, or the amount of streetlight service being provided by APS shall not be relied upon by City as satisfying any standard that may be adopted by or imposed upon City.

6. EXTENSION OF STREETLIGHT FACILITIES

6.1 Extension Less Than 300 Feet: Within APS' service territory, APS shall extend its electric secondary conductor up to a distance of 300 feet for each additional streetlight at no cost to City when requested by City. When extension is

underground, City or developer shall provide or pay for the trenching, conduit, backfill, and shading required. When extensions exceed 300 feet per additional streetlight, such extensions shall be made for an additional cost. For such additional cost, APS shall provide City or developer with the additional cost of the work to be performed and City or developer shall make full payment in advance if City desires such work to be performed.

6.2 Underground Extension: If APS' secondary conductors are to be placed underground, APS shall install such conductors underground at no cost to City within the footage limits specified in Section 6.1 above, except City shall pay the incremental costs of additional trenching, conduit, shading, and backfill required solely for streetlight conductors. Payments by City for trenching in accordance with this Section 6 shall be in accordance with Section 13, BILLING, PAYMENT AND TAXES.

7. TERM

This Energy Agreement shall remain in effect until terminated in accordance with the Termination section below, or Schedule 1.

8. TERMINATION

8.1 Termination at Will: Either party has the right to terminate this Agreement at any time and for any reason by giving the other Party ninety (90) days advanced written notice for the termination.

8.2 Cancellation By City: The Parties hereto acknowledge that this Energy Agreement is subject to cancellation by the City for a conflict of interest pursuant to the provisions of Section 38-511, Arizona Revised Statutes.

9. DESIGNATED REPRESENTATIVES AND NOTICES

9.1 Designated Representatives: All communications relating to the day-to-day activities under this Energy Agreement shall be exchanged between the following designated representatives who are authorized to act on behalf of that Party. Either Party may change said designated representatives from time to time by giving advance written notice.

**APS:**  
Arizona Public Service Company  
Attention: Outdoor Lighting  
P.O. Box 53999, Station 3536  
Phoenix, Arizona 85004  
Telephone: 602-328-1932  
FAX: 602-371-6733

**City:**  
City of Yuma  
Director of Public Works  
Attention: Joel Olea  
155 West 14th Street  
Yuma, Arizona 85364-4736

9.2 Notices: Any legal notices and communications required or provided for hereunder shall be in writing and shall be sent by first class, registered, certified or express mail, return receipt requested, postage prepaid, or by comparable delivery service, or by hand, or by facsimile (with the original sent by first class mail) to the following:

**To APS:**  
Arizona Public Service Company  
Office of Corporate Secretary  
400 N. 5<sup>th</sup> Street, Station 8602  
Phoenix, Arizona 85004

**To City:**  
City of Yuma  
Attention: City Administrator  
One City Plaza  
Yuma, Arizona 85364-1436

With a copy to:

Arizona Public Service Company  
Attention: Outdoor Lighting  
Station 3536  
P.O. Box 53999  
Phoenix, AZ 85072-3999

City of Yuma  
Director of Public Works  
Attention: Joel Olea  
155 West 14th Street  
Yuma, Arizona 85364-4736

9.3 Invoices and Payments: Invoices and payments pursuant to this Energy

Agreement shall be sent to:

City of Yuma  
Attention: Accounting Division  
One City Plaza  
Yuma, Arizona 85364-1436

Arizona Public Service Company  
P.O. Box 53920  
Phoenix, AZ 85072-3920

10. FISCAL YEAR

The obligation of City to make any payments hereunder is subject to the provisions of the Arizona State Budget Law and City Code provisions which require that the City Council make necessary appropriations for such payments in each fiscal year. City shall take all steps reasonably available to it to cause such payments to be included in its budget presented to City Council each fiscal year in the form of an appropriation for monies that will be due under this Energy Agreement during the subsequent year. However, the foregoing does not alter City's obligation to pay for services actually received, nor does it change APS' right to terminate this Energy Agreement for non-payment in accordance with the Termination section above.

11. UNCONTROLLABLE FORCES

11.1 Definition: An "Uncontrollable Force" shall mean any cause beyond the control of the Party affected, including but not restricted to failure of or threat of failure of facilities, flood, earthquake, geohydrologic subsidence, tornado, storm, fire,

lightning, epidemic, war, riot, commotion, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority (whether valid or invalid), and action or nonaction by or inability to obtain or keep the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence it shall be unable to overcome. It is the intent of the Parties that the foregoing examples shall not be used as a limitation on the term "uncontrollable force" in interpreting or construing this Energy Agreement. Rather the Parties intend a liberal interpretation of the term and accordingly intend that in questions of assumption of risk or contingencies, whether foreseen or not, the presumption shall be that risks not explicitly assumed by a Party are not assumed by said Party if, in fact, they are uncontrollable even with foresight.

- 11.2 Effect of Uncontrollable Force: If either Party, by reason of an Uncontrollable Force, is rendered unable, wholly or in part to timely perform its obligations under this Energy Agreement, then upon said Party giving notice and particulars of such Uncontrollable Force in writing to the other Party promptly after learning thereof, the obligations of said Party so far as they are affected by such Uncontrollable Force shall be suspended during the continuance of any inability so caused but for no longer period and the effects of such cause shall, so far as possible, be remedied with all reasonable dispatch. However, nothing contained herein shall be so construed as to require a Party to settle any strike or labor dispute in which it may be involved. The affected Party shall not be responsible for its delay in performance under this Energy Agreement during delays caused

by an Uncontrollable Force nor shall such Uncontrollable Force give rise to a claim for damages or constitute default.

11.3 Uncontrollable Force Limit. If a Party's obligation to perform is suspended for a period of forty-five (45) continuous calendar days due to an Uncontrollable Force or for any other reason, the other Party shall have all rights and remedies at law or in equity, including the right to terminate this Energy Agreement.

12. NON-WAIVER

The failure of either Party to insist upon strict performance of any of the provisions of this Energy Agreement, or to exercise any of the rights or remedies provided by this Energy Agreement, or any delay in the exercise of any of the rights or remedies, shall not release either Party from any of the responsibilities or obligations imposed by law or by this Energy Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Energy Agreement.

13. BILLING, PAYMENT AND TAXES

13.1 Billing: APS shall render bills to City on a monthly basis for services furnished during the preceding billing month.

13.2 Payment: APS shall receive payment from City on or before the Due Date. Payment shall be mailed to the address specified in Section 9.3. Amounts which are not paid when due shall bear Interest from the Due Date until such time as payment is received by APS.

13.3 Disputed Bill: If any portion of any bill is disputed, the undisputed amount shall be paid when due.

13.4 Delinquent Bill: If City's bill becomes delinquent, due to non-payment for a period of fifteen (15) days after the invoice date, APS shall have the right at its option:

13.4.1 To immediately suspend energy delivery hereunder until all amounts due have been paid, and/or

13.4.2 To exercise any other remedy provided by law, including immediate termination of this Energy Agreement. Suspension and/or termination shall not relieve City of its obligation to pay any amounts previously due nor shall such suspension or cancellation invalidate any other agreement with City.

13.4.3 To charge interest as set forth in Schedule 1.

The failure of APS to exercise such sanction shall not constitute a waiver by APS of any rights hereunder.

13.5 Taxes: City shall pay any and all applicable sales tax, transaction privilege tax or like tax assessed or assessable as the result of APS providing services hereunder.

14. ANNEXATION AND ACQUISITION OF ADDITIONAL STREETLIGHT FACILITIES

If City annexes additional territory or purchases additional Streetlight Facilities, the terms and conditions of this Energy Agreement will apply to the additional Streetlight Facilities and be effective as of the date City provided APS notice of the annexation or purchase.

15. GOVERNING LAW AND VENUE

This Energy Agreement shall be governed, construed and enforced in accordance with the substantive laws of the State of Arizona. Any suit to enforce this Energy Agreement shall be brought in the Superior Court of Maricopa County.

16. SEVERABILITY

If any provision of this Energy Agreement is determined by a court of competent jurisdiction to be unenforceable or illegal, then said provision(s) or amendments thereto shall be severed from this Energy Agreement and the remainder shall continue in full force and effect unless otherwise mutually agreed between the Parties.

17. ASSIGNMENT

Neither Party shall assign its rights, nor delegate its duties, or otherwise dispose of any right, title, or interest in all or any part of this Energy Agreement, or assign any monies due or payable hereunder without the prior written consent of the other Party. Such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may, without the need for consent from the other Party, (a) transfer, pledge, or assign this Energy Agreement as security for any financing; (b) transfer, assign or delegate this Energy Agreement or its rights hereunder or delegate or subcontract its obligations hereunder to an affiliated entity, parent entity or subsidiary of such Party, or (c) transfer, assign or delegate this Energy Agreement to any person or entity succeeding to all or substantially all of the assets of such Party. To the extent a transfer does not require consent, the transferring Party shall provide notice to the other Party within thirty (30) calendar days of the transfer and the effective date thereof. Any transfer in violation of this Section 17 shall be deemed null and void.

18. NO THIRD PARTY BENEFICIARIES

APS acknowledges and represents that Section 17 of this Energy Agreement entitled, "ASSIGNMENT," is not intended to and does not create any claims, rights, remedies or benefits exercisable by any third party. City acknowledges and represents that this Energy Agreement is not intended to and does not create any claims, rights, remedies, or benefits exercisable by any third party and that neither APS nor City undertakes any responsibility or obligation to any third party by virtue of this Energy Agreement, and neither shall be liable to any third party by virtue of the nature, location, quality or quantity of streetlights, or other cause arising directly or indirectly out of this Energy Agreement or its performance by either Party.

19. SURVIVABILITY OF OBLIGATIONS AND LIABILITIES

The covenants, representations, indemnifications and warranties of the Parties unless otherwise expressly provided shall survive the expiration or termination of this Energy Agreement.

20. PRECEDENCE

20.1 Order of Precedence: In the event of conflict between this Energy Agreement and any referenced document, the order of precedence shall be this Energy Agreement followed by any other referenced document, in the order in which they are referenced in the Table of Contents.

20.2 Amended Documents: Any amendment shall have priority over the document it amends, and any amended document shall have the same precedence classification as stated in Section 20.1.

21. ENTIRE AGREEMENT, MODIFICATION

This Energy Agreement shall constitute the entire agreement between the Parties and shall supersede all prior contracts, proposals, representations, negotiations, or letters pertaining to the subject matter of this Energy Agreement, whether written or oral, including the Former Energy Agreement. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind not set forth in this Energy Agreement and this Energy Agreement shall only be modified by an amendment signed by both Parties. The terms of this Section shall in no way effect the obligation of City to pay amounts due under the Former Energy Agreement; provided that the payments are for services rendered before the Former Energy Agreement was superseded by this Energy Agreement. This Energy Agreement includes all documents attached hereto or incorporated herein by reference. Specifically included as part of this Energy Agreement and attached hereto as exhibits are the following:

- Exhibit A - the E-59 Tariff
- Exhibit B - the Average Consumptions for Various Luminaires
- Exhibit C - Schedule 1
- Exhibit D - Schedule 5

22. INDEMNIFICATION

Notwithstanding anything to the contrary contained in that certain Franchise Agreement between the Parties hereto, each Party making a covenant, agreement, representation or warranty in this Energy Agreement shall indemnify and hold harmless the Party for whose benefit such covenant, agreement, representation or warranty is made, against any and all injury, loss, cost, damage, or expense of any kind (including reasonable attorney's fees) resulting from any breach of any such covenant, agreement, representation or warranty; provided however that such injury, loss, cost, damage or expense is not the

result of negligence, willful misconduct or a breach of this Energy Agreement by the Party to be indemnified.

In order for the requirements of indemnification to be enforceable, the party wishing to be indemnified must give the other Party notice of the event which caused the injury, loss, cost, damage or expense, along with notice of the intent to seek indemnification therefore, within 180 days of the date the Party wishing to be indemnified first learns of the event.

23. LEGAL REQUIREMENTS

23.1 Laws and Regulations: The Parties shall at all times observe and comply with all applicable laws, ordinances, statutes, rules or regulations including without limitation those of OSHA and the National Electrical Safety Code, which in any manner relate to any rights and obligations under this Energy Agreement.

23.2 Safety Statute: Nothing contained in this Energy Agreement shall be construed in any way to limit, restrict, substitute, or waive, in whole or in part, any of the Parties' obligations under Article 6.4, HIGH VOLTAGE POWER LINES AND SAFETY RESTRICTIONS, of Section 1, Title 40, Chapter 2 of the Arizona Revised Statutes, or any other laws, regulations, codes, standards, or industry practices pertaining to activities near overhead electric lines.

of Sudan and Iran.

24. EXECUTION AND EFFECTIVE DATE

Each Party to this Energy Agreement hereby represents and warrants that (i) it has full authority to enter this Energy Agreement and to perform all responsibilities and

obligations thereunder and that all necessary actions, if any, to authorize the execution, delivery and performance of this Energy Agreement have been taken, (ii) the person executing this Energy Agreement on its behalf has been duly authorized to execute this Energy Agreement, and (iii) this Energy Agreement constitutes legally binding and enforceable obligations of such Party. This Energy Agreement shall be effective as of the \_\_\_\_ day of \_\_\_\_\_, 2014.

**CITY OF YUMA**

**ARIZONA PUBLIC SERVICE COMPANY**

SIGNATURE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

NAME: Gregory W. Wilkinson

NAME: \_\_\_\_\_

TITLE: City Administrator

TITLE: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven W. Moore, City Attorney

EXHIBIT A  
STREETLIGHT ENERGY AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
CITY OF YUMA

E-59 TARIFF



**RATE SCHEDULE E-59  
CLASSIFIED SERVICE  
GOVERNMENT OWNED STREET LIGHTING SYSTEMS**

AVAILABILITY

This rate schedule is available in those portions of cities, towns and unincorporated communities in which the Company does a general retail electric business and where the customer has installed or purchased a multiple or series street lighting system and the Company has distribution facilities of adequate capacity for the service to be rendered.

APPLICATION

This rate schedule is applicable to Standard Offer electric service for continuous lighting, from dusk to dawn, of public streets, alleys, thoroughfares, public parks and playgrounds by use of the customer's facilities where such service for the whole area is contracted for from the Company pursuant to the terms set forth herein by the city, town, other governmental entities, or a responsible individual for unincorporated communities. Dusk is defined as the time between sunset and full night when a photocontrol senses the lack of sufficient sunlight and turns on the lights. Dawn is defined as the time between full night and sunrise when a photocontrol senses sufficient sunlight to turn off lights.

The customer will own, operate, and maintain the street lighting system including lamps and glass replacements but excluding distribution facilities installed by the Company to serve the lighting system.

RATES

The bill shall be computed at the following rates plus any adjustments incorporated in this schedule:

Service Charge:	\$2.79	per installed lamp
Energy Charge:	\$ 0.06088	per kWh

TRIP CHARGE

When Company is not the responsible party contracted for the regular maintenance of a street lighting system owned by a city, town or other governmental entity, a \$100.00 trip charge per light will be charged when customer requests a disconnect and/or reconnect of service in order to accommodate the maintenance activities of the customer or its designee(s) on their street light equipment. The trip charge will also apply when customer request disconnect or reconnect for non-maintenance purposes.

ADJUSTMENTS

1. The bill is subject the Renewable Energy Standard as set forth in the Company's Adjustment Schedule REAC-1 pursuant to Arizona Corporation Commission Decision No. 70313.
2. The bill is subject to the Power Supply Adjustment factor as set forth in the Company's Adjustment Schedule PSA-1 pursuant to Arizona Corporation Commission Decision No. 67744, Arizona Corporation Commission Decision No. 69663, Arizona Corporation Commission Decision No 71448, and 73183.
3. The bill is subject to the Transmission Cost Adjustment factor as set forth in the Company's Adjustment Schedule TCA-1 pursuant to Arizona Corporation Commission Decision No. 67744.
4. The bill is subject to the Environmental Improvement Surcharge as set forth in the Company's Adjustment Schedule EIS pursuant to Arizona Corporation Commission Decision No. 69663 and Arizona Corporation Commission Decision No. 73183.



**RATE SCHEDULE E-59  
CLASSIFIED SERVICE  
GOVERNMENT OWNED STREET LIGHTING SYSTEMS**

ADJUSTMENTS (cont)

5. Direct Access customers returning to Standard Offer service may be subject to a Returning Customer Direct Access Charge as set forth in the Company's Adjustment Schedule RCDAC-1 pursuant to Arizona Corporation Commission Decision No. 67744.
6. The bill is subject to the Demand Side Management Adjustment Charge as set forth in the Company's Adjustment Schedule DSMAC-1 pursuant to Arizona Corporation Commission Decision No.67744 and Arizona Corporation Commission Decision No. 71448.
7. The bill is subject to the applicable proportionate part of any taxes or governmental impositions which are or may in the future be assessed on the basis of gross revenues of APS and/or the price or revenue from the electric energy or service sold and/or the volume of energy generated or purchased for sale and/or sold hereunder.

SPECIAL PROVISIONS

1. Billed energy is based upon the summation of the contracted energy rating of installed facilities specified in the streetlighting contract.
2. The customer's bill will not be reduced due to lamp, photocontrol or cable repair or replacement outages.
3. Presently installed units which do not conform to the types specified in Rate Schedule E-58 will be billed in accordance with the type which is most nearly like such units.

EXTENSION OF COMPANY DISTRIBUTION SYSTEM

The Company will extend its standard street lighting system up to a distance of 300 feet for each additional lighting installation without cost at the request of the customer. When the extension is underground the customer will provide earthwork as specified in of the Company's Service Schedule 3, Conditions Governing Extensions of Electric Distribution Lines and Services; or, at the customer's request, the Company will provide such earthwork and the applicant will be required to pay a non-refundable contribution in aid of construction equal to the cost of such earthwork. Any additional extension required (over and above the first 300 feet) will be provided by Company for a contribution in aid of construction equal to the cost of the additional extension.

Extensions to isolated areas requiring a substantial extension of the electric distribution system, as opposed to an extension of the street lighting system, will require a special study to determine the terms and conditions under which the Company will undertake such an extension.

CONTRACT PERIOD

The contract period for service under this rate schedule shall be a fixed period of not less than 1 year and not more than 20 years, as agreed to by the customer and as specified in the streetlighting contract.

TERMS AND CONDITIONS

Service under this rate schedule is subject to the Company's Schedule 1, Terms and Conditions for Standard Offer and Direct Access Services and the Company's Schedule 10, Terms and Conditions for Direct Access. These schedules have provisions that may affect the customer's bill. In addition, service may be subject to special terms and conditions as provided for in a customer contract or service agreement.

EXHIBIT B

STREETLIGHT ENERGY AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
CITY OF YUMA

AVERAGE CONSUMPTIONS FOR VARIOUS LUMINAIRES

**Induction**

3,500 lumen	55 watts	19 kWh per month
6,000 lumen	85 watts	29 kWh per month
8,400 lumen	100 watts	34 kWh per month
13,000 lumen	150 watts	52 kWh per month
22,500 lumen	250 watts	86 kWh per month

**LED**

3,300 lumen	43 watts	15 kWh per month
4,350 lumen	86 watts	30 kWh per month
5,300 lumen	67 watts	23 kWh per month
8,300 lumen	106 watts	37 kWh per month
10,500 lumen	130 watts	45 kWh per month
20,000 lumen	258 watts	89 kWh per month

**Incandescent**

1,000 lumen	92 watts	32 kWh per month
2,500 lumen	189 watts	66 kWh per month
4,000 lumen	295 watts	103 kWh per month
6,000 lumen	405 watts	142 kWh per month
10,000 lumen	620 watts	217 kWh per month

**Mercury Vapor**

7,000 lumen	208 watts	73 kWh per month
11,000 lumen	275 watts	96 kWh per month
20,000 lumen	430 watts	150 kWh per month

**Metal Halide**

14,000 lumen	207 watts	72 kWh per month
21,000 lumen	288 watts	101 kWh per month
36,000 lumen	454 watts	159 kWh per month

**High Pressure Sodium**

5,800 lumen	83 watts	29 kWh per month
9,500 lumen	117 watts	41 kWh per month
16,000 lumen	197 watts	69 kWh per month
30,000 lumen	284 watts	99 kWh per month
50,000 lumen	438 watts	153 kWh per month

**Low Pressure Sodium**

8,000 lumen	86 watts	30 kWh per month
13,500 lumen	144 watts	50 kWh per month
22,500 lumen	205 watts	72 kWh per month
33,000 lumen	256 watts	90 kWh per month

ALL KWH ARE BASED ON AN AVERAGE OF 350 HOURS OF OPERATION PER MONTH, Effective Date: 4/2014

EXHIBIT C

STREETLIGHT ENERGY AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
CITY OF YUMA

SCHEDULE 1

TERMS AND CONDITIONS FOR STANDARD OFFER

AND DIRECT ACCESS SERVICES



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

The following TERMS AND CONDITIONS and any changes authorized by law will apply to Standard Offer and Direct Access services made available by Arizona Public Service Company (Company), under the established rate or rates authorized by law and currently applicable at time of sale.

