

# City of Yuma City Council Meeting Agenda

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Wednesday, November 18, 2015

5:30 PM

Yuma City Hall Council Chambers

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Notice is hereby given, pursuant to Resolution R2008-55 that one or more members of the Yuma City Council may participate in person or by telephonic, video or internet conferencing. Voting procedures will remain as required by the Yuma City Charter and other applicable laws.

## CALL TO ORDER

## INVOCATION

## PLEDGE OF ALLEGIANCE

## ROLL CALL

## FINAL CALL

*Final call for submission of Speaker Request Forms for agenda related items.*

## PRESENTATIONS

There are no presentations scheduled at this time.

## 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):

1. **MC 2015-233**      **City Council Citizen's Forum Draft Minutes January 6, 2015**  
Attachments:      1. 2015\_01\_06\_CCF\_minutes
  
2. **MC 2015-234**      **City Council Citizen's Forum Draft Minutes February 17, 2015**  
Attachments:      1. 2015\_02\_17\_CCF\_minutes

3. **MC 2015-235** **City Council Citizen's Forum Draft Minutes March 31, 2015**  
Attachments: 1. 2015\_03\_31\_CCF\_minutes
4. **MC 2015-236** **Regular City Council Meeting Draft Minutes June 17, 2015**  
Attachments: 1. 2015\_06\_17\_RCM\_minutes
5. **MC 2015-237** **Regular City Council Meeting Draft Minutes July 15, 2015**  
Attachments: 1. 2015\_07\_15\_RCM\_minutes
6. **MC 2015-238** **Special City Council Meeting Draft Minutes July 20, 2015**  
Attachments: 1. 2015\_07\_20\_SCM\_minutes

B. Approval of staff recommendations:

1. [MC 2015-000](#) **Executive Sessions**

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)

2. **MC 2015-224** **Special Event Liquor License: Navy League of U.S., Yuma Council - Military Appreciation Day**

Approve a Special Event Liquor License application submitted by Dean D. Hager, on behalf of the Navy League of U.S., Yuma Council, for Military Appreciation Day. The event will be held on the 200 block of Main Street, located in downtown Yuma, on Saturday, December 5, 2015 from 9:00 a.m. to 5:00 p.m. (SP15-53) (City Administration/City Clerk) (Lynda L. Bushong)

Attachments: 1. Special Event Liquor License: Navy League of U.S.-Military Appreciation Da

3. **MC 2015-225** **Special Event Liquor License: Yuma Metropolitan Planning Organization - 2016 Rural Transportation Summit**

Approve a Special Event Liquor License application submitted by Charlene FitzGerald, on behalf of the Yuma Metropolitan Planning Organization for the 2016 Rural Transportation Summit. The summit will be held at the Yuma Quartermaster Depot, located at 201 N. 4th Avenue, on Tuesday, January 12, 2016 from 4:00 p.m. to 8:00 p.m. (SP15-54) (City Administration/City Clerk) (Lynda L. Bushong)

Attachments: 1. Special Event Liquor License: YMPO 2016 Rural Transp. Summit

**4. MC 2015-226 Special Event Liquor License: Fort Yuma Rotary Club, Inc. - Traxx Christmas Party**

Approve a Special Event Liquor License application submitted by Xanthi Panos, on behalf of the Fort Yuma Rotary Club, Inc., for the Traxx Christmas Party. The party will be held at the Quartermaster Depot State Historic Park, located at 201 North 4th Avenue on Saturday, December 12, 2015 from 4:00 p.m. to 10:00 p.m. (SP15-55) (City Administration/City Clerk)(Lynda L. Bushong)

**Attachments:**

1. RFCCA Special Event Liquor License: Fort Yuma Rotary Club, Inc.

**5. MC 2015-227 Sole Source Purchase: Closed Circuit Television Mobile Video System**

Authorize the purchase of a Closed Circuit Television (CCTV) Mobile Video System following sole source guidelines at a total cost of \$119,998.97 to: RS Technical Services Inc., Petaluma, California. (Utilities/Administration) (Jay Simonton)