Definitions

- a. Applicant means a person requesting the utility to supply electric service. [A.A.C. R14-2-201-(2)]
- b. Application means a request to the utility for electric service, as distinguished from an inquiry as to the availability or charges for such service. [A.A.C. R14-2-201-(3)]
- c. Billing Month means the period between any two regular readings of the utility's Meters at approximately 30 day intervals. [A.A.C. R14-2-201-(5)]
- d. Billing Period means the time interval between two consecutive Meter readings that are taken for billing purposes. [A.A.C. R14-2-201-(6)]
- e. Customer means the person or entity in whose name service is rendered, as evidenced by the signature on the Application or contract for that service, or by the receipt and/or payment of bills regularly issued in his name regardless of the identity of the actual user of the service. [A.A.C. R14-2-201-(9)]
- f. Delinquent Bill means a bill in which current electric charges are considered past due. (15 calendar days after the statement date)
- g. Demand means the rate at which power is delivered during any specified period of time. Demand may be expressed in kilowatts, kilovolt-amperes, or other suitable units. [A.A.C. R14-2-201-(12)]
- h. Distribution Lines means the utility lines operated at distribution voltage which are constructed along public roadways or other bona fide rights-of-way, including Easements on Customer's property. [A.A.C. R-14-2-201-(13)]
- i. Easement means a property owner grants the right to use land they own ("Grantor") to another party. An easement gives Company the right to have Company lines on property not owned by the Company. This allows Company to construct, replace, repair, operate and maintain electrical equipment for the safe transmission and distribution of electricity. The Grantor may continue to use the land along the easement within certain limitations.
- j. Landlord Automatic Transfer of Service Agreement is a legal contract established between the customer (landlord) and Company, which provides continuous service to the landlord between tenants without incurring a service establishment charge to the landlord.
- k. Master meter means a meter used for measuring or recording the flow of electricity that has passed through it at a single location where said electricity is distributed to tenants or occupants for their individual usage. [A.A.C. R14-2-201(23)]
- l. Meter means the instrument used for measuring and indicating or recording the flow of electricity that has passed through it. [A.A.C. R14-2-201(25)]



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

- m. Meter tampering means a situation where a meter has been altered or bypassed without prior written authorization from Company. Common examples are meter bypassing, use of magnets to slow the meter recording, and broken meter seals. [A.A.C. R14-2-201(26)]
- n. Minimum charge means the amount the customer must pay for the availability of electric service, including an amount of usage, as specified in the utility's tariffs. [A.A.C. R14-2-201(27)]
- o. Point of delivery or delivery point means the point where facilities owned, leased, or under license by a customer connects to the utility's facilities. [A.A.C. R14-2-201(31)]
- p. Service establishment charge means the charge for establishing a new account.
- q. Tariffs mean the documents filed with the Arizona Corporation Commission which list the services and products offered by the utility and which set forth the terms and conditions and a schedule of the rates and charges, for those services and products. [A.A.C. R14-2-201(42)]

Statement of Charges

Description	Charge	Reference
Residential Service Establishment Charge	\$25.00	2.2
Non-Residential Service Establishment Charge	\$35.00	2.2
Trip Charge	\$16.00	2.2.1
After hours Charge	\$75.00	2.2.2
Same Day Connect Charge	\$75.00	2.2.3
Non-standard Connect Charge	\$75.00 per crew person per hour	2.2.4
Direct Access Request	\$10.00	2.3
Dishonored Payment Fee	\$15.00	4.4.1
Field Call Charge	\$15.00	4.5.1
Overhead Reconnection Charge	\$96.50	4.5.2
Underground Reconnection Charge	\$115.00	4.5.2
Lock Ring Key Charge	\$70.00	6.2.2
Joint Site meeting for removal of Company Equipment	\$62.00 per site per first half hour. Additional charge per hour for site meeting over one half hour	6.2.3

ARIZONA PUBLIC SERVICE COMPANY  
Phoenix, Arizona  
Filed by: David J. Rumolo  
Title: Manager, Regulation and Pricing  
Original Effective Date: December 1951

A.C.C. No. 5804  
Canceling A.C.C. No. 5765  
Service Schedule 1  
Revision No. 35  
Effective: July 1, 2012



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

	will be \$53.00 per hour.	
Meter Reread	\$16.50	6.4.4 & 6.4.5
Meter test in shop	\$30.00	6.5
Meter test at site	\$50.00	6.5
Electronically Transmitted Payment Discount	-\$0.48	4.3.3

1. General

- 1.1 Services will be supplied in accordance with these Terms and Conditions and any changes required by law, and such applicable rate or rates as may from time to time be authorized by law. However, in the case of the Customer whose service requirements are of unusual size or characteristics, additional or special contract arrangements may be required.
- 1.2 These Terms and Conditions shall be considered a part of all rate schedules, except where specifically changed by a written agreement.
- 1.3 In case of a conflict between any provision of a rate schedule and these Terms and Conditions, the provisions of the rate schedule shall apply.

2. Establishment of Service

- 2.1 Application for Service - Customers requesting service may be required to appear at Company's place of business to produce proof of identity and/or sign Company's standard form of Application for service or a contract before service is supplied by Company.
  - 2.1.1 In the absence of a signed Application or contract for service, the supplying of Standard Offer and/or Direct Access services by Company and acceptance thereof by the Customer shall be deemed to constitute a service agreement by and between Company and the Customer for delivery of, acceptance of, and payment for service, subject to Company's applicable rates and rules and regulations.
  - 2.1.2 Where service is requested by two or more individuals, Company shall have the right to collect the full amount owed Company from any one of the Customers.
- 2.2 Service Establishment and Customer Request for Special Service Charge - A Service Establishment Charge of \$25.00 for residential and \$35.00 non-residential plus any applicable tax adjustment will be assessed each time Company is requested to establish, reconnect or re-establish electric service to the Customer's Delivery Point, or to make a special read without a disconnect and calculate a bill for a partial month
  - 2.2.1 The Customer will additionally be required to pay a trip charge of \$16.00 when an authorized Company representative travels to the Customer's site and is unable to complete the Customer's requested services due to lack of access to the Point of Delivery.



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

- 2.2.2 The Customer will additionally be required to pay an after-hours charge of \$75.00 if the Customer requests service, as defined in A.A.C. R14-2-203.D.3, be established, reconnected, or re-established after 5:00 p.m. on a day other than the day of request.
- 2.2.3 The Customer will additionally be required to pay a same day connect charge of \$75.00 if the Customer requests service, as defined in A.A.C. R14-2-203.D.3, be established, reconnected, or re-established on the same business day the request is being made, and Company agrees to work the request on the same business day of the request. This will be charged regardless of the time the order may be worked by Company on that day. Company may, where no additional costs are incurred by Company, waive the same day fee.
- 2.2.4 The Customer will additionally be required to pay \$75.00 per crew person per hour when Customer requests services that do not meet the definition of service establishment as defined in A.A.C. R14-2-203.D.3 (such as Customer requested outages for maintenance and metering equipment installations which include instrument transformers) that require the availability of Company representatives after hours, on a weekend day, or on a Company holiday. The number of representatives utilized by Company in fulfilling such requests shall be at the sole discretion of Company. Customers will be given notice of estimated charges prior to the work being performed.

Company holidays are New Year's Day, Martin Luther King Jr. Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, The Day After Thanksgiving, and Christmas Day.

- 2.2.5 Company may waive the Service Establishment Charge where:
  - 2.2.5.1 No field trip is required because Applicant accepts responsibility for energy billed and not yet paid and the change is effective with the last Meter read and Meter read date billed.
  - 2.2.5.2 Applicant has an active Landlord Automatic Transfer of Service Agreement on file with Company. This service agreement is for property owners that have established credit with Company and provides for continuous service to the landlord between tenants.
  - 2.2.5.3 Where multiple connects are performed during the same site visit, in the same Applicant name, at the same address, for the same class of service, Company will assess the Service Establishment Charge once for every two Delivery Points.

2.3 Direct Access Service Request (DASR) - A Direct Access Service Request charge of \$10.00 plus any applicable tax adjustment will be assessed to the Electric Service Provider (ESP) submitting the DASR each time Company processes a Request (RQ) type DASR as specified in Company's Schedule 10, Terms and Conditions for Direct Access.

2.4 Grounds for Refusal of Service - Company may refuse to connect or reconnect Standard Offer or Direct Access service if any of the following conditions exist:



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

- 2.4.1 The Applicant has an outstanding amount due with Company for the same class of service and is unwilling to make payment arrangements that are acceptable to Company.
  - 2.4.2 A condition exists which in Company's judgment is unsafe or hazardous.
  - 2.4.3 The Applicant has failed to meet the security deposit requirements set forth by Company as specified under Section 2.5 or 2.6 hereof.
  - 2.4.4 The Applicant is known to be in violation of Company's Tariff.
  - 2.4.5 The Applicant fails to furnish such funds, service, equipment, and/or rights-of-way or Easements required to serve the Applicant and which have been specified by Company as a condition for providing service.
  - 2.4.6 The Applicant falsifies his or her identity for the purpose of obtaining service.
  - 2.4.7 Service is already being provided at the address for which the Applicant is requesting service.
  - 2.4.8 Residential service is requested by an Applicant and a prior Customer, who will be living at the subject address, owes a delinquent bill from the same or a prior residential service address.
  - 2.4.9 Service is requested by an Applicant, and a prior Customer who will be an actual user of the service at the subject address owes a delinquent bill for the same class of service from the same or a prior service address.
  - 2.4.10 The Applicant has failed to obtain all required permits and/or inspections indicating that the Applicant's facilities comply with local construction and safety codes.
- 2.5 Establishment of Credit or Security Deposit
- 2.5.1 Residential Establishment of Credit - Company shall not require a security deposit from a new Applicant for service at a primary and/or secondary residence if the Applicant is able to meet any of the following requirements:
    - 2.5.1.1 The Applicant has had service of a comparable nature with Company within the past two (2) years and was not delinquent in payment more than twice during the last twelve (12) consecutive months or disconnected for nonpayment.
    - 2.5.1.2 Company receives an acceptable credit rating, as determined by Company, for the Applicant from a credit rating agency utilized by Company.
    - 2.5.1.3 The Applicant can produce a letter regarding credit or verification from an electric utility where service of a comparable nature was last received within six (6) months of the current date which states that the Applicant had a timely payment history for the prior twelve (12) consecutive months at the time of service discontinuation.



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

- 2.5.1.4 In lieu of a security deposit, Company receives deposit guarantee notification from a social or governmental agency acceptable to Company or a surety bond as security for Company in a sum equal to the required deposit.
- 2.5.1.5 Where three or more additional residential services are requested, Company may require Customer to establish or reestablish a security deposit.
- 2.5.2 Residential Establishment of Credit or Security Deposit - When credit cannot be established as provided for in Section 2.5.1 hereof or when it is determined that the Applicant left an unpaid final bill owing to another utility company, the Applicant will be required to:
  - 2.5.2.1 Place a cash deposit to secure payment of bills for service as prescribed herein, or
  - 2.5.2.2 Provide a surety bond acceptable to Company in an amount equal to the required security deposit.
- 2.5.3 Non-residential Establishment of Security Deposit – All non-residential Applicants will be required to place a cash deposit to secure payment of bills for service as prescribed herein, unless:
  - 2.5.3.1 The Applicant has had service of a comparable nature with Company within the past two (2) years and was not delinquent in payment more than twice during the last twelve (12) consecutive months or disconnected for nonpayment.
  - 2.5.3.2 The Applicant provides a non-cash security deposit in the form of a Surety Bond, Irrevocable Letter of Credit, or Assignment of Monies in an amount equal to the required security deposit.
- 2.6 Establishment or Reestablishment of Security Deposit
  - 2.6.1 Residential - Company may require a residential Customer to establish or re-establish a security deposit if the Customer becomes delinquent in the payment of two (2) or more bills within a twelve (12) consecutive month period or has been disconnected for non-payment during the last twelve (12) months.
  - 2.6.2 Non-residential - Company may require a non-residential Customer to establish or re-establish a security deposit if the Customer becomes delinquent in the payment of two (2) or more bills within a twelve (12) consecutive month period or if the Customer has been disconnected for non-payment during the last twelve (12) months, or when the Customer's financial condition may jeopardize the payment of their bill, as determined by Company based on the results of using a credit scoring worksheet. Company will inform all Customers of the Arizona Corporation Commission's complaint process should the Customer dispute the deposit based on the financial data.
- 2.7 Security Deposits – Once it is determined that a security deposit is required, the following will apply:



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

- 2.7.1 Security deposits may be required for each service location.
- 2.7.2 Company reserves the right to increase or decrease security deposit amounts applicable to the services being provided by Company in accordance with this section:
  - 2.7.2.1 If the Customer chooses to change from Standard Offer to Direct Access services, the deposit may be decreased by an amount which reflects that portion of the Customer's service being provided by a Load Serving ESP. However if the Load Serving ESP is providing ESP Consolidated Billing pursuant to Company's Schedule 10 Section 7, the entire deposit will be credited to the Customer's account; or,
  - 2.7.2.2 If the Customer chooses to change from Direct Access to Standard Offer service, the requested deposit amount may be increased by an amount pursuant to Section 2.5, which reflects that Company is providing bundled electric service.
  - 2.7.2.3 If the Customer's average consumption increases: by more than ten (10) percent for residential accounts or five (5) percent for nonresidential accounts within a twelve (12) consecutive month period and credit has not been established, an additional security deposit may, at Company's option, be required.
- 2.7.3 Customer security deposits shall not preclude Company from terminating an agreement for service or suspending service for any failure in the performance of Customer obligation under the agreement for service.
- 2.7.4 Cash deposits held by Company six (6) months/183 days or longer shall earn interest from the date the deposit was collected at the established one year Treasury Constant Maturities rate, effective on the first business day of each year, as published on the Federal Reserve Website. Deposits on inactive accounts are applied to the final bill when all service options become inactive, and the balance, if any, is refunded to the Customer of record within thirty (30) days. For refunds resulting from the Customer changing from Standard Offer to Direct Access, the difference in the deposit amounts will be applied to the Customer's account.
- 2.7.5 If the Customer terminates all service with Company, the security deposit may be credited to the Customer's final bill.
- 2.7.6 Residential security deposits shall not exceed the higher amount of either one (1) times the Customer's maximum monthly bill or two (2) times the Customer's average monthly bill as estimated by Company for the services being provided by Company.
  - 2.7.6.1 Deposits or other instruments of credit will automatically expire or be credited or returned to the Customers account after twelve (12) consecutive months of service, provided the Customer has not been delinquent more than twice, unless Customer has filed bankruptcy in the last twelve (12) months.



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

- 2.7.7 Non-residential security deposits shall not exceed two and one-half (2-1/2) times the Customer's maximum monthly billing as estimated by Company for the service being provided by Company.
  - 2.7.7.1 Deposits and non-cash deposits on file with Company will be reviewed after twenty-four (24) months of service and will be returned provided the Customer has not been delinquent more than twice in the payment of bills or disconnected for non-payment during the previous twelve (12) consecutive months unless the Customer's financial condition warrants extension of the security deposit.
- 2.8 Line Extensions Service requests requiring Company to extend or upgrade its facilities in order to establish service will be made in accordance with Company's Service Schedule #3, Conditions Governing Extensions of Electric Distribution Lines and Services filed with the Arizona Corporation Commission.
- 2.9 Customer-Specific Information - Customer-specific information shall not be released without specific prior written Customer authorization unless the information is requested by law enforcement or other public agency, or is requested by the Arizona Corporation Commission or its staff, or is reasonably required for legitimate account collection activities, or is necessary to provide efficient, effective, safe, or reliable service to the Customer. Customer-specific information may be provided to suppliers of goods or services under contract with Company if:
  - 2.9.1 Such goods or services will assist Company in providing efficient, effective, safe, or reliable service; and
  - 2.9.2 Such contract includes a requirement that the information be kept confidential and is only used to fulfill the supplier's obligations to Company.
- 3. Rates
  - 3.1 Rate Information - Company shall provide, in accordance with A.A.C. R14-2-204, a copy of any rate schedule applicable to that Customer for the requested type of service. In addition, Company shall notify its Customers of any changes in Company Tariff affecting those Customers.
  - 3.2 Rate Selection - The Customer's service characteristics and service requirements determine the selection of applicable rate schedule. If the Customer is receiving bundled service, Company will use reasonable care in initially establishing service to the Customer under the most advantageous rate schedule applicable to the Customer. However, because of varying Customer usage patterns and other reasons beyond its reasonable knowledge or control, Company cannot guarantee that the most economic applicable rate will be applied. Company will not make any refunds in any instances where it is determined that the Customer would have paid less for service had the Customer been billed on an alternate applicable rate or provision of that rate.
  - 3.3 Optional Rates - Certain optional rate schedules applicable to certain classes of service allow the Customer the option to select the rate schedule to be effective initially or after service has been established. Billing under the alternate rate will become effective from the next regularly scheduled Meter reading, after the appropriate metering equipment is installed. No further rate schedule changes, however, may be made within the succeeding twelve (12) month period. Where



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

the rate schedule or contract pursuant to which the Customer is provided service specifies a term, the Customer may not exercise its option to select an alternate rate schedule until expiration of that term.

- 3.4 Direct Access service will be effective upon the next Meter read date if DASR is processed fifteen (15) calendar days prior to that read date and the appropriate metering equipment is in place. If a DASR is made less than fifteen (15) days prior to the next regular read date the effective date will be at the next Meter read date thereafter. The above timeframes are applicable for Customers changing their selection of Electric Service Providers or for Customers returning to Standard Offer service.
- 3.5 Any Customer that selects Direct Access service may return to Standard Offer service in accordance with the rules, regulations, and orders of the Arizona Corporation Commission. However, such Customer will not be eligible for Direct Access service for the succeeding twelve (12) month period. If a Customer returning to Standard Offer, in accordance with the rules, regulations and orders of the Commission, was not given the required notification in accordance with the rules and regulations of the Commission by their Load Serving ESP of its intent to cease providing competitive services then the above provision will only apply if the Customer fails to select another ESP within sixty (60) days of returning to Standard Offer service.

4. Billing and Collection

- 4.1 Customer Service Installation and Billing - Service Billing Periods normally consist of approximately thirty (30) days unless designated otherwise under rate schedules, through contractual agreement, or at Company option.
- 4.1.1 Company normally Meters and bills each site separately; however, at Customer's request, adjacent and contiguous sites (not separated by private or public property or right of way), operated as one integral unit under the same name and as a part of the same business, may at Company's option be considered a single site as specified in Company's Schedule 4, Totalized Metering of Multiple Service Entrance Sections at a Single Site for Standard Offer and Direct Access Service.
- 4.1.2 The Customer's service installation will normally be arranged to accept only one type of service at one Point of Delivery to enable service measurement through one Meter. If the Customer requires more than one type of service, or total service cannot be measured through one Meter according to Company's regular practice, separate Meters will be used and separate billing rendered for the service measured by each Meter.
- 4.2 Collection Policy - The following collection policy shall apply to all Customer accounts:
- 4.2.1 All bills rendered by Company are due and payable no later than fifteen (15) calendar days from the billing date. Any payment not received within this time frame will be considered delinquent. All delinquent bills for which payment has not been received shall be subject to the provisions of Company's termination procedure. Company reserves the right to suspend or terminate the Customer's service for non-payment of any Arizona Corporation Commission approved charges. All delinquent charges will be subject to a late charge at the rate of eighteen percent (18%) per annum.



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

4.2.2 If the Customer, as defined in A.A.C. R 14-2-201.9, has two or more services with Company and one or more of such services is terminated for any reason leaving an outstanding bill and the Customer is unwilling to make payment arrangements that are acceptable to Company, Company shall be entitled to transfer the balance due on the terminated service to any other active account of the Customer for the same class of service. The failure of the Customer to pay the active account shall result in the suspension or termination of service thereunder.

4.2.3 Unpaid charges incurred prior to the Customer selecting Direct Access will not delay the Customer's request for Direct Access. These charges remain the responsibility of the Customer to pay. Normal collection activity, including discontinuing service, may be followed for failure to pay.

4.2.4 All unpaid delinquent final bills may be referred to a collection agency for collection.

4.2.4.1 If collection agency referral is warranted for collection of unpaid final bills, Customer will be responsible for associated collection agency fees incurred.

4.3 Responsibility for Payment of Bills

4.3.1 The Customer is responsible for the payment of bills until service is ordered discontinued and Company has had reasonable time to secure a final Meter reading for those services involving energy usage, or if non-metered services are involved until Company has had reasonable time to process the disconnect request.

4.3.2 When an error is found to exist in the billing rendered to the Customer, Company may correct such an error to recover or refund the difference between the original billing and the correct billing. Such adjusted billings will not be rendered for periods in excess of the applicable statute of limitations from the date the error is discovered. Schedule 8 (Bill Estimation) shall be applied when Company cannot obtain a complete and valid Meter read. Situations that result in an estimated Meter read include inclement weather, lack of access to a Customer's Meter, energy diversion, labor unavailability and equipment malfunction.

4.3.2.1 Refunds or credits to Customers resulting from overbillings will be made promptly upon discovery by Company.

4.3.2.2 Corrected charges for underbillings shall be billed to the Customer who shall be given an equal length of time such as number of months underbilled to pay the backbill without late payment penalties, unless there is evidence of Meter Tampering or energy diversion.

4.3.2.3 Except as specified below, corrected charges for underbillings shall be limited to three (3) month for residential accounts and six (6) months for non-residential accounts.

4.3.2.3.1 Where the account is billed on a special contract or non-metered rate, corrected charges for underbillings shall be billed in accordance with



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

the contract or rate schedule requirements and is not limited to three or six months as applicable.

4.3.2.3.2 Where service has been established but no bills have been rendered, corrected charges for underbillings shall go back to the date service was established.

4.3.2.3.3 Where there is evidence of Meter Tampering or energy diversions, corrected charges for underbillings shall go back to the date Meter Tampering or energy diversions began, as determined by Company.

4.3.2.3.4 Where lack of access to the Meter (caused by the Customer) has resulted in estimated bills, corrected charges for underbillings shall go back to the Billing Month of the last Company obtained Meter read date.

4.3.2.3.5 Where actual Customer usage can be determined without estimating reads, corrected charges for underbillings are not limited to three or six months, as applicable. In no event shall such rebilling exceed the applicable statute of limitations.

4.3.2.4 Company may forgo billing and collection of corrected charges for an underbilling if Company believes the cost of billing and collecting the underbilling would not justify pursuing the underbill.

4.3.3 Where Company is responsible for rendering the Customer's bill, Company will provide a monthly incentive of \$0.48 per Customer to Customers who elect to pay their bills using the Company's electronically transmitted payment options AutoPay, SurePay or similar programs.

4.4 Dishonored Payments - If Company is notified by the Customer's financial institution that they will not honor a payment tendered by the Customer for payment of any bill, Company may require the Customer to make payment in cash, by money order, certified or cashier's check, or other means which guarantee the Customer's payment to Company.

4.4.1 The Customer will be charged a fee of \$15.00 for each instance where the Customer tenders payment of a bill with a payment that is not honored by the Customer's financial institution.

4.4.2 The tender of a dishonored payment shall in no way (i) relieve the Customer of the obligation to render payment to Company under the original terms of the bill, or (ii) defer Company's right to terminate service for nonpayment of bills.

4.4.3 Where the Customer has tendered two (2) or more dishonored payments in the past twelve (12) consecutive months, Company may require the Customer to make payment in cash, money order or cashier's check for the next twelve (12) consecutive months.



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

4.5 Termination Process Charges

- 4.5.1 Company will require payment of a Field Call Charge of \$15.00 when an authorized Company representative travels to the Customer's site to accept payment on a delinquent account, notify of service termination, make payment arrangements or terminate the service. This charge will only be applied for field calls resulting from the termination process.
- 4.5.2 If a termination is required at the pole, a reconnection charge of \$96.50 will be required; if the termination is in underground equipment, the reconnection charge will be \$115.00.
- 4.5.3 To avoid termination of service, the Customer will make payment in full, including any necessary deposit in accordance with Section 2.5 hereof or make payment arrangements satisfactory to Company.

5. Service Responsibilities of Company and Customer

5.1 Service Voltage –Company will deliver electric service to the designated Point of Delivery, as specified in Section 6.3 of this Schedule, at the standard voltages specified in the Electric Service Requirements Manual published by Company and as specified in A.A.C. R14-2-208.F. Company may deliver service for special Applications at higher voltages, with prior approval from Company's Engineering Department and in accordance with Company's Schedule 3, Conditions Governing Extensions of Electric Distribution Lines and Services filed with the Arizona Corporation Commission.

5.2 Responsibility: Use of Service or Apparatus

- 5.2.1 The Customer shall save Company harmless from and against all claims for injury or damage to persons or property occasioned by or in any way resulting from the services being provided by Company or the use thereof on the Customer's side of the Point of Delivery. Company shall have the right to suspend or terminate service in the event Company should learn of service use by the Customer under hazardous conditions.
- 5.2.2 The Customer shall exercise all reasonable care to prevent loss or damage to Company property installed on the Customer's site for the purpose of supplying service to the Customer.
- 5.2.3 The Customer shall be responsible for payment for loss or damage to Company property on the Customer's site arising from neglect, carelessness or misuse and shall reimburse Company for the cost of necessary repairs or replacements.
- 5.2.4 The Customer shall be responsible for payment for any equipment damage and/or estimated unmetered usage resulting from unauthorized breaking of seals, interfering with, tampering with, or by-passing the Meter.
- 5.2.5 The Customer shall be responsible for notifying Company of any failure in Company's equipment.



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

5.3 Service Interruptions: Limitations on Liability of Company

- 5.3.1 Company shall not be liable to the Customer for any damages occasioned by Load Serving ESP's equipment or failure to perform, fluctuations, interruptions or curtailment of electric service, except where due to Company's willful misconduct or gross negligence. Company may, without incurring any liability therefore, suspend the Customer's electric service for periods reasonably required to permit Company to accomplish repairs to or changes in any of Company's facilities. The Customer needs to protect their own sensitive equipment from harm caused by variations or interruptions in power supply.
- 5.3.2 In the event of a national emergency or local disaster resulting in disruption of normal service, Company may, in the public interest and on behalf of Electric Service Providers or Company, interrupt service to other Customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

5.4 Company Access to Customer Sites

- 5.4.1 Company's authorized agents shall have satisfactory unassisted twenty-four (24) hour a day, seven (7) days a week access to Company's equipment located on Customer's sites for the purpose of repair, maintenance, and service restoration work that Company may need to perform.
- 5.4.2 Company's authorized agents shall have satisfactory unassisted access to the Customer's sites at all reasonable hours to install, inspect, read, repair or remove its Meters or to install, operate or maintain other Company property, to verify that Customer is in compliance with its obligations, or to inspect and determine the connected electrical load. If, after six (6) months (not necessarily consecutive) of good faith efforts by Company to work with the Customer, Company in its opinion does not have satisfactory unassisted access to the Meter, then Company shall have sufficient cause for termination of service or denial of any rate options where, in Company's opinion, access is required. The remedy for unassisted access will be at Company discretion and may include the installation by Company of a specialized Meter. If such specialized Meter is installed, the Customer will be billed the difference between the otherwise applicable Meter for their rate and the specialized Meter plus the cost incurred to install the specialized Meter as a one-time charge and any reoccurring incremental costs. If service is terminated as a result of failure to provide unassisted access, Company verification of unassisted access may be required before service is restored. Written termination notice is required prior to disconnecting service under this section.

5.5 Easements

- 5.5.1 All suitable Easements or rights-of-way required by Company for any portion of an extension to serve a Customer, which is either on sites owned, leased or otherwise controlled by the Customer or developer, or other property required for the extension, shall be furnished in Company's name by the Customer without cost to or condemnation by Company and in reasonable time to meet proposed service requirements. All



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

Easements or rights-of-way granted to, or obtained on behalf of Company shall contain such terms and conditions as are acceptable to Company.

5.5.2 When Company discovers that the Customer or the Customer's agent is performing work, has constructed facilities, or has allowed vegetation to grow, adjacent to or within an Easement or right-of-way or Company-owned equipment, and such work, construction, vegetation or facility poses a hazard or is in violation of federal, state, or local laws, ordinances, statutes, rules or regulations, or significantly interferes with Company's safe use, operation or maintenance of, or access to, equipment or facilities, Company shall notify the Customer or the Customer's agent and shall take whatever actions are necessary to eliminate the hazard, obstruction, interference or violation at the Customer's expense. Company will notify the Customer in writing of the violations.

5.6 Load Characteristics – The Customer shall exercise reasonable care to ensure that the electrical characteristics of its load, such as deviation from sine wave form (a minimum standard is IEEE 519) or unusual short interval fluctuations in Demand, shall not impair service to other Customers or interfere with operation of telephone, television, or other communication facilities. Customer shall meet power factor requirements as specified on applicable rate schedules.

6. Metering and Metering Equipment

6.1 Customer Equipment - The Customer shall install and maintain all wiring and equipment beyond the Point of Delivery except for Company's Meters and special equipment. The Customer's entire installation must conform to all applicable construction standards and safety codes and the Customer must furnish an inspection or permit if required by law or by Company. In circumstances where a clearance is not required by law, Company may require Customer to execute a Letter In-Lieu of Electrical Clearance.

6.1.1 The Customer shall provide, in accordance with Company's current service standards and/or Electric Service Requirements Manual, at no expense to Company, and close to the Point of Delivery, a sufficient and suitable space acceptable to Company's agent for the installation, accessibility and maintenance of Company's metering equipment. A current version of the Electric Service Requirements Manual is available on-line at <http://esp.apsc.com/resource/metering.asp>.

6.1.2 Where a Customer requests, and Company approves, a special Meter reading device or communications services or devices to accommodate the Customer's needs, the cost for such additional equipment and usage fees shall be the responsibility of the Customer.

6.2 Company Equipment

6.2.1 A Meter Service Provider (MSP) or its authorized agents may remove Company's metering equipment pursuant to Company's Schedule 10. Meters not returned to Company or returned damaged will result in charge to the MSP of the replacement costs, plus an administration fee of fifteen percent (15%), less five (5) years depreciation.

6.2.2 Company will lease lock ring keys to MSP's and/or their agents authorized to remove Company Meters pursuant to the terms and conditions of Company's Schedule 10 at a



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

refundable charge of \$70.00 per key. The charge will not be refunded if a key is lost, stolen, or damaged. If Company must replace ten percent (10%) of the issued keys within any twelve (12) month period due to loss by the MSP's agent, Company may, rather than leasing additional lock ring keys, require the MSP to arrange for a joint meeting. All lock ring keys must be returned to Company within five (5) working days if the MSP and/or its authorized agents are:

- 1) No longer permitted to remove Company Meters pursuant to conditions of Company's Schedule 10;
- 2) No longer authorized by the Arizona Corporation Commission to provide services; or
- 3) The ESP Agreement has been terminated.

6.2.3 If the MSP, the Customer, and/or its agent request a joint site meeting for removal of Company metering and associated equipment and/or lock ring, a base charge will be assessed of \$62.00 per site. Company may assess an additional charge of \$53.00 per hour for joint site meetings that exceed thirty (30) minutes. If Company must temporarily replace the MSP's Meter and/or associated metering equipment during emergency situations or to restore power to a Customer, the above charges may apply.

6.3 Service Connections - Company is not required to install and maintain any lines and equipment on the Customer's side of the Point of Delivery except its Meter.

6.3.1 For overhead service, the Point of Delivery shall be where Company's service conductors terminate at the Customer's weatherhead or bus rider.

6.3.2 For underground service, the Point of Delivery shall be where Company's service conductors terminate in the Customer's or development's service equipment. The Customer shall furnish, install and maintain any risers, raceways and/or termination cabinet necessary for the installation of Company's underground service conductors.

6.3.3 For special Applications where service is provided at voltages higher than the standard voltages specified in the Electric Service Requirements Manual, Company and Customer shall mutually agree upon the designated Point of Delivery.

6.3.4 For the mutual protection of the Customer and Company, only authorized employees or agents of Company or the Load Serving ESP are permitted to make and energize the connection between Company's service wires and the Customer's service entrance conductors. Such employees carry Company issued identification which they will show on request.

6.4 Measuring Customer Service - All the energy sold to the Customer will be measured by commercially acceptable measuring devices by Company (or the Meter Reading Service Provider (MRSP) pursuant to the terms and conditions of Company's Schedule 10). Where energy and, if applicable, Demand is estimated by Company, estimation will be in accordance with Company's bill estimation procedures approved by the Arizona Corporation Commission. Where it is impractical to Meter loads, such as street lighting, security lighting, or special installations, consumption will be determined by Company.



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

- 6.4.1 For Standard Offer Customers, or where Company is the MRSP, the readings of the Meter will be conclusive as to the amount of electric power supplied to the Customer unless there is evidence of Meter Tampering or energy diversion, or unless a test reveals the Meter is in error by more than plus or minus three percent (3%).
- 6.4.2 If there is evidence of Meter Tampering or energy diversion, the Customer, person or entity demonstrated to have tampered with the Meter and/or benefited from the tampering or diversion will be billed for the estimated energy and, if applicable, Demand, for the period in which the energy diversion took place. Additionally, where there is evidence of Meter Tampering, energy diversion, or by-passing the Meter, the Customer, person or entity demonstrated to have tampered with the Meter and/or diverted energy will also be charged the cost of the investigation as determined by Company.
- 6.4.3 If after testing, a Meter is found to be more than three percent (3%) in error, either fast or slow, proper correction shall be made of previous readings and adjusted bills shall be rendered or adjusted billing information will be provided to the MRSP.
  - 6.4.3.1 Customer will be billed, in accordance with Section 4.3.2, for the estimated energy and Demand that would have registered had the Meter been operating properly.
- 6.4.4 Where Company is the MRSP, Company will, at the request of the Customer or the ESP, reread the customer's Meter within ten (10) working days after such request by the Customer. The cost of such rereads is \$16.50 and may be charged to the Customer or the ESP, provided that the original reading was not in error.
- 6.4.5 Where the ESP is the MSP or MRSP, and the ESP and/or its' agent fails to provide the Meter data to Company pursuant to Company's Schedule 10 Section 8.16, Meter Reading Data Obligations, Company may, at its option, obtain the data, or may estimate the billing determinants. The charge for such reread is \$16.50 and may be charged to the ESP.
- 6.5 Meter Testing - Company tests its Meters regularly in accordance with a Meter testing and maintenance program as approved by the Arizona Corporation Commission. Company will, however, individually test a Company owned/maintained Meter upon Customer or ESP request. If the Meter is found to be within the plus or minus three percent (3%) limit, Company may charge the Customer or the ESP \$30.00 for Meter test if the Meter is removed from the site and tested in the meter shop, and \$50.00 if the Meter remains on site and is tested in the field.
- 6.6 Master Metering
  - 6.6.1 Mobile Home Parks - Company shall refuse service to all new construction and/or expansion of existing permanent residential mobile home parks unless the construction and/or expansion is individually metered by Company.
  - 6.6.2 Residential Apartment Complexes - Company shall refuse service to all new construction of apartment complexes and condominiums which are Master Metered. This section is not applicable to Senior Care/Nursing Centers registered with the State of Arizona with independent living units which provide packaged services such as housing, food, and nursing care.



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

6.6.3 Multi-Unit Residential High Rise Developments (developments consisting of apartments, condominiums or townhouse developments built with four or more floors, usually using elevators for accessing floors) – Company will allow Master Metering for residential units where the residential units are privately owned, provided the building will be served by a centralized heating, ventilation and/or air conditioning system, and each residential unit shall be individually sub-metered and responsible for energy consumption of that unit.

6.6.3.1 Sub-metering shall be provided and maintained by the builder or homeowners association.

6.6.3.2 Responsibility and methodology for determining each unit's energy billing shall be clearly specified in the original bylaws of the homeowners association, a copy of which must be provided to Company prior to Company providing the initial extension.

7. Termination of Service

7.1 With Notice - Company may without liability for injury or damage, and without making a personal visit to the site, disconnect service to any Customer for any of the reasons stated below, provided Company has met the notice requirements established by the Arizona Corporation Commission:

7.1.1 A Customer violation of any of the applicable rules of the Arizona Corporation Commission or Company Tariff.

7.1.2 Failure of the Customer to pay a Delinquent Bill for services provided by Company.

7.1.2.1 Additional notice will not be provided when Customer makes payments to avoid/stop non-payment disconnection with a dishonored payment. Prior to reconnection of service, repayment of those funds and all other delinquent amounts will be required in cash, money order, or certified funds.

7.1.2.2 Additional notice will not be provided when Customer pays to reconnect service with a dishonored payment. Prior to reconnection of service, payment of those funds and all other delinquent amounts will be required in cash, money order or certified funds.

7.1.3 The Customer's breach of a written contract for service.

7.1.4 Failure of the Customer to comply with Company's deposit requirements.

7.1.5 Failure of the Customer to provide Company with satisfactory and unassisted access to Company's equipment.

7.1.6 When necessary to comply with an order of any governmental agency having jurisdiction.



**SERVICE SCHEDULE 1  
TERMS AND CONDITIONS FOR  
STANDARD OFFER AND DIRECT ACCESS SERVICES**

---

- 7.1.7 Failure of a prior Customer to pay a Delinquent Bill for utility services where the prior Customer continues to reside on the premises.
- 7.1.8 Failure to provide or retain rights-of-way or Easements necessary to serve the Customer.
- 7.1.9 Company learns of the existence of any condition in Section 2.4, Grounds For Refusal of Service.
- 7.2 Without Notice - Company may without liability for injury or damage disconnect service to any Customer without advance notice under any of the following conditions:
  - 7.2.1 Company observes, or has evidence of, a hazard to the health or safety of persons or property.
  - 7.2.2 Company has evidence of Meter Tampering or fraud.
  - 7.2.3 Company has evidence of unauthorized resale or use of electric service.
  - 7.2.4 Failure of the Customer to comply with the curtailment procedures imposed by Company during a supply shortage.
- 7.3 Restoration of Service - Company shall not be required to restore service until the conditions which resulted in the termination have been corrected to the satisfaction of Company.
- 8. Removal of Facilities - Upon termination of service, Company may without liability for injury or damage, dismantle and remove its facilities installed for the purpose of supplying service to the Customer, and Company shall be under no further obligation to serve the Customer.
- 9. Successors and Assigns - Agreements for Service shall be binding upon and for the benefit of the successors and assigns of the Customer and Company, but no assignments by the Customer shall be effective until the Customer's assignee agrees in writing to be bound and until such assignment is accepted in writing by Company.
- 10. Warranty - THERE ARE NO UNDERSTANDINGS, AGREEMENTS, REPRESENTATIONS, OR WARRANTIES, EXPRESS OR IMPLIED (INCLUDING WARRANTIES REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), NOT SPECIFIED HEREIN OR IN THE APPLICABLE RULES OF THE ARIZONA CORPORATION COMMISSION CONCERNING THE SALE AND DELIVERY OF SERVICES BY COMPANY TO THE CUSTOMER. THESE TERMS AND CONDITIONS AND THE APPLICABLE RULES OF THE ARIZONA CORPORATION COMMISSION STATE THE ENTIRE OBLIGATION OF COMPANY IN CONNECTION WITH SUCH SALES AND DELIVERIES.