**Attachments:**

1. RFCCA Sole Source: Closed Circuit

**6. MC 2015-228 Contract Amendment: Environmental Engineering Services for Brownfields Assessment and Area-Wide Planning**

Authorize the City Administrator to execute a 13-month extension to the existing contract for Environmental Engineering Services for Brownfields Assessment with Ayres Associates, Tempe, Arizona. (City Administration - RFQ #2013-20000049) (Greg Wilkinson)

**Attachments:**

1. RFCCA Contract Extension Environmental Engineering Services For Brownfi
2. EPA Contract Extension Environmental Engineering Services

**7. MC 2015-229 Contract: Arizona Department of Corrections**

Authorize the City Administrator to execute a contract with the Arizona Department of Corrections (ADOC) for inmate labor work within the City of Yuma. (Parks and Recreation/Public Works) (Debbie Wendt/Joel Olea)

**Attachments:**

1. RFCCA IGA: ADOC
2. AGMT. IGA: ADOC

**8. MC 2015-230 Grant Award: U.S. Environmental Protection Agency Brownfields Assessment**

Authorize the City Administrator to execute all documents necessary for acceptance of the U.S. Environmental Protection Agency (EPA) Community-Wide Brownfields Assessment Cooperative Agreement (BF-99T32901-0) which provides funding for the inventory, assessment, and redevelopment planning activities for the brownfields sites in the "Old Town South" redevelopment area. (Administration) (Ricky Rinehart)

**Attachments:**

1. RFCCA Grant Award: Brownfields
2. NOTICE Grant Award: Brownfields Cooperative Agreement
3. ATTACHMENT A Grant Award: Brownfields

**9. MC 2015-231 Grant Award: Governor's Office of Highway Safety**

Authorize the City Administrator to execute a contract with the Arizona Governor's Office of Highway Safety for highway safety projects in accordance with Arizona's Federal Fiscal Year 2015-2016 Highway Safety Plan. (Police/Patrol) (John Lekan)

**Attachments:**

1. RFCCA GOHS 2015 Victory Motor
2. AGMT GOHS 2015 Victory Motor

**10. MC 2015-216 Memorandum of Understanding: San Luis Police Department**

Authorize the City Administrator to execute a Memorandum of Understanding with the San Luis Police Department (SLPD) providing shared access to the Arizona Criminal Justice Information Services (ACJIS) interface. (Police/Communications) (John Lekan)

**Attachments:**

1. RFCCA Memorandum of Understanding: San Luis Police Dept.
2. AGMT Memorandum of Understanding: San Luis Police Dept.

## **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.*

There are no resolutions scheduled for adoption at this time.

### 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.*

1. [O2015-058](#)      **Yuma City Code: Amend Chapter 138, Residential Rental Inspection**

Amend City of Yuma Code Title 13, Chapter 138: Residential Rental Inspection, replacing reference to the Housing Quality Standard (HQS), with International Property Maintenance Code (IPMC) as adopted at Title 15, Section 150-090: Housing Code. (Community Development/Neighborhood Services)(Laurie Lineberry)

**Attachments:**

- [1. RFCCA - Amend Rental Inspection](#)
- [2. ORD Amend Rental Inspection](#)
- [3. CODE Amend Rental Inspection](#)

2. [O2015-059](#)      **Real Property Acquisition: PMG Partnership, LLC**

Authorize City acquisition of all or any portion of the real property owned by PMG Partnership, L.L.C., in the vicinity of the northeast corner of 16th Street and 4th Avenue (south of 15th Street) by purchase and exchange agreement or through the exercise of eminent domain. (Engineering) (Joshua Scott)

**Attachments:**

- [1. RFCCA PMG Real Property Acquisition](#)
- [2. MAP PMG Real Property Acquisition](#)
- [3. ORD PMG Real Property Acquisition](#)

#### IV. DEVELOPMENT AGREEMENT AND LAND AND IMPROVEMENTS LEASE: HARDKNOCKS LIMITED PARTNERSHIP

The following discussion may result in the adoption of Ordinance O2015-060

1. [O2015-060](#)      **Development Agreement and Land and Improvements Lease:  
Hardknocks Limited Partnership**