EXHIBIT D

STREETLIGHT ENERGY AGREEMENT  
BETWEEN  
ARIZONA PUBLIC SERVICE COMPANY  
AND  
CITY OF YUMA

SCHEDULE 5



## SERVICE SCHEDULE 5 GUIDELINES FOR ELECTRIC CURTAILMENT

---

1. Arizona Public Service Company (Company) shall have no liability of obligation for claims arising out of the procedures for curtailment or interruption of electric service effected by it in accordance with such guidelines or such supplemental, amendatory or implementary guidelines or regulations as may hereafter be established and as provided by law.
2. Company shall endeavor to identify any electric customer(s) who might be classified as having either essential or critical loads. In the event that any customer of Company is dissatisfied by the classification of Customer by Company, or with the amount of such customer's load (if any) classified by the Company as critical or essential, the Customer may bring the matter to either the Company or the Commission and request a determination in regard thereto. However, until such redetermination is made by the Commission or the Company, customer's original classification for purposes of electric curtailment under this Schedule shall be unaffected.
3. Company shall endeavor to, as circumstances permit and as further discussed in the Company's detailed Electric Load and Curtailment Plan, to notify County emergency personnel, or similar local authorities, of existing or developing situations involving the curtailment or interruption of APS customers pursuant to this Schedule #5.

#### 4. DEFINITIONS

- 4.1 Essential Loads – Loads necessary to serve facilities used to protect the health and safety of the public, such as: hospitals, 911 Centers, national defense installations, sewage facilities and domestic water facilities. Loads necessary to serve 911 Centers, police stations, and fire stations, which do not have independent back-up generation and require APS' electric service for operation of essential emergency equipment.
- 4.2 Critical Loads – That portion of the electric load of nonresidential customers, which in the event of 100 percent curtailment of service, would cause excessive damage to equipment or material being processed, or where such interruption would create grave hazards to employees or the public.
- 4.3 Major Use Customers/Others (With Notice) – Those customers having relatively large loads (over 1000 kW) or a substantial number of employees or other special circumstances that make it appropriate to schedule blackouts or curtailments different from typical customers. Customers who qualify as Major Use/Others (With Notice) can take 100 percent curtailment when sufficient notice is provided. These loads will be interrupted after the required notification period. "Sufficient", "required", and "appropriate" notice is that notice that APS, after consultation with the affected customer, has determined will allow the customer to curtail in a safe and efficient manner. Such notice necessarily varies from customer to customer.
- 4.4 Others (With or Without Notice) – All customers not meeting the above definitions. These customers will be interrupted (with or without notice) if voluntary curtailment measures are not sufficient to alleviate the situation.

5. GUIDELINES TO BE APPLICABLE IN EVENT OF INTERRUPTION OR CURTAILMENT OF ELECTRIC SERVICE BY COMPANY TO ITS CUSTOMERS DUE TO POWER SUPPLY INTERRUPTIONS, FUEL SHORTAGE OR TRANSMISSION EMERGENCY PURSUANT TO CORPORATION COMMISSION RULE R14-2-208, PROVISION OF SERVICE, PARAGRAPH E.

#### 5.1 Operating Procedures Prior to Customer Load Curtailment



## SERVICE SCHEDULE 5 GUIDELINES FOR ELECTRIC CURTAILMENT

---

- 5.1.1 The following items shall be pursued concurrently
  - 5.1.1.1 Reschedule maintenance of transmission components and generating units, where practical.
  - 5.1.1.2 Utilize spinning reserve.
  - 5.1.1.3 Discontinue all non-firm wholesale sales during any period of involuntary curtailment or when an involuntary curtailment is anticipated.
  - 5.1.1.4 Do not enter into any new wholesale sales during any period of involuntary curtailment or when an involuntary curtailment is anticipated.
  - 5.1.1.5 Start all standby units.
  - 5.1.1.6 Contact other utilities and/or agencies for emergency assistance.
  - 5.1.1.7 Invoke emergency and short-term contractual schedules with other utilities and/or agencies.
  - 5.1.1.8 Reduce system voltage, where practical.
  - 5.1.1.9 Reduce non-essential Company uses such as flood lighting, sign lighting, display lighting, office lighting, electric cooling and heating, etc., where practical.
  - 5.1.1.10 Provide information through the media or other appropriate medians to the public which will contain instructions on how customers can assist Company in case of an emergency power outage.
  - 5.1.1.11 Work with government agencies and environmental groups to seek waivers on environmental constraints and/or expedite permitting process for company-owned generation, as well as, customer generation, as appropriate.

### 5.2 Voluntary Customer Load Curtailment

#### 5.2.1 Public Appeal

- 5.2.1.1 An advisory message procedure will be used when Company has advance indications that it will not be able to meet future peak loads. These messages will request voluntary load reduction during specific hours on specific days.
- 5.2.1.2 An emergency bulletin procedure will be used for instant notification to the public in the event there is no advance indication of a power shortage. These bulletins will request the immediate voluntary cooperation of all customers in reducing electric loads.
  - 5.2.1.2.1 These bulletins will request all customers to reduce the use of all electrically operated equipment and devices, where possible.



## SERVICE SCHEDULE 5 GUIDELINES FOR ELECTRIC CURTAILMENT

5.2.1.2.2 Company will have a prepared statement to read which will give current information on the Power Supply Interruption, Fuels Shortage or Transmission Emergency.

### 5.3 Contractually Interruptible Load

5.3.1 Company shall invoke contractual interruption provisions to the extent appropriate.

5.3.2 Company shall interrupt non-firm wholesale customer(s) as appropriate.

### 5.4 Involuntary Customer Load Curtailment

5.4.1 If the load reduction realized from application of the voluntary curtailment procedures is not sufficient to alleviate the power shortage, Company will reduce voltage if and to the extent practical and in accordance with normal applicable electric utility operation standards.

5.4.2 If further load reduction is required, load will be reduced as follows:

5.4.2.1 Circuits not classified with "Major Use/Others With Notice, Critical or Essential" customers will be interrupted on a rotating basis. The frequency and duration of such interruptions will be dependent upon the magnitude and nature of the power shortage. The frequency and duration of such interruptions shall also consider the circumstances of Major Use Customers.

5.4.2.2 Accurate records will be kept to ensure that these circuits are rotated in an equitable and technically feasible manner.

5.4.2.3 Circuits classified as "Major Use/Others" will be interrupted upon the giving of appropriate notice.

5.4.2.4 Customers on circuits which serve critical loads will be required to curtail the non-critical portion of their loads. Thereafter, circuits which serve critical loads will be identified and will not be interrupted unless an area must be dropped to maintain stability of the electric system. However, loads otherwise classifiable as critical may be curtailed if they possess back-up generation sufficient to meet their entire load requirement. If a customer having a critical load refuses or fails to curtail his electric consumption down to the critical load, he shall thereupon not be considered to have a critical load for purposes of this Schedule.

5.4.2.5 Circuits which serve essential loads will be identified and will not be interrupted unless an area must be dropped to maintain stability of the electric system. However, loads otherwise classifiable as essential may be curtailed if they possess back-up generation sufficient to meet their entire load requirement.

### 5.5 Sudden Shortages of Power

In the event that time does not allow for the implementation of the Electric Curtailment Guidelines, Company may resort to its emergency operations procedures, with or without notice.



## SERVICE SCHEDULE 5 GUIDELINES FOR ELECTRIC CURTAILMENT

---

### 5.6 Automatic Load Shedding

In the event that there is a major electrical disturbance threatening the interconnected Southwest system with blackout conditions, emergency devices such as under frequency load shedding, transfer tripping, etc., will be utilized to maintain the optimum system stability.

## 6. ELECTRIC CURTAILMENT OF FIRM WHOLESAL CUSTOMERS

6.1 The term "firm wholesale customer" shall be defined as those APS customers who purchase, on a firm basis, electricity from the Company for purposes of resale.

6.2 In any given instance where a curtailment of wholesale power deliveries is involved, and subject to any required approvals of the Federal Energy Regulatory Commission or contractual provisions to the contrary, Company shall notify its firm wholesale customers, requesting that they curtail electric service to their retail customers during the period that Company's system is affected by power shortages. In the event that Company is unable to obtain the cooperation of a firm wholesale customer, it may seek an order from appropriate governmental authority requiring the firm wholesale customer to accept a reduction of electricity deliveries proportionate to the curtailment being effected on Company's system.

## 7. ELECTRIC LOAD AND CURTAILMENT PLAN

A detailed electric load and curtailment plan shall be kept on file with the Arizona Corporation Commission. This plan shall contain specific procedures for implementation of the above, along with the name(s) and telephone number(s) of the appropriate Company personnel to contact in the event implementation of the plan becomes necessary. This plan shall be updated at least annually, and it or amendments thereto shall become effective upon submission to the Arizona Corporation Commission.

7.1 Company shall contact the Director, Utilities Division, or their designee, as soon as practical for any curtailment pursuant to this Schedule #5.



City of YUMA

# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:** November 5, 2014

**DEPARTMENT:** Public Works

**DIVISION:** Engineering

- Motion
- Resolution
- Ordinance - Introduction
- Ordinance - Adoption
- Public Hearing

**TITLE:**  
Development Fee Deferral: Terraces Townhomes, L.L.C.

**SUMMARY RECOMMENDATION:**

Approve a Development Agreement request with Terraces Townhomes, L.L.C., permitting the deferral of City of Yuma (City) Development Fees and water and sewer capacity charges for properties in the Sunset Terrace Townhomes Subdivision.

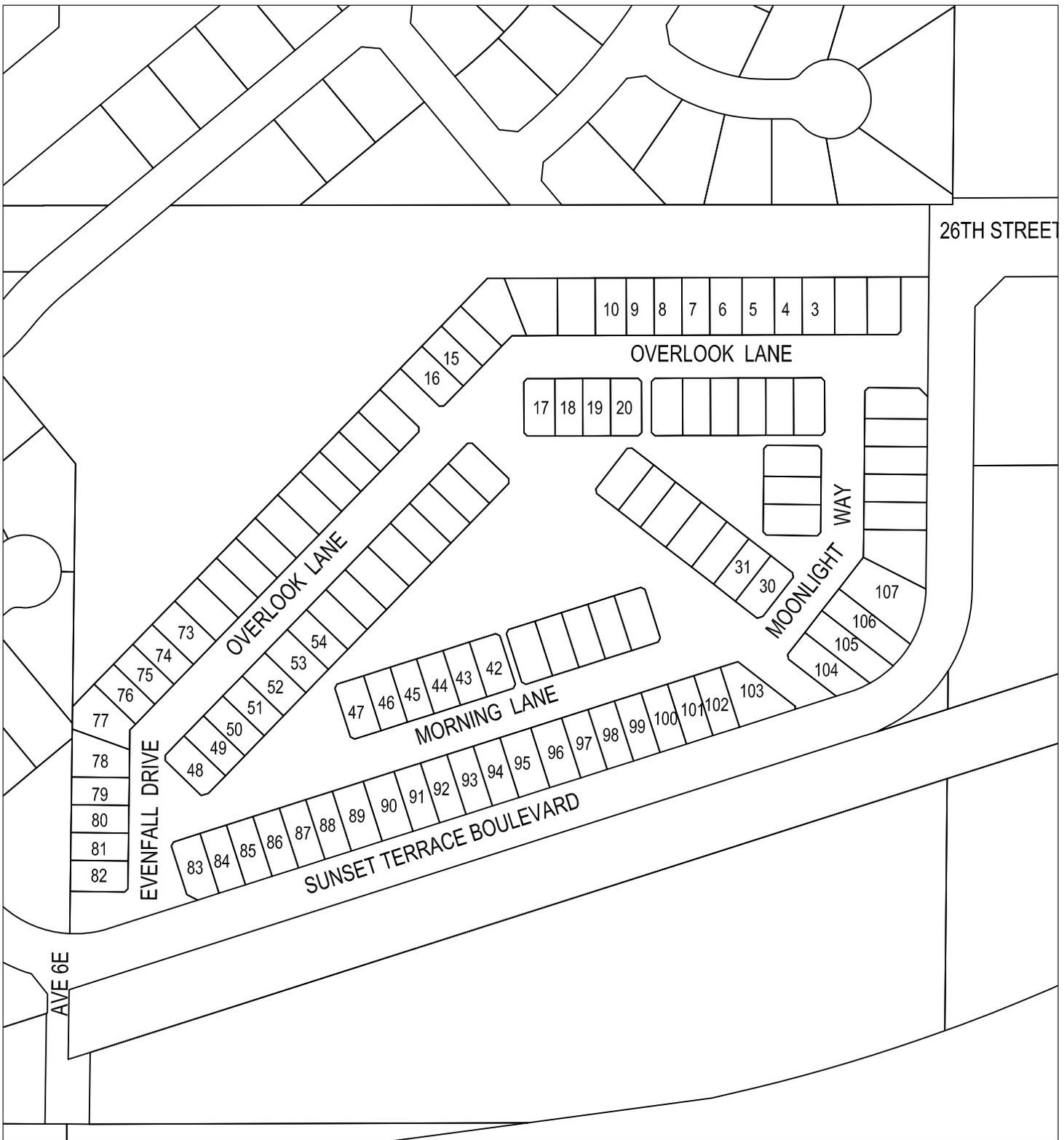
**REPORT:**

City Administration and staff have previously met with the development community regarding current local economic activity, particularly that of the construction industry, and have recommended a procedure to City Council for deferral of development fees. Upon payment of a \$500.00 deferral fee to pay for City costs associated with processing and tracking the deferrals, for a period of one year (renewable for an additional year at the option of City Council), all development fees, along with sanitary sewer and water capacity charges, for residential, commercial and industrial development shall be eligible for deferral prior to issuance of a certificate of occupancy. The eligibility for deferral is in accordance with the specific terms outlined in the proposed development agreement.

It is anticipated that deferring these development fees and capacity charges will help stimulate economic activity and retain construction jobs. The deferral must be accomplished through a development agreement in accordance with A.R.S. § 9-463.05.

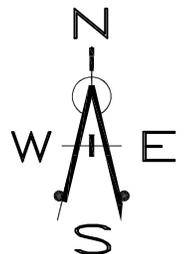
Terraces Townhomes, L.L.C. has requested a deferral of Development Fees and water and sewer capacity charges for the Sunset Terrace Townhomes Subdivision property in accordance with terms of the proposed Development Agreement.

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	\$0.00		
	FISCAL IMPACT STATEMENT:			
ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK: 1. 2. 3. 4. 5.			
	IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?  <input checked="" type="checkbox"/> Department <input type="checkbox"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			10/28/2014
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			10/28/2014
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
Joshua Scott			10/21/2014	
WRITTEN/SUBMITTED BY:			DATE:	
Teresa Blackburn			9/24/2014	



——— SUBJECT PARCELS

NOTE: THIS MAP IS PREPARED TO SHOW  
GENERAL SITE LOCATION ONLY AND REPRESENTS  
NO SPECIFIC DIMENSIONS RELATED TO THE SITE.



# LOCATION MAP

Prepared by: Andrew McGarvie

Checked by:

CITY OF YUMA  
DEPARTMENT OF  
PUBLIC WORKS  
ENGINEERING DIV.

DATE: 9-18-14

SCALE: N.T.S

REVISED:

CIP NO.

137

**RESOLUTION NO. R2014-39**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA, AUTHORIZING AND APPROVING A DEVELOPMENT AGREEMENT CONCERNING THE DEFERRAL OF CITY OF YUMA DEVELOPMENT FEES AND WATER AND SANITARY SEWER CAPACITY CHARGES FOR SUNSET TERRACE TOWNHOMES SUBDIVISION**

WHEREAS, the City of Yuma, Arizona (City) desires to obtain those public benefits accruing from the development of property, which benefits include, but are not limited to, the creation and retention of jobs, stimulation of further economic development within the City, increased property tax values based on improvements to be constructed on the property and by retention and generation of additional sales tax revenues through increased business activities; and,

WHEREAS, A.R.S. § 9-463.05(B)(10) permits the deferral of payment of development fees for residential units when supported by appropriate security and included as part of a development agreement; and

WHEREAS, both the City of Yuma and the property owner agree that deferral of payment of development fees and water and sanitary sewer capacity charges, prior to issuance of a certificate of occupancy, will promote economic activity within the City of Yuma and shall constitute sufficient consideration for the deferral.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma as follows:

SECTION 1: That the deferral of City of Yuma Development Fees, water and sanitary sewer capacity charges is approved in accordance with the terms of the Development Agreement, attached as Exhibit A and by this reference, made part of this resolution.

SECTION 2: That upon payment to the City of Yuma of the described processing fee, the City Administrator is authorized and directed to execute the Development Agreement on behalf of the City of Yuma.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

APPROVED:

\_\_\_\_\_  
Douglas J. Nicholls  
Mayor

ATTESTED:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven W. Moore  
City Attorney

## RESOLUTION NO. R2014-39

### EXHIBIT A DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”), in accordance with the Arizona Revised Statutes (A.R.S.) § 9-500.05, is by and between Terraces Townhomes, LLC, an Arizona limited liability company (“Owner”), as owner of the real property described in the Sunset Terrace Townhomes plat, lots 3 – 10, 15 – 20, 30 – 31, 42 – 54, and 73 – 107, recorded as Yuma County Assessor’s Fee #: 2008-07722, Book 24 of Plats Page 44, (the “Property”) and the City of Yuma, an Arizona municipal corporation (“City”).

#### RECITALS

WHEREAS, the City desires to obtain those public benefits which accrue from the development of the Property and include (but are not limited to) the creation and retention of jobs, stimulation of further economic development within the City, increased property tax values based on improvements to be constructed on the Property, and by generation of additional sales tax revenues through increased business activity; and,

WHEREAS, A.R.S. § 9-463.05(B)(10) permits the deferral of payment of development fees for residential units when supported by appropriate security and included as part of a development agreement; and

WHEREAS, for the mutual benefit of both parties, the sufficiency of which is acknowledged, the parties have entered into this Agreement to provide for the deferral of payment of City of Yuma Development Fees and all City of Yuma water and sewer capacity charges and connection fees upon the terms and conditions contained herein.

NOW THEREFORE, in consideration of the above recitals, the parties agree as follows:

1. Term. This Agreement shall be effective upon execution by all of the parties hereto (the “Effective Date”) and shall expire one year from the Effective Date (the “Expiration Date”) unless the parties mutually agree to an earlier termination or the City Council, by proper motion, extends this Agreement for an additional one year term, in which case the Expiration Date shall be two years from the Effective Date.
2. Vesting. Vesting of the deferral benefit shall accrue on a lot by lot basis. To vest the right to deferral, the residential unit must pass the under slab plumbing and building setback inspection (“underground inspection”) within thirty (30) days of the date of issuance of the building permit. Time is of the essence. If the underground inspection is not successfully completed within thirty (30) days of the issuance of the building permit, no right to deferral shall vest, and Owner shall either: (1) be issued a refund of 80% of the cost of the building permit and the building permit shall expire; or (2) all deferral amounts shall immediately be due and payable to the City to prevent the building permit from expiring. At the expiration or termination of this Agreement, any vested lot shall continue to enjoy the deferral benefit unless construction is abandoned by Owner. On the

Expiration Date, the deferral benefit shall expire for any non-vested lot.

3. Deferral Benefits. Deferral of certain described City of Yuma Development Fees and water and sewer capacity charges shall be available to the Property throughout the term of this Agreement. An expired building permit shall not prohibit Owners from reapplying for the deferral benefit provided that a new building permit is applied for. When vested in accordance with paragraph 2 above, the deferral benefit shall include:
  - a. Deferral of Payment of Citywide Development Fees and Water and Sewer Capacity Charges. For any platted lot within the Property, payment of City of Yuma Development Fees (the parks and recreation facility development fee, the police facilities development fee, the fire facilities development fee, the general government facilities development fee, the streets facilities development fee), and water and sewer capacity charges may, upon written request on a form provided by City staff, be deferred from the time of application for a building permit.
  - b. Application. At the time of application for a building permit, the Owner of the Property shall submit and sign a Request for Deferral of City of Yuma Development Fees and/or water and sewer capacity charges together with payment of a five hundred (\$500.00) dollar deferral fee (which shall cover the deferral costs for all of the Property for the term of this Agreement), payable to the City of Yuma. The deferred amount shall be calculated, signed by Owner and the City Administrator or his designee, and shall constitute an enforceable contract for the payment to the City of all deferred amounts. The completed Request for Deferral of the City of Yuma Development Fees and water and sewer capacity charges, together with this Development Agreement, shall serve as the security required by statute for payment thereof.
  - c. Period of Deferral. Payment in full of the deferred amount shall be made to the City of Yuma no later than the date of issuance of any certificate of occupancy, whether temporary or otherwise. In the case of residential property, in the event that Owner does not request a residential certificate of occupancy, then the “date of final inspection” shall be substituted for “date of issuance of a certificate of occupancy.”
  - d. Deferred Amount Due Upon Sale. Notwithstanding any sales contract or agreement to the contrary between Owner and the purchaser of any lot, part or portion of the Property which has a vested deferral, Owner shall pay all deferred amounts to the City prior to recording any deed transferring ownership or entering into a lease of lot.
4. Notice. All notices, demands or other communications must be in writing and are deemed duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

OWNER:

Terraces Townhomes, L.L.C.  
Elliott Homes, Inc  
11463 Foothills Boulevard  
Yuma, AZ 85367

CITY:

City Administrator  
City of Yuma  
One City Plaza  
Yuma, Arizona 85364-1436

If either party changes address, they must give written notice to the other party. Notice of change of address is deemed effective five (5) days after mailing by the party changing address.

5. Successors and Assigns. This Agreement is binding upon the heirs, executors, administrators, successors, and assigns of both Parties.
6. Waiver. If either party fails to require the other party to perform any provision of this Agreement, that failure does not prevent the other party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this Agreement if the other party fails to exercise a right or remedy. No waiver of any provisions of this Agreement shall be binding upon either party unless in writing signed by both Parties.
7. Governing Law and Venue. The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance. The Parties shall institute and maintain any legal actions or other judicial proceeding arising from this Agreement in a court of competent jurisdiction in Yuma County, Arizona.
8. 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.
9. Costs and Attorney Fees. If either party brings an action or proceeding for failure to observe any of the terms or provisions of this Agreement, the prevailing party shall recover, as part of such action or proceeding, all reasonable costs, expenses, and attorney fees as determined by the Court and not by a jury.
10. 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 shall be in writing, signed and endorsed by the Parties.
11. Recordation. The City shall record a copy of this Agreement no later than ten (10) days from date of entering into this Agreement pursuant to A.R.S. § 9-500.05.

12. Estoppel Certificate. The Parties agree that, upon not less than twenty-one (21) business days prior written request from a party to this Agreement, a requested party shall execute, acknowledge and deliver to the party making such request a written statement certifying to the current status of the Agreement, including whether or not, a party is in default of any obligation or duty set forth within the Agreement. Any such certificate may be relied on by a prospective purchaser of any lot within the Property, or any prospective lender.
13. No Partnership. This Agreement does not create and is not intended to imply a partnership or joint venture between Owner and City.
14. Good Standing; Authority. Each of the Parties represents and warrants to the other that it is duly formed and validly existing under the laws of Arizona and that the individual(s) executing this Agreement on behalf of their respective Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

**IN WITNESS WHEREOF**, the parties have executed this Agreement through their authorized representatives.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF YUMA:

OWNER: TERRACES TOWNHOMES,  
LLC

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

By: \_\_\_\_\_  
Wayne Eide  
Assistant Vice President

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Steven W. Moore  
City Attorney





City of YUMA

# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:** November 5, 2014

**DEPARTMENT:** Public Works

**DIVISION:** Engineering

- Motion
- Resolution
- Ordinance - Introduction
- Ordinance - Adoption
- Public Hearing

**TITLE:**  
Development Fee Deferral: Elliott Construction, Inc.

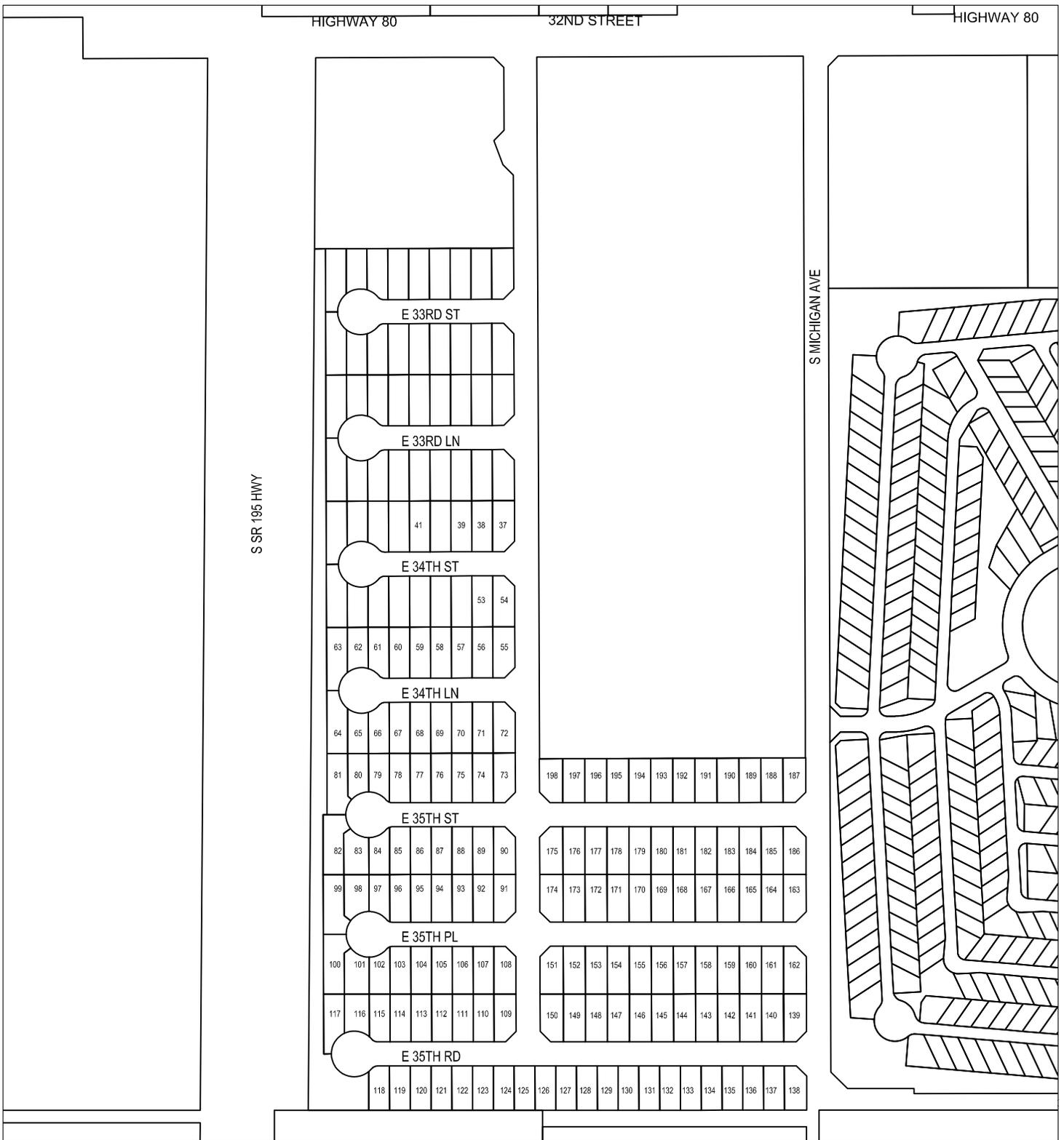
**SUMMARY RECOMMENDATION:**  
Approve a Development Agreement request with Elliott Construction, Inc, permitting the deferral of City of Yuma (City) Development Fees and water and sewer capacity charges for properties in the Araby Crossing Subdivision.

**REPORT:**  
City Administration and staff have previously met with the development community regarding current local economic activity, particularly that of the construction industry, and have recommended a procedure to City Council for deferral of development fees. Upon payment of a \$500.00 deferral fee to pay for City costs associated with processing and tracking the deferrals, for a period of one year (renewable for an additional year at the option of City Council), all development fees, along with sanitary sewer and water capacity charges, for residential, commercial and industrial development shall be eligible for deferral prior to issuance of a certificate of occupancy. The eligibility for deferral is in accordance with the specific terms outlined in the proposed development agreement.

It is anticipated that deferring these development fees and capacity charges will help stimulate economic activity and retain construction jobs. The deferral must be accomplished through a development agreement in accordance with A.R.S. § 9-463.05.

Elliott Construction, Inc. has requested a deferral of development fees and water and sewer capacity charges for the Araby Crossing Subdivision property in accordance with the terms of the proposed Development Agreement.

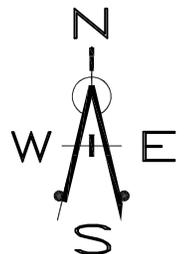
FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	\$0.00		
	FISCAL IMPACT STATEMENT:			
ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK: 1. 2. 3. 4. 5.			
	IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?  <input checked="" type="checkbox"/> Department <input type="checkbox"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			10/28/2014
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			10/28/2014
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
Joshua Scott			10/21/2014	
WRITTEN/SUBMITTED BY:			DATE:	
Teresa Blackburn			9/24/2104	



——— SUBJECT PARCELS

NOTE: THIS MAP IS PREPARED TO SHOW  
GENERAL SITE LOCATION ONLY AND REPRESENTS  
NO SPECIFIC DIMENSIONS RELATED TO THE SITE.

# LOCATION MAP



Prepared by: Andrew McGarvie

Checked by:

CITY OF YUMA  
DEPARTMENT OF  
PUBLIC WORKS  
ENGINEERING DIV.

DATE: 9-18-14

SCALE: N.T.S

REVISED:

CIP NO.

146

**RESOLUTION NO. R2014-40**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA,  
AUTHORIZING AND APPROVING A DEVELOPMENT AGREEMENT CONCERNING  
THE DEFERRAL OF CITY OF YUMA DEVELOPMENT FEES AND WATER AND  
SANITARY SEWER CAPACITY CHARGES FOR ARABY CROSSING SUBDIVISION**

WHEREAS, the City of Yuma, Arizona (City) desires to obtain those public benefits accruing from the development of property, which benefits include, but are not limited to, the creation and retention of jobs, stimulation of further economic development within the City, increased property tax values based on improvements to be constructed on the property and by retention and generation of additional sales tax revenues through increased business activities; and,

WHEREAS, A.R.S. § 9-463.05(B)(10) permits the deferral of payment of development fees for residential units when supported by appropriate security and included as part of a development agreement; and

WHEREAS, both the City and the property owner agree that deferral of payment of development fees and water and sanitary sewer capacity charges, prior to issuance of a certificate of occupancy, will promote economic activity within the City and shall constitute sufficient consideration for the deferral.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Yuma, Arizona as follows:

SECTION 1: That the deferral of City of Yuma Development Fees, and water and sanitary capacity charges is approved in accordance with the terms of the Development Agreement attached as Exhibit A is and by this reference, made a part of this resolution.

SECTION 2: That upon payment to the City of Yuma of the described processing fee, the City Administrator is authorized and directed to execute the Development Agreement on behalf of the City of Yuma.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

APPROVED:

\_\_\_\_\_  
Douglas J. Nicholls  
Mayor

ATTESTED:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven W. Moore  
City Attorney

## RESOLUTION NO. R2014-40

### EXHIBIT A DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement"), in accordance with the Arizona Revised Statutes (A.R.S.) § 9-500.05, is by and between Elliott Construction, Inc., an Arizona corporation ("Owner"), as owner of the real property described in the Araby Crossing plat, lots 37 through 39, 41, 53 through 198, recorded as Yuma County Assessor's Fee #: 2008-34523, Book 25 of Plats 9, (the "Property") and the City of Yuma, a municipal corporation of the State of Arizona ("City").

#### RECITALS

WHEREAS, the City desires to obtain those public benefits which accrue from the development of the Property and include (but are not limited to) the creation and retention of jobs, stimulation of further economic development within the City, increased property tax values based on improvements to be constructed on the Property, and by retention and generation of additional sales tax revenues through increased business activity; and,

WHEREAS, A.R.S. § 9-463.05(B)(10) permits the deferral of payment of development fees for residential units when supported by appropriate security and included as part of a development agreement; and

WHEREAS, for the mutual benefit of both parties, the sufficiency of which is acknowledged, the parties have entered into this Agreement to provide for the deferral of payment of City of Yuma Development Fees and all City of Yuma water and sewer capacity charges and connection fees upon the terms and conditions contained herein.

NOW THEREFORE, in consideration of the above recitals, the parties agree as follows:

1. Term. This Agreement shall be effective upon execution by all of the parties hereto (the "Effective Date") and shall expire one year from the Effective Date (the "Expiration Date") unless the parties mutually agree to an earlier termination or the City Council, by proper motion, extends this Agreement for an additional one year term, in which case the Expiration Date shall be two years from the Effective Date.
2. Vesting. Vesting of the deferral benefit shall accrue on a lot by lot basis. To vest the right of deferral, the residential unit must pass the under slab plumbing and building setback inspection ("underground inspection") within thirty (30) days of the date of issuance of the building permit. Time is of the essence. If the underground inspection is not successfully completed within thirty (30) days of the issuance of the building permit, no right to deferral shall vest, and Owner shall either: (1) be issued a refund of 80% of the cost of the building permit and the building permit shall expire; or (2) all deferral amounts shall immediately be due and payable to the City to prevent the building permit from expiring. At the expiration or termination of this Agreement, any vested lot shall

continue to enjoy the deferred benefit unless construction is abandoned by Owner. On the Expiration Date, the deferral benefit shall expire for any non-vested lot.

3. Deferral Of Fees Benefit. Deferral of certain described City of Yuma Development Fees and water and sewer capacity charges shall be available within the Property throughout the term of this Agreement. An expired building permit shall not prohibit Owner from reapplying for the deferral benefit provided that a new building permit is applied for. When vested in accordance with paragraph 2 above, the deferral of fees benefit shall include:
  - a. Deferral of Payment of City of Yuma Development Fees and Water and Sewer Capacity Charges. For any platted lot within the Property, payment of City of Yuma Development Fees (the parks and recreational facilities development fee, the police facilities development fee, the fire facilities development fee, the general government facilities development fee, and the streets facilities development fee), and water and sewer capacity charges may, upon written request on a form provided by City staff, be deferred from the time of application for a building permit.
  - b. Application. At the time of application for the building permit, the Owner of the Property shall submit and sign a Request for Deferral of City of Yuma Development Fees and/or water and sewer capacity charges together with payment of a five hundred (\$500.00) dollar deferral fee (which shall cover the deferral costs for all of the property for the term of this agreement), payable to the City of Yuma. The deferred fees shall be calculated, signed by Owner and the City Administrator or his designee, and shall constitute an enforceable contract for the payment to the City of all deferred amounts. The completed Request for Deferral of City Development Fees and/or water and sewer capacity charges, together with this Development Agreement, shall serve as the security required by statute for payment thereof.
  - c. Period of Deferral. Payment in full of the deferred amount shall be made to the City no later than the date of issuance of any certificate of occupancy, whether temporary or otherwise. In the case of residential property, in the event that Owner does not request a residential certificate of occupancy, then the “date of final inspection” shall be substituted for “date of issuance of a certificate of occupancy.”
  - d. Deferred Fees and Charges Due Upon Sale. Notwithstanding any sales contract or agreement to the contrary between Owner and the purchaser of any lot, part or portion of the Property which has a vested deferral, Owner shall pay all deferred amounts to the City prior to recording any deed transferring ownership or entering into a lease of lot.
4. Notice. All notices, demands or other communications must be in writing and are deemed duly delivered upon personal delivery, or as of the second business day after mailing by United States mail, postage prepaid, registered or certified, return receipt

requested, addressed as follows:

**OWNER:**

Elliott Construction, Inc.  
1400 E. Southern Avenue, #720  
Tempe, AZ 85282

**CITY:**

City Administrator  
City of Yuma  
One City Plaza  
Yuma, Arizona 85364-1436

If either party changes address, they must give written notice to the other party. Notice of change of address is deemed effective five (5) days after mailing by the party changing address.

5. Successors and Assigns. This Agreement is binding upon the heirs, executors, administrators, successors, and assigns of both Parties.
6. Waiver. If either party fails to require the other party to perform any provision of this Agreement, that failure does not prevent the other party from later enforcing that provision. Neither party is released from any responsibilities or obligations imposed by law or this Agreement if the other party fails to exercise a right or remedy. No waiver of any provisions of this Agreement shall be binding upon either party unless in writing signed by both Parties.
7. Governing Law and Venue. The laws of the State of Arizona govern this Agreement as to validity, interpretation, and performance. The Parties shall institute and maintain any legal action or other judicial proceeding arising from this Agreement in a court of competent jurisdiction in Yuma County, Arizona.
8. 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.
9. Costs and Attorney Fees. If either party brings an action or proceeding for failure to observe any of the terms or provisions of this Agreement, the prevailing party shall recover, as part of such action or proceeding, all reasonable costs, expenses, and attorney fees as determined by the Court and not by a jury.
10. 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 shall be in writing, signed and endorsed by the Parties.
11. Recordation. The City shall record a copy of this Agreement no later than ten (10) days from date of entering into this Agreement pursuant to A.R.S. § 9-500.05.

12. Estoppel Certificate. The Parties agree that, upon not less than twenty-one (21) business days prior written request from a party to this Agreement, a requested party shall execute, acknowledge and deliver to the party making such request a written statement certifying to the current status of the Agreement, including whether or not, a party is in default of any obligation or duty set forth within the Agreement. Any such certificate may be relied on by a prospective purchaser of any lot within the Property, or any prospective lender.
13. No Partnership. This Agreement does not create and is not intended to imply a partnership or joint venture between Owner and City.
14. Good Standing; Authority. Each of the Parties represents and warrants to the other that it is duly formed and validly existing under the laws of Arizona and that the individual(s) executing this Agreement on behalf of their respective Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

**IN WITNESS WHEREOF**, the parties have executed this Agreement through their authorized representatives.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

CITY OF YUMA:

OWNER: ELLIOTT CONSTRUCTION,  
INC.

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

By: \_\_\_\_\_  
Wayne Eide  
General Manager, Elliott Construction  
Inc.

ATTEST:

By: \_\_\_\_\_  
Linda L. Bushong  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Steven W. Moore  
City Attorney

**ACKNOWLEDGEMENTS**

State of \_\_\_\_\_ )  
 ) ss  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2014 by Wayne Eide, General Manager of Elliott Construction, Inc. an Arizona corporation, on behalf of the corporation.

In witness whereof, I have set my hand and official seal

My commission expires:

By: \_\_\_\_\_  
Notary Public



City of YUMA

# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:** November 5, 2014

**DEPARTMENT:** Community Development

**DIVISION:** Community Planning

- Motion
- Resolution
- Ordinance - Introduction
- Ordinance - Adoption
- Public Hearing

**TITLE:**  
Rezoning of Property: Southwest Corner of Maple Avenue and 16th Street, Yuma, AZ.

**SUMMARY RECOMMENDATION:**  
Rezone approximately 0.47 acres from the Light Industrial (L-I) District to the General Commercial (B-2) District. The property is located at 1610 S. Maple Avenue, Yuma, AZ. (ZONE-6787-2014)

**REPORT:**  
On September 22, 2014, the Planning and Zoning Commission voted to recommend APPROVAL (5-0, with Hamel absent and one vacancy) of the request to rezone approximately 0.47 acres from the Light Industrial (L-I) District to the General Commercial (B-2) District for property located at 1610 South Maple Avenue, subject to the following conditions:

1. The conditions listed below are in addition to City codes, rules, fees and regulations that are applicable to this action.
2. The Owner shall submit to the City of Yuma, for recordation, a signed and notarized "Waiver of Claims under the Private Property Rights Protection Act." The Waiver shall be submitted within thirty (30) calendar days of the effective date of approval of this zoning action and prior to the issuance of any building permit. In the event this condition is not completed within this time frame, the zoning action is null and void.
3. The Owner shall record an Avigation Easement on the property acknowledging potential noise and overflight of aircraft from both daily and special operations of the Marine Corps Air Station and the Yuma International Airport.
4. With the exception of Condition 2, each of the conditions listed above shall be completed within two (2) years of the effective date of the rezoning ordinance or prior to the issuance of a building permit or business license for this site, whichever occurs first. If the conditions of approval are not completed within the above timeframe then the rezone shall be subject to ARS 9-462.01.