Enter into a development agreement authorizing the City to accept conveyance of title to land and improvements on real property located at 190 S. Madison Avenue and authorize an eight year government property land and improvements lease of the property to Hardknocks Limited Partnership as the statutory prime lessee. (This item must be adopted by a simple majority vote without the use of the consent calendar). (City Administration/Yuma Crossing National Heritage Area) (Charles Flynn)

**Attachments:**

1. [RFCCA Hardknocks Limited Partnership](#)
2. [DEV AGMT. Hardknocks Limited Partnership](#)
3. [GPLET Lease Hardknocks Limited Partnership](#)
4. [ORD Hardknocks Limited Partnership](#)

#### V. 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.*

There are no ordinances scheduled for introduction at this time.

#### VI. PUBLIC HEARING AND RELATED ITEMS

1. **MC 2015-232**      **Amendment: 2011-2015 Community Development Block Grant (CDBG)  
Consolidated Plan**

Approve an amendment to the City of Yuma 2011-2015 CDBG Consolidated Plan to incorporate the Mesa Heights Neighborhood Revitalization Strategy Area Plan. (Community Development/Neighborhood Services)(Laurie Lineberry)

**Attachments:**

1. RFCCA Amendment: CDBG Consolidated Plan

## FINAL CALL

*Final call for submission of Speaker Request Forms for Call to the Public.*

## VII. APPOINTMENTS, ANNOUNCEMENTS AND SCHEDULING

*Discussion and possible action on the following items:*

### 1. Appointments:

There are no appointments scheduled at this time.

### 2. 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 November 5, 2015 through November 18, 2015. 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.

### 3. Scheduling:

Motion to schedule future City Council meetings pursuant to Arizona Revised Statutes Section 38-431.02 and the Yuma City Code, Chapter 30.

## VIII. 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.*

## IX. 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.*

## X. 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 (1, 3, 4 and/or 7) and the following items:*

A. Discussion, consultation with and/or instruction to legal counsel, regarding the following legal matters: (ARS 38-431.03 A3, A4 and A7)

- Dyer v. COY
- Avenue 6E Investments v. COY
- Esquivel v. Carrillo (COY)
- LeMarche v. COY
- Smith v. COY, et al
- Loucel, et al v. COY, et al
- Armendariz v. Padilla, et al
- COY v. Clark, et al
- COY v. State of Arizona, et al
- Pixley Claim
- Camacho Claim
- Yuma Mesa Land, LLC, et al v. City Clerk, et al

B. Discussion with City Administrator regarding annual performance review. (ARS 38-431.03 A1)

## 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, AZ 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  
**January 6, 2015**  
**5:30 p.m.**

**CALL TO ORDER**

**Mayor Nicholls** called the City Council Citizen's Forum to order at 5:32 p.m.

Councilmembers Present: Knight, Thomas, McClendon, Wright, 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. TEXTING WHILE DRIVING**

**Lance Wright**, 2950 W. 10<sup>th</sup> Lane, a local high school teacher, stated that one of his students had a car accident from texting while driving that resulted in the death of a local man. That event sparked his desire to address this issue. He spoke about the hazards and personal tragedies that texting while driving poses, stating that teens are especially prone to the activity. He backed up his comments with data from national sources that indicated texting significantly raises the risk of accidents that lead to injuries and death. It causes more teen deaths than drunk driving. There are strict laws about driving while under the influence of alcohol. Why aren't there laws against driving while texting? It affects the proper flow of traffic and, of course, affects the lives of those who are injured and/or the families of those who are killed. At one time, the Arizona state legislature was considering a bill about texting and driving, but it was not successful. He would like to see the behavior made illegal or, at least, have deterrents put in place. Fines could even bring money into the City. He noted that there is community support for the measure.

**Mayor Nicholls** stated that yesterday he discussed the previously proposed State law with legislators. It has been proposed in almost every session of the State legislature for the last couple of years and it hasn't been successful. The latest revision, however, is specific to distracted driving rather than texting while driving. The Arizona Department of Public Safety did a study of accidents and, while texting was a major cause of accidents, roadside distractions caused even more. Thus, legislators feel they should work toward a solution that encompasses all of the causes. **Mayor Nicholls** stated he would be getting a copy of the upcoming state proposal soon. Though there's no way to know if the State legislature will pass this version, it would be better for Yuma to follow suit with provisions that conform to the State's legislation, if and when a bill does pass.