**PUBLIC COMMENTS - EXCERPT FROM PLANNING AND ZONING COMMISSION MEETING MINUTES:**

**QUESTIONS FOR STAFF**

**“Clinton Underhill – Planning and Zoning Commissioner,** asked if there were any issues with the underground gasoline storage tanks. **Joy Everett – Senior Planner,** said she was not aware of any issues, and would not know until the storage tanks were removed; it had been a gas station since the 1970s. **Underhill** asked if it was the city’s responsibility to clean up the property. **Everett** said yes.

**“David Koopmann – Planning and Zoning Commissioner,** asked if this property was in the city or county. **Everett** said city. **Koopmann** asked if there was an agreement that the previous owner would be responsible for soil remediation. **Deb Vining – Right-of-Way Agent,** said there were strict rules by the Arizona Department of Environmental Quality (ADEQ) that the city had to abide by. The city would not be responsible for any contamination upon tank removal. The old steel tanks were removed and replaced with the double-walled fiberglass tanks, and there were no leaks or contamination at that time. ADEQ would go after the company that installed the tanks. **Koopmann** asked if remediation is the responsibility of the previous owner. **Vining** said yes, and staff had a letter stating that; staff was proceeding with tank removal and any contamination would be the responsibility of the prior owner.

**APPLICANT / APPLICANT’S REPRESENTATIVE**

**OPEN PUBLIC COMMENT**

**CLOSE PUBLIC COMMENT**

**MOTION**

**“Motion by Underhill, second by Conde, to APPROVE Case Number ZONE-6787-2014, subject to the Conditions of Approval in Attachment A. Motion carried unanimously (5-0).”**

**Planning Commission Staff Report - Attached**

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	\$0.00		
	FISCAL IMPACT STATEMENT:			

ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK:			
	1. 2. 3. 4. 5.			
IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?				
<input type="checkbox"/> Department <input type="checkbox"/> City Clerk's Office				

SIGNATURES	CITY ADMINISTRATOR:	DATE:
	Gregory K. Wilkinson	10/6/2014
	REVIEWED BY CITY ATTORNEY:	DATE:
	Steven W. Moore	10/6/2014
	RECOMMENDED BY (DEPT/DIV HEAD):	DATE:
Laurie L. Lineberry	9/29/2014	
WRITTEN/SUBMITTED BY:	DATE:	
Stephanie Joy Everett	8/26/2014	



**STAFF REPORT TO THE PLANNING AND ZONING COMMISSION  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
COMMUNITY PLANNING DIVISION  
CASE TYPE – REZONE**

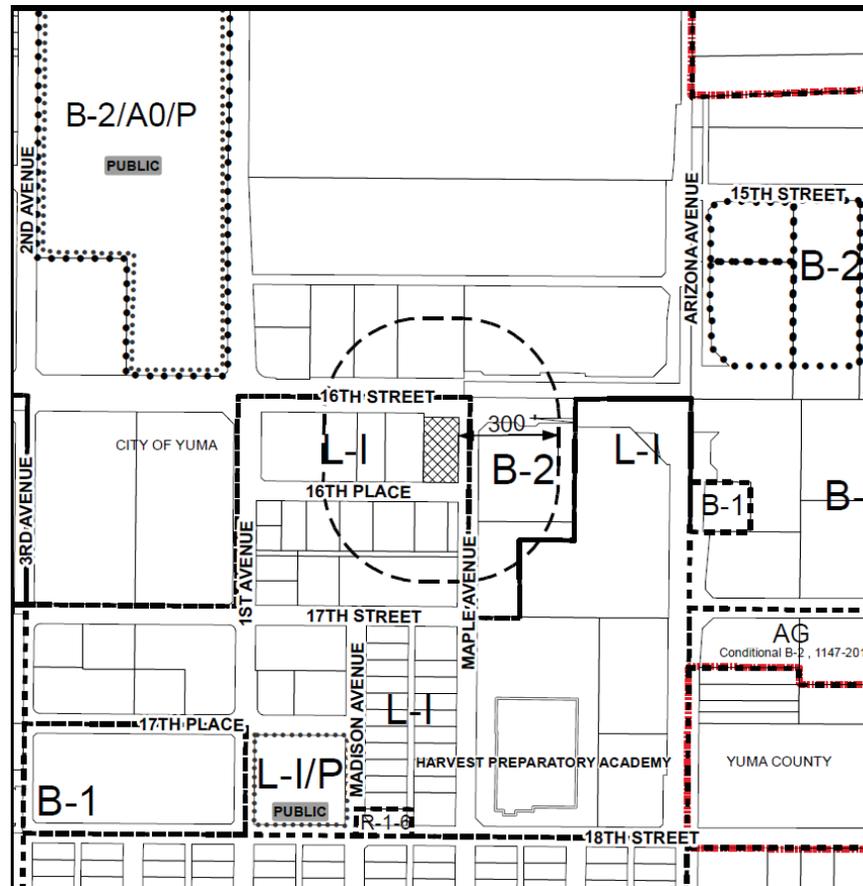
**Hearing Date:** September 22, 2014

**Case Number:** ZONE-6787-2014

**Project Description/Location:** Rezone approximately .47 acres from the Light Industrial (L-I) District to the General Commercial (B-2) District. The property is located at 1610 South Maple Avenue, Yuma, AZ.

	Existing Zoning	Existing Land Use	Land Use Designation
Site	Light Industrial (L-I)	Vacant Gas Station	Commercial
North	General Commercial (B-2)	Smart and Final Grocery Store	Commercial
South	Light Industrial (L-I)	Storage Yard	Commercial
East	General Commercial (B-2)	Union 76 Gas Station / Wendy's	Commercial
West	Light Industrial (L-I)	Village Inn Pizza Parlor	Commercial

**Location Map**



**Prior site actions:** Annexation: Ord. #672 (7/21/1956); Conditional Use Permit: CU97-013 (Motor Fuel Sales in L-I) (12/9/1997)

**Staff recommendation:** Staff recommends **APPROVAL** of the rezoning of the property from the Light Industrial (L-I) District to the General Commercial (B-2) District, subject to the conditions shown in Attachment A, because it is in conformance with the General Plan.

**Suggested Motion:** Move to **APPROVE** the rezoning of the property from the Light Industrial (L-I) District to the General Commercial (B-2) District, subject to the conditions shown in Attachment A, because it is in conformance with the General Plan.

**Staff Analysis:** The subject property is approximately 20,584 sq. ft. (.47 acres) and is located on the southwest corner of 16<sup>th</sup> Street and Maple Avenue. The property was annexed into the City of Yuma in 1956. It is currently developed with a vacant gas station and is in the Light Industrial (L-I) Zoning District. A conditional use permit was approved for this property in 1997 for “motor fuel sales” to allow the gas station use. The City of Yuma purchased the property in 2010 as part of the 16<sup>th</sup> Street widening project to fulfill future rights-of-way requirements. The former Barney’s Gas Station closed in late 2013.

The City of Yuma is requesting to rezone the subject property from the Light Industrial (L-I) District to the General Commercial (B-2) District. With B-2 zoning, this property, located at a prominent location on 16<sup>th</sup> Street, will have more versatility when it comes to what businesses can operate there, making it more marketable for future redevelopment opportunities. The area surrounding the property is characterized by various commercial uses. The City of Yuma General Plan as amended designates this area as Commercial. The request to rezone to the B-2 Zoning District is in conformance with the General Plan.

No neighborhood meeting was held and no public comments were received.

**1. Does the proposed zoning district conform to the Land Use Element?**

Yes

**2. Are there any dedications or property easements identified by the Transportation Element?**

No

Transportation Element	Planned	Existing	Difference	Requested
16 <sup>th</sup> Street – Principal Arterial Constrained	56 FT H/W ROW	60 FT H/W ROW	+ 4 FT	0 FT
Maple Avenue – Local	29 FT H/W ROW	30 FT H/W ROW	+ 1 FT	0 FT

**3. Does the proposed rezoning of the property conform to the remaining elements of the general plan?**

Yes

**4. Does the proposed rezoning conform to the adopted facilities plan?**

Yes

**5. Does the proposed rezoning conform to Council's prior approval of rezonings, development agreements or subdivisions for this site?**

Yes

**External Agency Comments:** None received.  
**Neighborhood Meeting Comments:** No Meeting Required.

**Proposed conditions delivered to applicant on:** August 20, 2014

**Final staff report delivered to applicant on:** September 15, 2014

- Applicant agreed with all of the conditions of approval on: August 20, 2014
- Applicant did not agree with the following conditions of approval: (list #'s)
- If the Planner is unable to make contact with the applicant – describe the situation and attempts to contact.

**Attachments**

A	B
Staff Conditions of Approval	Aerial Photo

**Project Planner:** James Alexander, 373 -5000 #3040 James.Alexander@YumaAZ.gov  
 Associate Planner

**Prepared By:**  **Date:** 8/20/14  
 James Alexander, Associate Planner

**Reviewed By:**  **Date:** 8/26/14  
 Bobette Bauermann, Principal Planner

**Approved By:**  **Date:** 8-20-14  
 Laurie L. Lineberry, AICP, Community Development Director

**ATTACHMENT A**  
**CONDITIONS OF APPROVAL**

The following conditions have been found to have a reasonable nexus and are roughly proportionate to the impact of the proposed rezone for the site:

**Department Of Community Development Comments: Laurie Lineberry, Community Development Director (928) 373-5175:**

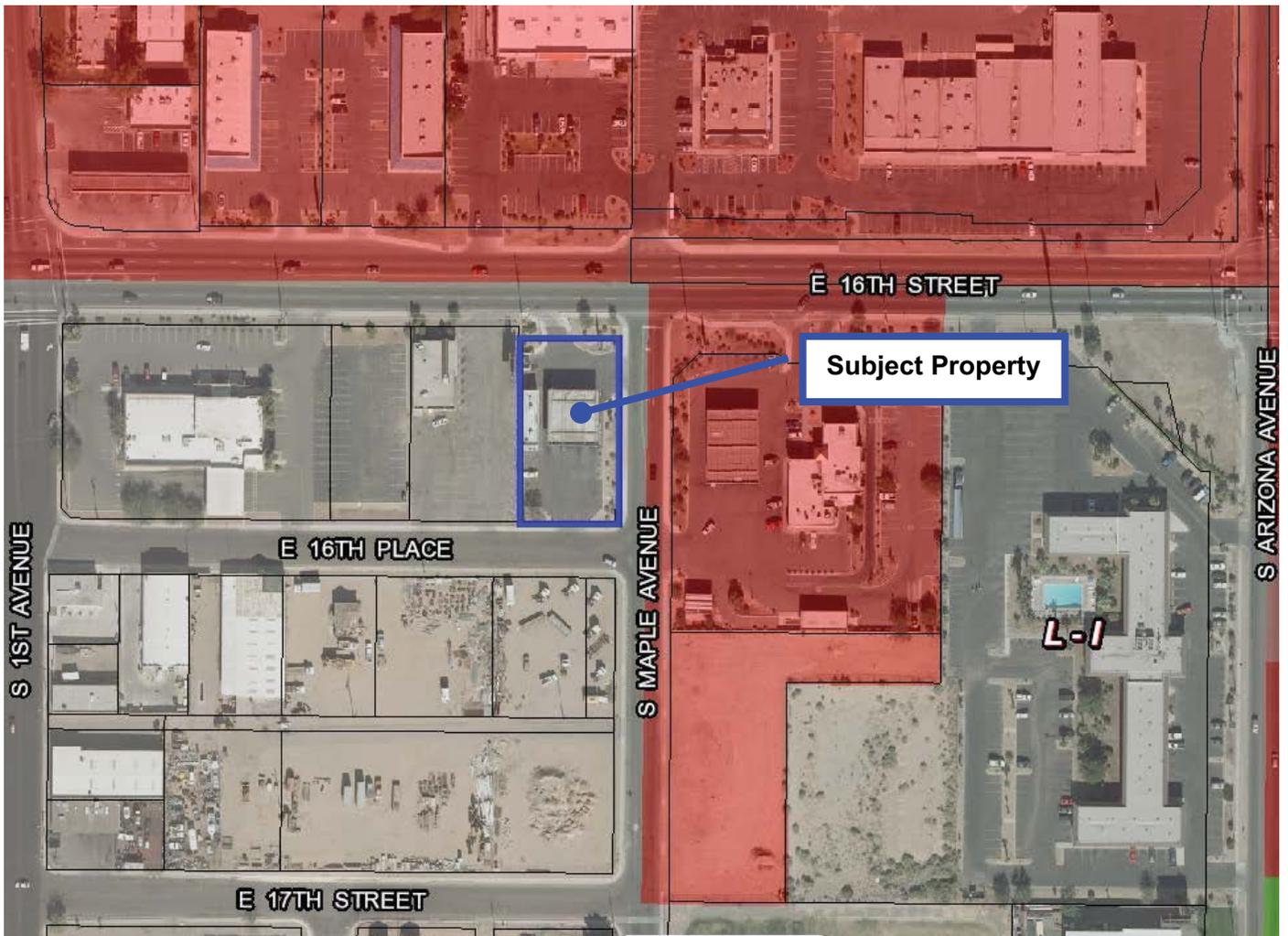
1. The conditions listed below are in addition to City codes, rules, fees and regulations that are applicable to this action.
2. The Owner shall submit to the City of Yuma, for recordation, a signed and notarized "Waiver of Claims under the Private Property Rights Protection Act." The Waiver shall be submitted within thirty (30) calendar days of the effective date of approval of this zoning action and prior to the issuance of any building permit. In the event this condition is not completed within this time frame, the zoning action is null and void.
3. The Owner shall record an Avigation Easement on the property acknowledging potential noise and overflight of aircraft from both daily and special operations of the Marine Corps Air Station and the Yuma International Airport.

**Community Planning: James Alexander, Assistant Planner (928) 373-5000 #3040:**

4. With the exception of Condition 2, each of the conditions listed above shall be completed within two (2) years of the effective date of the rezoning ordinance or prior to the issuance of a building permit or business license for this site, whichever occurs first. If the conditions of approval are not completed within the above timeframe then the rezone shall be subject to ARS 9-462.01.

**Any questions or comments regarding the Conditions of Approval as stated above should be directed to the staff member who provided the comment. Name and phone numbers are provided.**

**ATTACHMENT B  
AERIAL PHOTO**





**STAFF RESEARCH – REZONE**

**CASE #: ZONE-6787-2014**  
**CASE PLANNER: JAMES ALEXANDER**

**I. PROJECT DATA**

Project Location:	SWC of 16 <sup>th</sup> Street and Maple Avenue										
Parcel Number(s):	665-36-061										
Parcel Size(s):	20,584 sq. ft.										
Total Acreage:	.47 ac.										
Proposed Dwelling Units:	0										
Address:	1610 South Maple Avenue										
Applicant:	City of Yuma										
Applicant's Agent:	N/A										
Land Use Conformity Matrix:	Conforms: Yes X No										
Zoning Overlay:	Public	AO	Auto	B&B	Historic	None	X	Airport			
Noise Contours	65-70	70-75	75+	APZ1	APZ2	Clear Zone					

	Existing Zoning	Existing Land Use	Planned Land Use
<b>Site</b>	Light Industrial (L-I)	Vacant Gas Station	Commercial
<b>North</b>	General Commercial (B-2)	Smart and Final Grocery Store	Commercial
<b>South</b>	Light Industrial (L-I)	Storage Yard	Commercial
<b>East</b>	General Commercial (B-2)	Union 76 Gas Station / Wendy's	Commercial
<b>West</b>	Light Industrial (L-I)	Village Inn Pizza Parlor	Commercial

Prior Cases or Related Actions:

Type	Conforms			Cases, Actions or Agreements	
Pre-Annexation Agreement	Yes		No	N/A	
Annexation	Yes	X	No	Ord. #672 (7/21/1956)	
General Plan Amendment	Yes		No	N/A	
Development Agreement	Yes		No	N/A	
Rezone	Yes	X	No	Z80-23	
Subdivision	Yes		No	N/A	
Conditional Use Permit	Yes	X	No	CU97-013 (Motor Fuel Sales in L-I) (12/9/1997)	
Pre-Development Meeting	Yes	X	No	7/1/14	
Design Review Commission	Yes		No	N/A	
Enforcement Actions	Yes		No	N/A	
Avigation Easement Recorded	Yes		No	X	Fee # _____ If no, add to Conditions of Approval
Land Division Status:	Parcel is legal lot of record.				
Irrigation District:	None				
Adjacent Irrigation Canals & Drains:	N/A				
Water Conversion: (5.83 ac ft/acre)	N/A				Highlight & F9 to compute field
Water Conversion Agreement Required	Yes		No	X	

**II. CITY OF YUMA GENERAL PLAN**

<b>Land Use Element:</b>			
Land Use Designation:	Commercial		
Noise Contour:	N/A	Overlay/Specific Area:	N/A
Issues:	None		

Historic District:	Brinley Avenue		Century Heights		Main Street		None	X	
Historic Buildings on Site:	Yes		No	X					
<b>Transportation Element:</b>									
<b>FACILITY PLANS</b>									
Major Roadways Plan			Planned			Existing			
16 <sup>th</sup> Street – Principal Arterial Constrained			56 FT H/W ROW			60 FT H/W ROW			
Maple Avenue – Local			29 FT H/W ROW			30 FT H/W ROW			
Median Covenant	Fee # 1998-23419								
Gateway Route	X	Scenic Route		Hazardous Cargo Route	X	Truck Route	X		
Bicycle Facilities Master Plan	Existing: Bike Route from 16 <sup>th</sup> St., south on 1 <sup>st</sup> Ave., west on 17 <sup>th</sup> St., south on 3 <sup>rd</sup> Ave. Proposed: Bike Route from 16 <sup>th</sup> St., south on 1 <sup>st</sup> Ave., east on 17 <sup>th</sup> St., south on Maple Ave.								
YCAT Transit System	Yellow Route 95; Bus Stop on 1 <sup>st</sup> Avenue at 16 <sup>th</sup> Street								
Issues:	None								
<b>Parks, Recreation and Open Space Element:</b>									
Parks and Recreation Facility Plan									
Neighborhood Park:	Existing: Joe Henry Park			Future: None					
Area Park	Existing: Kennedy Park			Future: None					
Linear Park:	Existing: None			Future: Joe Henry Park to Avenue F					
Issues:	None								
<b>Housing Element:</b>									
Special Need Household:	N/A								
Issues:	None								
<b>Redevelopment Element:</b>									
Planned Redevelopment Area:	N/A								
Adopted Redevelopment Plan:	North End:		Carver Park:		None:	X			
Conforms:	Yes		No		N/A				
<b>Conservation, Energy &amp; Environmental Element:</b>									
Impact on Air or Water Resources	Yes		No	X					
Renewable Energy Source	Yes		No	X					
Issues:	None								
<b>Public Services Element:</b>									
<b>Population Impacts</b> Projected Population per Census 2010: 2.9 persons per unit Police Impact Standard: 1 officer for every 530 citizens; Water Consumption: 300 gallons per day per person; Wastewater generation: 100 gallons per day per person	Dwelling Units	Projected	Police	Water		Wastewater			
		Population	Impact	Consumption		Generation			
	Maximum		Officers	GPD	AF	GPD			
	0	0	0.00	0	0.0	0			
	Minimum								
0	0	0.00	0	0.0	0				
Fire Facilities Plan:	Existing: Fire Station No. 3			Future: Fire Station No. 3					
Water Facility Plan:	Source:	City	X	Private		Connection:	1" line from 16 <sup>th</sup> St.		
Sewer Facility Plan:	Treatment:	City	X	Septic		Private	Connection: 8" line from 16 <sup>th</sup> St.		
Issues:	None								
<b>Safety Element:</b>									
Flood Plain Designation:	X		Liquefaction Hazard Area:	Yes		No	X		
Issues:	None								
<b>Growth Area Element:</b>									
Growth Area:	Araby Rd & Interstate 8		Arizona Ave & 16 <sup>th</sup> St		Avenue B & 32 <sup>nd</sup> St.				
	North End		Pacific Ave & 8 <sup>th</sup> St		Estancia		None	X	
Issues:	None								

**NOTIFICATION**

- **Legal Ad Published: The Sun** 8/29/14
- **300' Vicinity Mailing:** 8/4/14
- **34 Commenting/Reviewing Agencies noticed:** 8/7/14
- **Neighborhood Meeting:** N/A
- **Hearing Dates:** 9/22/14
- **Comments Due:** 8/18/14

<b>External List (Comments)</b>	<b>Response Received</b>	<b>Date Received</b>	<b>"No Comment"</b>	<b>Written Comments</b>	<b>Comments Attached</b>
Yuma County Airport Authority	Yes	8/7/14	X		
Yuma County Engineering	NR				
Yuma County Public Works	NR				
Yuma County Water Users	Yes	8/15/14	X		
Yuma County Planning & Zoning	NR				
Arizona Public Service	NR				
Time Warner Cable	NR				
Southwest Gas	NR				
Qwest Communications	NR				
Bureau of Land Management	NR				
YUHS District #70	NR				
Yuma Elem. School District #1	NR				
Crane School District #13	NR				
A.D.O.T.	Yes	8/6/14	X		
Yuma Irrigation District	NR				
Arizona Fish and Game	NR				
USDA – NRCS	NR				
United States Postal Service	NR				
Yuma Metropolitan Planning Org.	NR				
El Paso Natural Gas Company	NR				
Western Area Power Administration	NR				
YCIPTA	Yes	8/6/14	X		
<b>City of Yuma Internal List (Conditions)</b>	<b>Response Received</b>	<b>Date Received</b>	<b>"No Conditions"</b>	<b>Written Conditions</b>	<b>Comments Attached</b>
Daniel Rhodes, Police	Yes	8/18/14	X		
Ron Ramirez, Parks	Yes	8/7/14	X		
Damon Chango, Parks	NR				
Andrew McGarvie, Engineering	NR				
Kayla Holiman, Fire	Yes	8/13/14	X		
Kerry Beecher, Building Safety	NR				
Alan Kircher, Building Safety	Yes	8/8/14	X		
Jim Hamersley, ITS	NR				
Josh Scott, Engineering	NR				
Josh Scott, Traffic Engineering	NR				
MCAS / C P & L Office	NR				
Jay Simonton, Utilities	Yes	8/12/14	X		
Joel Olea, Public Works	NR				
Joel Olea, Streets	NR				

<b>Neighborhood Meeting</b>	<b>Comments Available</b>
None required	N/A
<b>Prop. 207 Waiver Given to Applicant on:</b>	<b>Delivery Method:</b>
August 25, 2014	In Person

**PUBLIC COMMENTS RECEIVED:** None Received

**ORDINANCE NO. O2014-30**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA, AMENDING CHAPTER 154 OF THE YUMA CITY CODE, AS AMENDED, REZONING CERTAIN PROPERTY HEREINBEFORE LOCATED IN THE LIGHT INDUSTRIAL (L-I) DISTRICT TO THE GENERAL COMMERCIAL (B-2) DISTRICT AND AMENDING THE ZONING MAP TO CONFORM THERETO**

WHEREAS, the City of Yuma Planning and Zoning Commission held a public hearing on September 22, 2014 in Zoning Case No: ZONE-6787-2014 in the manner prescribed by law for the purpose of rezoning a parcel of property hereinafter described to the General Commercial (B-2) District as provided for in Chapter 154 of the Yuma City Code; and,

WHEREAS, due and proper notice of such public hearing was given in the time, form, substance and manner as provided by law, including publication of such notice in the Yuma Sun on August 29, 2014; and,

WHEREAS, the City Council has considered the recommendation of the Planning and Zoning Commission regarding Case No: ZONE-6787-2014 and finds that the recommendation complies with and conforms to the goals and objectives of the Yuma General Plan, as amended.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Yuma as follows:

SECTION 1: That the following described property, depicted in Exhibit A, attached hereto and by this reference made a part hereof:

That part of the Northwest quarter of the Northeast quarter of the Northeast quarter (NW1/4 NE1/4 NE1/4) of Section 33, Township 8 South, Range 23 West of the Gila and Salt River Base and Meridian, Yuma County, State of Arizona, more particularly described as follows:

Commencing at the Northeast corner of the West half of the Northeast quarter of the Northeast quarter (W1/2 NE1/4 NE1/4); thence West along the North line of said Section, a distance of 30 feet to the True Point of Beginning;  
thence West along the North line of said Section, a distance of 100 feet;  
thence South and parallel to the East side of said Section, a distance of 256.20 feet;  
thence East and parallel to the North line of said Section, a distance of 100 feet;  
thence North and parallel to the East side of said Section 33, a distance of 256.30 feet to the True Point of Beginning;

EXCEPT the North 61 feet thereof.

AND

The East 5.38 feet of that portion of the Northwest quarter of the Northeast quarter of the Northeast quarter (NW1/4 NE1/4 NE1/4) of Section 33, Township 8 South, Range 23 West of the Gila and Salt River Base and Meridian, Yuma County, State of Arizona, more particularly described as follows:

Commencing at a point which is South 0°26'45" West, a distance of 48 feet and South 89°37' East, a distance of 330 feet from the Northwest corner of said Northwest quarter of the Northeast quarter of the Northeast quarter (NW1/4 NE1/4 NE1/4) and the True Point of Beginning;

thence South 0°26'45" West, a distance of 207.88 feet;

thence South 89°33'30" East, a distance of 205.38 feet;

thence North 0°28' 15" East, a distance of 208.20 feet;

thence North 89°37' West, a distance of 205.46 feet to the True Point of Beginning;

EXCEPT the North 13 feet thereof.

Containing 20,570 square feet or 0.472 acres, more or less

be placed in the General Commercial (B-2) District, as defined by Chapter 154 of the Yuma City Code, as amended; that said property upon this Ordinance becoming final, be subject to all rules, regulations and requirements of Chapter 154 of the Yuma City Code, as amended, pertaining to the General Commercial (B-2) District, and that the zoning map adopted under Chapter 154 of the Yuma City Code, as amended, be hereby ordered to be changed and amended so as to show that said property described in this Ordinance will be located within the District herein provided.

SECTION 2: That the following condition(s) must be met and/or completed in order for the zoning amendment to be final:

1. The conditions listed below are in addition to City codes, rules, fees and regulations that are applicable to this action.
2. The Owner shall submit to the City of Yuma, for recordation, a signed and notarized "Waiver of Claims under the Private Property Rights Protection Act." The Waiver shall be submitted within thirty (30) calendar days of the effective date of approval of this zoning action and prior to the issuance of any building permit. In the event this condition is not completed within this time frame, the zoning action is null and void.
3. The Owner shall record an Avigation Easement on the property acknowledging potential noise and overflight of aircraft from both daily and special operations of the Marine Corps Air Station and the Yuma International Airport.

SECTION 3: With the exception of Condition 2, each of the conditions listed above shall be completed within two (2) years of the effective date of the rezoning ordinance or prior to the issuance

of a building permit or business license for this site, whichever occurs first. If the conditions of approval are not completed within the above timeframe then the rezone shall be subject to ARS 9-462.01.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

APPROVED:

\_\_\_\_\_  
Douglas J. Nicholls  
Mayor

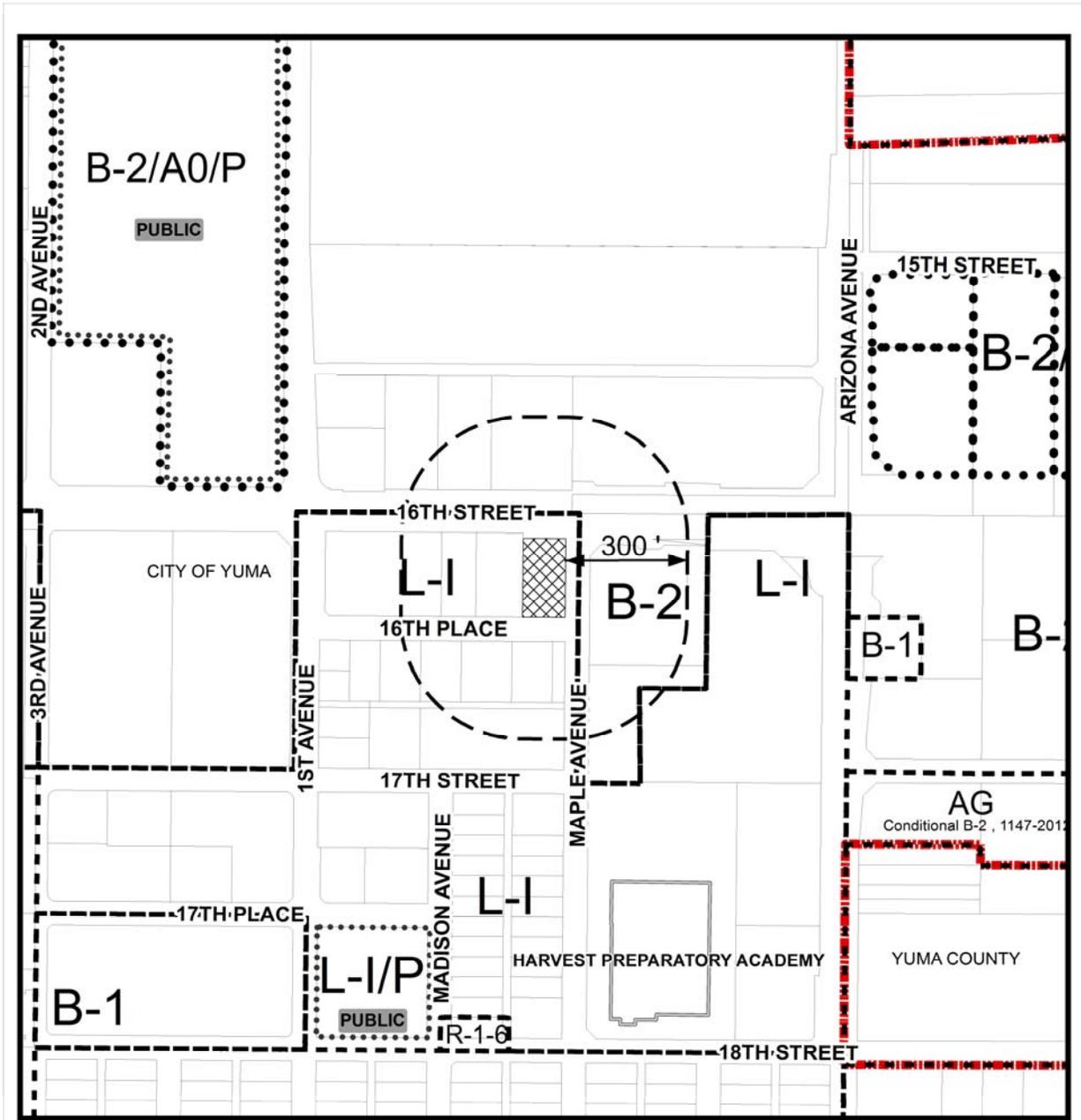
ATTESTED:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven W. Moore  
City Attorney

Exhibit A

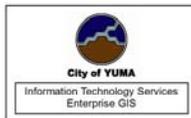


LOCATION MAP

 LOCATION OF SUBJECT PROPERTY



Prepared by: ITS/GIS  
 Checked by:



Date: 07-29-14  
 Revised:  
 Revised:

Case #:  
 ZONE-6787-2014



City of YUMA

# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:** November 5, 2014

**DEPARTMENT:** Community Development

**DIVISION:** Community Planning

- Motion
- Resolution
- Ordinance - Introduction
- Ordinance - Adoption
- Public Hearing

**TITLE:**  
Rezoning of Property: Northwest corner of 32nd Street and Talon Avenue, Yuma, AZ.

**SUMMARY RECOMMENDATION:**  
Rezone approximately 0.74 acres from the General Commercial/Aesthetic Overlay (B-2/AO) District to the General Commercial (B-2) District. The property is located at the northwest corner of 32nd Street and Talon Avenue, Yuma, AZ. (ZONE-7131-2014)

**REPORT:**  
On October 27, 2014, the Planning and Zoning Commission voted to recommend APPROVAL (6-0, with Underhill absent) of the request to rezone approximately 0.74 acres from the General Commercial/Aesthetic Overlay (B-2/AO) District to the General Commercial (B-2) District for property located at the northwest corner of 32nd Street and Talon Avenue, subject to the following conditions:

1. The conditions listed below are in addition to City codes, rules, fees and regulations that are applicable to this action.
2. The Owner shall submit to the City of Yuma, for recordation, a signed and notarized "Waiver of Claims under the Private Property Rights Protection Act." The Waiver shall be submitted within thirty (30) calendar days of the effective date of approval of this zoning action and prior to the issuance of any building permit. In the event this condition is not completed within this time frame, the zoning action is null and void.
3. With the exception of Condition 2, each of the conditions listed above shall be completed within two (2) years of the effective date of the rezoning ordinance or prior to the issuance of a building permit or business license for this site, whichever occurs first. If the conditions of approval are not completed within the above timeframe then the rezone shall be subject to ARS 9-462.01.

**PUBLIC COMMENTS - EXCERPT FROM PLANNING AND ZONING COMMISSION MEETING MINUTES:**

“Joy Everett – Senior Planner, summarized the staff report, recommending APPROVAL.

**QUESTIONS FOR STAFF**

None

**APPLICANT / APPLICANT'S REPRESENTATIVE**

**"Margie Mitchell, property owner,** said she wanted to remove the AO designation to allow her the discretion of selecting her own paint color and signage.

**OPEN PUBLIC COMMENT**

None

**CLOSE PUBLIC COMMENT**

**MOTION**

**"Motion by Koopmann, second by Conde, to APPROVE Case Number ZONE-7131-2014, subject to the Conditions of Approval in Attachment A. Motion carried unanimously (6-0)."**

**Planning Commission Staff Report - Attached**

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	\$0.00		
	FISCAL IMPACT STATEMENT:			

ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK:			
	1. 2. 3. 4. 5.			
IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?				
<input type="checkbox"/> Department <input type="checkbox"/> City Clerk's Office				

SIGNATURES	CITY ADMINISTRATOR:	DATE:
	Gregory K. Wilkinson	10/29/2014
	REVIEWED BY CITY ATTORNEY:	DATE:
	Steven W. Moore	10/29/2014
	RECOMMENDED BY (DEPT/DIV HEAD):	DATE:
Laurie L. Lineberry	10/28/2014	
WRITTEN/SUBMITTED BY:	DATE:	
Stephanie Joy Everett	10/28/2014	



**STAFF REPORT TO THE PLANNING AND ZONING COMMISSION  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
COMMUNITY PLANNING DIVISION  
CASE TYPE – REZONE**

**Hearing Date:** October 27, 2014

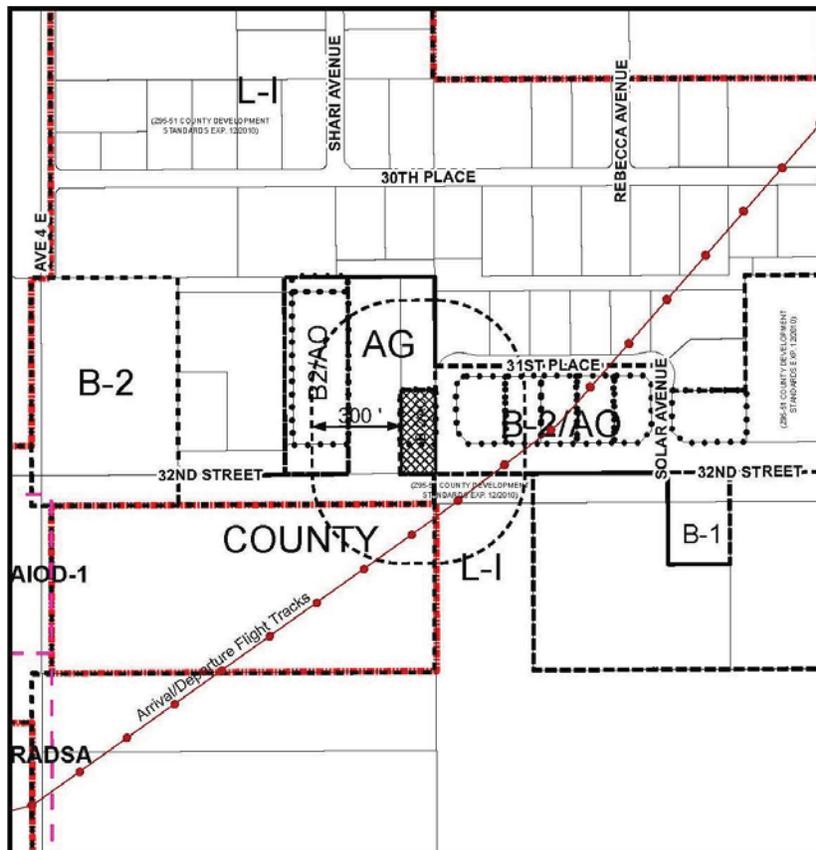
**Case Number:** ZONE-7131-2014

**Project Description/Location:**

Rezone approximately 0.74 acres from the General Commercial/Aesthetic Overlay (B-2/AO) District to the General Commercial (B-2) District. The property is located at the northwest corner of 32<sup>nd</sup> Street and Talon Avenue, Yuma, AZ.

	<b>Existing Zoning</b>	<b>Existing Land Use</b>	<b>Land Use Designation</b>
<b>Site</b>	General Commercial / Aesthetic Overlay (B-2/AO)	Vacant (former restaurant and bar)	Commercial
<b>North</b>	Agriculture (AG)	Vacant (former residence and salvage yard)	Commercial
<b>South</b>	County General Commercial (C-2)	Agriculture field	Industrial
<b>East</b>	General Commercial / Aesthetic Overlay (B-2/AO)	Pinnacle Health Care	Commercial
<b>West</b>	Agriculture (AG)	Superior Awning	Commercial

**Location Map**



**Prior site actions:** Annexation: Ord. O96-026 (March 21, 1996); and Rezone: Agriculture upon annexation; Ord. O2005-59 (August 17, 2005) – Z2004-031.

**Staff recommendation:** Staff recommends APPROVAL of the rezoning of the property from the General Commercial/Aesthetic Overlay (B-2/AO) District to the General Commercial (B-2) District, subject to the conditions shown in Attachment A, because the request is in conformance with the General Plan.

**Suggested Motion:** Move to **APPROVE** the rezoning of the property from the General Commercial/Aesthetic Overlay (B-2/AO) District to the General Commercial (B-2) District, subject to the conditions shown in Attachment A, because the request is in conformance with the General Plan.

**Staff Analysis:** The subject property was developed in Yuma County in 1970 with two commercial structures, one 4,152 square feet and the other 2,342 square feet. In 1996, the property was annexed into the City of Yuma and rezoned to the Agriculture (AG) District upon annexation. The property has been used as a restaurant and bar for many years.

In 2004, the property was rezoned from Agriculture (AG) to General Commercial/Aesthetic Overlay (B-2/AO) District. The property owner originally requested that the property be rezoned to the General Commercial (B-2) zoning District. At that time, the 2002 General Plan designated 32<sup>nd</sup> Street as a Gateway Route, so staff recommended the addition of the Aesthetic Overlay (AO) to be in conformance with the General Plan. The Aesthetic Overlay (AO) District was created to enhance the community's image and attractiveness, and to establish areas where the design of physical improvements and landscape enhances the community's appearance. To accomplish this goal, the zoning code applies additional development review procedures for properties within this overlay district.

The applicant is requesting that the Aesthetic Overlay be removed from the property. The Gateway Route designation for this section of 32<sup>nd</sup> Street was removed with the 2012 General Plan update, thus eliminating the Aesthetic Overlay requirement for the subject property and many others along 32<sup>nd</sup> Street.