**Thomas** noted that there is stringent legislation against drunk while under the influence, but it hasn't curtailed drunk driving. Cell phone usage while driving is a very real problem; he sees it all the time. But once the government gets involved in policing an activity, it erodes personal responsibility. **Lance Wright** agreed, but noted that the frequency of this behavior is increasing. Deterrents aimed specifically at teenagers might be more appropriate. **Thomas** and **Lance Wright** agreed that parents should be more involved. **Lance Wright** noted that, as a motorcycle rider, the issue has more relevance to him.

**Mayor Nicholls** discussed the effectiveness of an educational awareness program for teens. Creating a law doesn't mean kids will understand the reasons behind it. Communities turn to legislation when education isn't working, but education might be a middle ground approach.

**Thomas** asked if the issue is taught in Driver's Education classes. **Lance Wright** stated that, though he has no firsthand knowledge of the curriculum, he feels sure it is included in Driver's Ed. Education on the problem is ongoing; there are television warning ads. But it doesn't seem to be gaining traction. His students continue to text because there's no penalty in place. Personally, he doesn't speed because he doesn't want to get a ticket.

**Gary Wright** appreciated Lance Wright's bringing the matter to Council. The issue, though, isn't big government, but driver accountability. Anything that diminishes your reaction time behind the wheel can cause accidents. Perhaps this could be a topic at the Council's Retreat.

**Thomas** also suggested that those telephoned refuse to talk to someone who is calling them while driving. **Lance Wright** added that people shouldn't text someone when they know the person they are calling is on the road. He asked for a contact person.

**Mayor Nicholls** stated he would get Lance Wright in touch with local legislators and he could also talk to anyone on Council for an update on the issue.

**II. EXECUTIVE SESSION/ADJOURNMENT**

**Motion** (Thomas/Knight): To adjourn to Executive Session. Voice vote: **approved** 6-0; the meeting adjourned at 5:52 p.m.

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Lynda L. Bushong, City Clerk

APPROVED:

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Douglas J. Nicholls, Mayor

**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  
**February 17, 2015**  
**5:30 p.m.**

**CALL TO ORDER**

**Mayor Nicholls** called the City Council Citizen’s Forum to order at 5:33 p.m.

Councilmembers Present: Beeson, Knight, Thomas, McClendon, Wright, Craft, and Mayor Nicholls  
Councilmembers Absent: none  
Staffmembers Present: City Administrator, Gregory K. Wilkinson  
Various department heads or their representatives  
City Attorney, Steven W. Moore  
City Clerk, Lynda Bushong

**I. CITIZEN’S FORUM PRESENTATION**

There was no speaker or presentation scheduled.

**II. EXECUTIVE SESSION/ADJOURNMENT**

**Motion** (Beeson/Knight): To adjourn to Executive Session. Voice vote: **approved** 7-0; the meeting adjourned at 5:33 p.m.

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Lynda L. Bushong, City Clerk

APPROVED:

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Douglas J. Nicholls, Mayor

**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  
**March 31, 2015**  
**5:30 p.m.**

**CALL TO ORDER**

**Mayor Nicholls** called the City Council Citizen's Forum to order at 5:30 p.m.

Councilmembers Present: Knight, Thomas, McClendon, Wright, 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. CITIZEN'S FORUM PRESENTATION**

There was no speaker or presentation scheduled.

**II. EXECUTIVE SESSION/ADJOURNMENT**

There being no further business, **Mayor Nicholls** adjourned the meeting at 5:30 p.m. No Executive Session was held.

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Lynda L. Bushong, City Clerk

APPROVED:

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Douglas J. Nicholls, Mayor

**MINUTES**  
**REGULAR CITY COUNCIL MEETING**  
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA  
CITY COUNCIL CHAMBERS, YUMA CITY HALL  
ONE CITY PLAZA, YUMA, ARIZONA  
**JUNE 17, 2015**  
**5:30 p.m.**

**CALL TO ORDER**

**Mayor Nicholls** called the City Council meeting to order at 5:37 p.m.

**INVOCATION/PLEDGE**

**Ray Mitchell**, Chaplain, Yuma Regional Medical Center, gave the invocation. **Charles Flynn**, Executive Director of the Yuma Crossing National Heritage Area Corporation (YCNHAC), led the City Council in the Pledge of Allegiance.