**1. Does the proposed zoning district conform to the Land Use Element?**

Yes

**2. Are there any dedications or property easements identified by the Transportation Element?**

No

**3. Does the proposed rezoning of the property conform to the remaining elements of the general plan?**

Yes

**4. Does the proposed rezoning conform to the adopted facilities plan?**

Yes

**5. Does the proposed rezoning conform to Council's prior approval of rezonings, development agreements or subdivisions for this site?**

Yes

**Public Comments Received:** One Received.

Name:	John Whitaker			Contact Information:	4228 E. 32 <sup>nd</sup> Street				
Method of Contact:	Phone	X	FAX	Email	Letter	Other			
Mr. Whitaker called to find out what the request was for. Staff informed him that it was to remove the AO. Mr. Whitaker is not opposed to the request.									

**External Agency Comments:** None Received.

**Neighborhood Meeting Comments:** No Meeting Required.

**Proposed conditions delivered to applicant on:** September 24, 2014

**Final staff report delivered to applicant on:** October 6, 2014

<input checked="" type="checkbox"/>	Applicant agreed with all of the conditions of approval on: September 24, 2014
<input type="checkbox"/>	Applicant did not agree with the following conditions of approval: (list #'s)
<input type="checkbox"/>	If the Planner is unable to make contact with the applicant – describe the situation and attempts to contact.

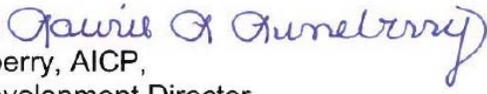
**Attachments**

<b>A</b>	<b>B</b>
Staff Conditions of Approval	Aerial Photo

**Project Planner:** Joy Everett, Senior Planner      373 -5000 #3034      [Joy.Everett@YumaAZ.gov](mailto:Joy.Everett@YumaAZ.gov)

**Prepared By:**       **Date:** 9/30/14  
 Joy Everett, Senior Planner

**Reviewed By:**       **Date:** 9/30/14  
 Bobette Bauermann, Principal Planner

**Approved By:**       **Date:** 10.3.14  
 Laurie L. Lineberry, AICP,  
 Community Development Director

**ATTACHMENT A**  
**CONDITIONS OF APPROVAL**

The following conditions have been found to have a reasonable nexus and are roughly proportionate to the impact of the proposed rezone for the site:

**Department Of Community Development Comments: Laurie Lineberry, Community Development Director (928) 373-5175:**

1. The conditions listed below are in addition to City codes, rules, fees and regulations that are applicable to this action.
2. The Owner shall submit to the City of Yuma, for recordation, a signed and notarized "Waiver of Claims under the Private Property Rights Protection Act." The Waiver shall be submitted within thirty (30) calendar days of the effective date of approval of this zoning action and prior to the issuance of any building permit. In the event this condition is not completed within this time frame, the zoning action is null and void.

**Community Planning Conditions: Joy Everett, Senior Planner, (928) 373-5000 x3034:**

3. With the exception of Condition 2, each of the conditions listed above shall be completed within two (2) years of the effective date of the rezoning ordinance or prior to the issuance of a building permit or business license for this site, whichever occurs first. If the conditions of approval are not completed within the above timeframe then the rezone shall be subject to ARS 9-462.01.

**Any questions or comments regarding the Conditions of Approval as stated above should be directed to the staff member who provided the comment. Name and phone numbers are provided.**

**ATTACHMENT B  
AERIAL PHOTO**





**STAFF RESEARCH – REZONE**

**CASE #: ZONE-7131-2014**  
**CASE PLANNER: JOY EVERETT**

**I. PROJECT DATA**

Project Location:	Northwest corner of 32 <sup>nd</sup> Street and Talon Avenue													
Parcel Number(s):	697-25-016													
Parcel Size(s):	32,200 square feet													
Total Acreage:	0.74													
Proposed Dwelling Units:	N/A													
Address:	4340 E. 32 <sup>nd</sup> Street													
Applicant:	Margie Mitchell													
Applicant's Agent:	N/A													
Land Use Conformity Matrix:	Conforms:	Yes	X	No										
Zoning Overlay:	Public		AO	X	Auto		B&B		Historic		None		Airport	
	Noise Contours	65-70		70-75		75+		APZ1		APZ2		Clear Zone		

	Existing Zoning	Existing Land Use	Planned Land Use
<b>Site</b>	General Commercial / Aesthetic Overlay (B-2/AO)	Vacant (former restaurant and bar)	Commercial
<b>North</b>	Agriculture (AG)	Vacant (former residence and salvage yard)	Commercial
<b>South</b>	County General Commercial (C-2)	Agriculture field	Industrial
<b>East</b>	General Commercial / Aesthetic Overlay (B-2/AO)	Pinnacle Health Care	Commercial
<b>West</b>	Agriculture (AG)	Superior Awning	Commercial

Prior Cases or Related Actions:				
Type	Conforms			Cases, Actions or Agreements
Pre-Annexation Agreement	Yes		No	N/A
Annexation	Yes	X	No	Ord. O96-026 (March 21, 1996)
General Plan Amendment	Yes		No	N/A
Development Agreement	Yes		No	N/A
Rezone	Yes	X	No	Agriculture upon annexation; Ord. O2005-59 (August 17, 2005) – Z2004-031
Subdivision	Yes		No	N/A
Conditional Use Permit	Yes		No	N/A
Pre-Development Meeting	Yes		No	N/A
Design Review Commission	Yes		No	N/A
Enforcement Actions	Yes		No	N/A
Avigation Easement Recorded	Yes	X	No	Fee # 2006-35725   If no, add to Conditions of Approval
Land Division Status:	Parcel is a legal lot of record.			
Irrigation District:	Yuma Mesa Irrigation and Drainage District			
Adjacent Irrigation Canals & Drains:	None			
Water Conversion: (5.83 ac ft/acre)	4.31 Acre Feet a Year			Highlight & F9 to compute field
Water Conversion Agreement Required	Yes		No	X

**II. CITY OF YUMA GENERAL PLAN**

<b>Land Use Element:</b>	
Land Use Designation:	Commercial

Noise Contour:	N/A	Overlay/Specific Area:	N/A																														
Issues:	None																																
Historic District:	Brinley Avenue	Century Heights	Main Street																														
Historic Buildings on Site:	Yes	No	X																														
<b>Transportation Element:</b>																																	
<b>FACILITY PLANS</b>																																	
Major Roadways Plan	Planned		Existing																														
32 <sup>nd</sup> Street – Expressway	80 FT H/W		0 FT H/W																														
Talon Avenue – Local Street	29 FT H/W		35 FT H/W																														
Median Covenant	N/A																																
Gateway Route	Scenic Route	Hazardous Cargo Route	Truck Route																														
			X																														
Bicycle Facilities Master Plan	Proposed Bike Path along 32 <sup>nd</sup> Street																																
YCAT Transit System	Green Route 4 stop along Avenue 3E across from MCAS Main Gate																																
Issues:	None																																
<b>Parks, Recreation and Open Space Element:</b>																																	
Parks and Recreation Facility Plan																																	
Neighborhood Park:	Existing: Terrace View Park		Future: Terrace View Park																														
Area Park	Existing: Kennedy Park		Future: East Mesa Area Park 2																														
Linear Park:	Existing: East Main Canal		Future: B Lateral																														
Issues:	None																																
<b>Housing Element:</b>																																	
Special Need Household:	N/A																																
Issues:	None																																
<b>Redevelopment Element:</b>																																	
Planned Redevelopment Area:	N/A																																
Adopted Redevelopment Plan:	North End:	Carver Park:	None: X																														
Conforms:	Yes	No	N/A																														
<b>Conservation, Energy &amp; Environmental Element:</b>																																	
Impact on Air or Water Resources	Yes	No	X																														
Renewable Energy Source	Yes	No	X																														
Issues:	None																																
<b>Public Services Element:</b>																																	
<b>Population Impacts</b> Projected Population per Census 2010: 2.9 persons per unit Police Impact Standard: 1 officer for every 530 citizens; Water Consumption: 300 gallons per day per person; Wastewater generation: 100 gallons per day per person																																	
<table border="1"> <thead> <tr> <th></th> <th>0</th> <th>Population</th> <th>Impact</th> <th>Consumption</th> <th>Generation</th> </tr> </thead> <tbody> <tr> <td>Maximum</td> <td></td> <td></td> <td>Officers</td> <td>GPD</td> <td>AF</td> </tr> <tr> <td></td> <td>0</td> <td>0</td> <td>0.00</td> <td>0</td> <td>0.0</td> </tr> <tr> <td>Minimum</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td></td> <td>0</td> <td>0</td> <td>0.00</td> <td>0</td> <td>0.0</td> </tr> </tbody> </table>					0	Population	Impact	Consumption	Generation	Maximum			Officers	GPD	AF		0	0	0.00	0	0.0	Minimum							0	0	0.00	0	0.0
	0	Population	Impact	Consumption	Generation																												
Maximum			Officers	GPD	AF																												
	0	0	0.00	0	0.0																												
Minimum																																	
	0	0	0.00	0	0.0																												
Fire Facilities Plan:	Existing: Fire Station #5		Future: Fire Station #8																														
Water Facility Plan:	Source:	City	X Private																														
	Connection:	6' Polyvinylchloride Pipe in 32 <sup>nd</sup> Street																															
Sewer Facility Plan:	Treatment:	City	Septic X Private																														
	Connection:																																
Issues:	None																																
<b>Safety Element:</b>																																	
Flood Plain Designation:	Zone X		Liquefaction Hazard Area: Yes No X																														
Issues:	None																																
<b>Growth Area Element:</b>																																	
Growth Area:	Araby Rd & Interstate 8	Arizona Ave & 16 <sup>th</sup> St	Avenue B & 32 <sup>nd</sup> St.																														
	North End	Pacific Ave & 8 <sup>th</sup> St	Estancia																														
Issues:	None																																

**NOTIFICATION**

- **Legal Ad Published: The Sun** 10/03/14
- **300' Vicinity Mailing:** 09/08/14
- **34 Commenting/Reviewing Agencies noticed:** 09/11/14
- **Neighborhood Meeting:** N/A
- **Hearing Dates:** 10/27/14
- **Comments Due:** 09/22/14

<b>External List (Comments)</b>	<b>Response Received</b>	<b>Date Received</b>	<b>"No Comment"</b>	<b>Written Comments</b>	<b>Comments Attached</b>
Yuma County Airport Authority	NR				
Yuma County Engineering	NR				
Yuma County Public Works	NR				
Yuma County Water Users	Yes	09/11/14	X		
Yuma County Planning & Zoning	Yes	09/11/14	X		
Arizona Public Service	NR				
Time Warner Cable	NR				
Southwest Gas	NR				
Qwest Communications	NR				
Bureau of Land Management	NR				
YUHS District #70	NR				
Yuma Elem. School District #1	NR				
Crane School District #13	NR				
A.D.O.T.	Yes	09/10/14	X		
Yuma Irrigation District	NR				
Arizona Fish and Game	NR				
USDA – NRCS	NR				
United States Postal Service	NR				
Yuma Metropolitan Planning Org.	NR				
El Paso Natural Gas Company	NR				
Western Area Power Administration	NR				
<b>City of Yuma Internal List (Conditions)</b>	<b>Response Received</b>	<b>Date Received</b>	<b>"No Conditions"</b>	<b>Written Conditions</b>	<b>Comments Attached</b>
R.J. Chapman, Police	Yes	09/10/14	X		
Ron Ramirez, Parks	NR				
Damon Chango, Parks	NR				
Andrew McGarvie, Engineering	NR				
Kayla Holiman, Fire	Yes	09/16/14	X		
Kerry Beecher, Building Safety	NR				
Alan Kircher, Building Safety	Yes	09/10/14	X		
Jim Hamersley, ITS	NR				
Josh Scott, Engineering	NR				
Josh Scott, Traffic Engineering	NR				
MCAS / C P & L Office	NR				
Jay Simonton, Utilities	Yes	09/11/14	X		
Joel Olea, Public Works	NR				
Joel Olea, Streets	NR				

<b>Neighborhood Meeting</b>	<b>Comments Available</b>
None Required	N/A
<b>Prop. 207 Waiver Given to Applicant on:</b>	<b>Delivery Method:</b>
September 9, 2014	by U.S. Mail

**PUBLIC COMMENTS RECEIVED: ONE RECEIVED.**

Name:	John Whitaker	Contact Information:	4228 E. 32 <sup>nd</sup> Street
Method of Contact:	Phone	X	FAX
	Email		Letter
			Other
Mr. Whitaker called to find out what the request was for. Staff informed him that it was to remove the AO. Mr. Whitaker is not opposed to the request.			

**ORDINANCE NO. O2014-31**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA, AMENDING CHAPTER 154 OF THE YUMA CITY CODE, AS AMENDED, REZONING CERTAIN PROPERTY HEREINBEFORE LOCATED IN THE GENERAL COMMERCIAL/AESTHETIC OVERLAY (B-2/AO) DISTRICT TO THE GENERAL COMMERCIAL (B-2) DISTRICT AND AMENDING THE ZONING MAP TO CONFORM THERETO**

WHEREAS, the City of Yuma Planning and Zoning Commission held a public hearing on October 27, 2014 in Zoning Case No: ZONE-7131-2014 in the manner prescribed by law for the purpose of rezoning a parcel of property hereinafter described to the General Commercial (B-2) District as provided for in Chapter 154 of the Yuma City Code; and,

WHEREAS, due and proper notice of such public hearing was given in the time, form, substance and manner as provided by law, including publication of such notice in the Yuma Sun on October 3, 2014; and,

WHEREAS, the City Council has considered the recommendation of the Planning and Zoning Commission regarding Case No: ZONE-7131-2014 and finds that the recommendation complies with and conforms to the goals and objectives of the City of Yuma 2012 General Plan, as amended.

NOW THEREFORE, BE IT ORDAINED by the City Council of the City of Yuma as follows:

SECTION 1: That the following described real property, depicted in Exhibit A attached and by this reference made a part hereof:

That part of the Southeast quarter of Southwest quarter of the Southwest quarter (SE1/4 SW1/4 SW1/4) Section 6, Township 9 South, Range 22 West of the Gila and Salt River Base and Meridian, Yuma County, State of Arizona, and more particularly described as follows:

The North 180 feet of the South 280 feet of the East 115 of the Southeast quarter of Southwest quarter of the Southwest quarter (SE1/4 SW1/4 SW1/4) of said Section 6, Township 9 South, Range 22 West of the Gila and Salt River Base and Meridian, Yuma County, State of Arizona, and more particularly described as follows.

Above Parcel contains 20700 square feet or 0.475 acres more or less.

be placed in the General Commercial (B-2) District, as defined by Chapter 154 of the Yuma City Code, as amended; that upon this Ordinance becoming final, the described real property shall be subject to all rules, regulations and requirements of Chapter 154 of the Yuma City Code, as amended, pertaining to the General Commercial (B-2) District, and that the zoning map adopted under Chapter 154 of the Yuma City Code, as amended, is ordered to be changed and amended to show that the real property described in this Ordinance will be located within the General Commercial (B-2) District.

SECTION 2: That the following condition(s) must be met and/or completed in order for this rezoning to be final:

1. The conditions listed below are in addition to City codes, rules, fees and regulations that are applicable to this action.
2. The Owner shall submit to the City of Yuma, for recordation, a signed and notarized "Waiver of Claims under the Private Property Rights Protection Act." The Waiver shall be submitted within thirty (30) calendar days of the effective date of approval of this zoning action and prior to the issuance of any building permit. In the event this condition is not completed within this time frame, the zoning action is null and void.

SECTION 3: With the exception of Condition 2, each of the conditions listed above shall be completed within two (2) years of the effective date of the rezoning ordinance or prior to the issuance of a building permit or business license for this site, whichever occurs first. If the conditions of approval are not completed within the above timeframe then the rezone shall be subject to ARS 9-462.01.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

APPROVED:

\_\_\_\_\_  
Douglas J. Nicholls  
Mayor

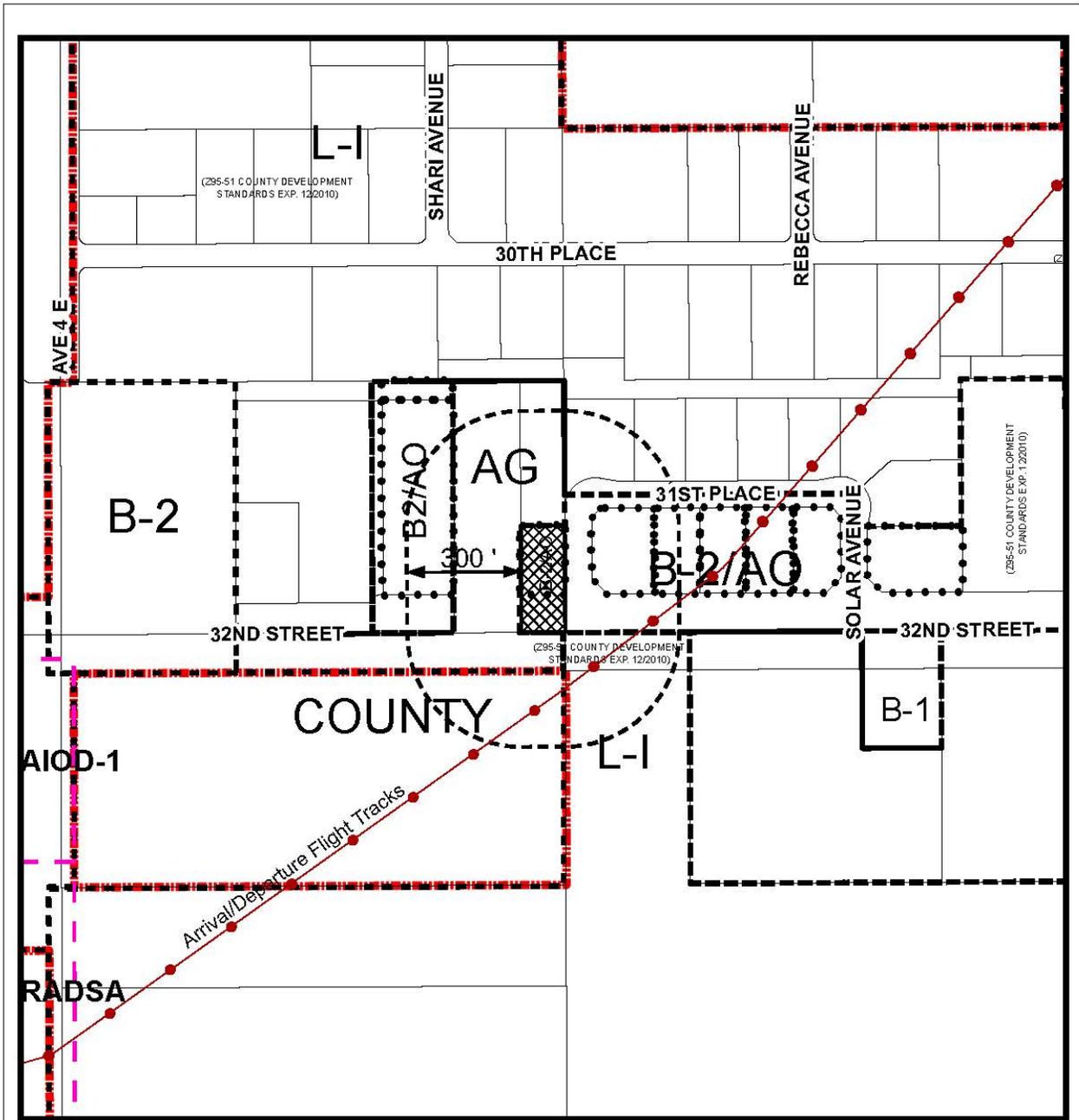
ATTESTED:

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

APPROVED AS TO FORM:

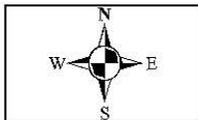
\_\_\_\_\_  
Steven W. Moore  
City Attorney

# Exhibit A

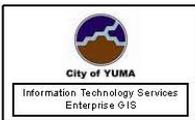


## LOCATION MAP

 LOCATION OF SUBJECT PROPERTY



Prepared by: J.W.B.  
 Checked by:



Date: 09-04-14  
 Revised:  
 Revised:

Case #:  
 ZONE-7131-2014