**ROLL CALL**

Councilmembers Present: Beeson, Knight, Thomas, McClendon, Wright, Craft, and Mayor Nicholls

Councilmembers Absent: none

Staffmembers Present: City Administrator, Gregory K. Wilkinson  
Capital Improvement Program Administrator, Czarina Gallegos  
Various Department Heads or their representative  
City Attorney, Steven W. Moore  
City Clerk, Lynda L. Bushong

**Mayor Nicholls** recognized Charlene Fernandez, Arizona State Representative, as well as Jeff Vanderhaden, Boy Scout, Troop #8010, both of whom were in attendance.

**FINAL CALL - AGENDA ITEMS**

**Mayor Nicholls** made a final call for the submission of Speaker Request Forms from members of the audience interested in addressing items scheduled on tonight's agenda.

**PRESENTATIONS** – none

**I. MOTION CONSENT AGENDA**

B.6 Authorize the City Administrator to execute an agreement to continue support of the Yuma Crossing National Heritage Area Corporation (YCNHAC) and to further implement the *Plan for the Yuma Crossing National Heritage Area*. (YCNHA)

**Motion** (Beeson/Thomas): To amend B.6 at Section III, Subsection A, to change the termination written notice term to two years.

**Wilkinson** stated that, per last night's discussion, he discussed the written notice requirement period with Tom Rushin, Chairman of the Board of Directors of YCNHAC. The crux of the issue is that YCNHAC must work with the City's fiscal year that goes from July 1 to June 30 and the National Parks

Service fiscal year that goes from October 1 to September 30. This requires extra time for them to plan their yearly budget. Other provisions in the contract allow the City to terminate the agreement if no funds are available. His previous concern is not related to the current or future executive director or the corporation itself; he was simply concerned about having a way to cease funding if the City faced fiscal constraints.

**Beeson** noted that the City has had a strong relationship with YCNHAC and its long partnership, two years has been the termination notice period. Even though YCNHAC is a separate entity, he regards it as a regular City department. **Knight** agreed with Beeson. The organization is too important to have a termination notice period of any less than two years.

Voice vote on amendment: **approved** 7-0.

**Motion** (Beeson/Craft): To approve B.6 as amended. Voice vote: **approved** 7-0.

**Motion** (Knight/McClendon): To approve the Motion Consent Agenda, as presented, with the exception of B.6, which was pulled for separate consideration, see above. Voice vote: **approved** 7-0.

A. Approval of minutes of the following City Council meetings:

Regular City Council Meeting	November 19, 2014
Regular City Council Meeting	December 3, 2014
Regular City Council Meeting	December 17, 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). (City Atty)
2. Approve a Special Event Liquor License application submitted by Jamie Nicewander, on behalf of the Spartans F. C. Inc., for a soccer game scheduled for Wednesday, July 29, 2015, from 12:00 p.m. to 12:00 a.m. The game will be held at Desert Sun Stadium, located at 1280 W. Desert Sun Drive. (SP15-29) (City Admin/Clerk)
3. Ratify the Professional Design Services contact with Leathers and Associates, Inc., to rebuild the Stewart Vincent Wolf Creative Playground (aka Castle Park). (2015-20000159) (City Admin)
4. Authorize the City Administrator to execute grants agreements with various local non-profit agencies to distribute gaming proceeds received from the Cocopah Indian Tribe's casino operations. (City Admin)
5. Approve an intergovernmental agreement between the City of Yuma and the Arizona Department of Revenue regarding the uniform administration, licensing, collection, and auditing of transaction privilege tax, use tax, severance tax, jet fuel excise and use tax and rental occupancy taxes imposed by the state or cities or towns. (Fin/Admin)

6. Pulled for separate consideration; see above.
7. Authorize the City of Yuma/Police Department (YPD) to accept grant monies received under the Recovery Act Edward Byrne Memorial Justice Assistance Grant (JAG) Program as part of a joint application submitted by YPD and the Yuma County Sheriff's Office. (YPD/Admin)
8. Authorize the City Administrator to execute a grant agreement with the Arizona Department of Homeland Security for reimbursement of funds expended for materials, labor, and travel as it relates to the Critical Public Safety Infrastructure Expansion for the Martinez Lake Area (Black Mountain). (14-AZDOHS-HSGP-140409-01) (ITS/Radio Communications)

## II. RESOLUTION CONSENT AGENDA

**Mayor Nicholls** declared a potential conflict of interest in regards to Resolutions R2015-026 and R2015-027, because his firm is involved with the related projects. He turned the meeting over to Deputy Mayor Thomas and left the room.

Resolution R2015-026: Real Property Exchange Agreement with Beeler Equipment Company, Inc. for the 16<sup>th</sup> Street and 4<sup>th</sup> Avenue intersection improvements.

**Motion** (Craft/): To continue R2015-026 to give staff and the Beeler family time for further discussion. Voice vote: **approved** 6-0-1; Mayor Nicholls abstained due to a conflict of interest as stated above.

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Resolution R2015-027: Approve an amendment to the development agreement (R2012-31) with the Yuma County Airport Authority for the Amelia Earhart Hanger located at the southeast corner of 40<sup>th</sup> Street and 4<sup>th</sup> Avenue Extension.

**Motion** (Beeson/Knight): To adopt R2015-027 as presented.

**Bushong** displayed the following title:

**R2015-027**

**A resolution of the City Council of the City of Yuma, Arizona, authorizing and approving an amendment to the Development Agreement with the Yuma County Airport Authority permitting the deferral of construction turn lanes**  
(Public Works/Engineering)

Roll call vote: **adopted** 6-0-1; Mayor Nicholls abstained due to a conflict of interest as stated above.

**Mayor Nicholls** returned to the dais and control of the meeting.

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**Motion** (Craft/Knight): To replace the original legal description (referenced as Exhibit 1 to the Preannexation Development Agreement with Mireles, which agreement is referenced as Exhibit A to Resolution R2015-029) with the legal description being presented via the overhead projector. The original legal description contained a computer-generated error – the text was printed in a foreign language font. The replacement version has been available in the City Clerk's Office for 24 hours prior to the start of tonight's meeting. Voice vote: **approved** 7-0.

**Motion** (Knight/Thomas): To adopt the Resolution Consent Agenda, as presented and respectively amended, with the exception of R2015-026 and R2015-027, which were pulled for separate consideration; see above.

**Bushong** displayed the following titles:

**Resolution R2015-028**

**A resolution of the City Council of the City of Yuma, Arizona, declaring as public records those certain documents filed with the City Clerk and titled: 2012 International Mechanical Code, 2012 International Plumbing Code, 2012 International Fuel Gas Code, and NFPA 70 National Electrical Code, 2014 Edition**

(Community Development/Building Safety)

**Resolution R2015-029, as amended**

**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 north of the northeast corner of Avenue C and Riverside Drive**

(Property owner: Edward J. Mireles, Jr.) (Community Development/Planning)

Roll call vote: **approved** 7-0.

**III. ADOPTION OF ORDINANCES CONSENT AGENDA**

**Motion** (Beeson/McClendon): To adopt the Ordinances Consent Agenda as presented.

**Bushong** displayed the following title:

**Ordinance O2015-032**

**An ordinance of the City Council of the City of Yuma, Arizona, authorizing the acquisition of residential real property, hereafter described, for the purpose of assembling the property with surrounding vacant City-owned parcels for redevelopment**

(property located at 2024 S. Arizona Ave.) (City Administration/Administration)

Roll call vote: **adopted** 7-0.

**IV. INTRODUCTION OF ORDINANCES**

**Mayor Nicholls** noted that Ordinance O2015-034 is scheduled for Public Hearings on July 1, 2015. Public comment will be taken by City Council at that time.

**Bushong** displayed the following titles:

**Ordinance O2015-033**

**An ordinance of the City Council of the City of Yuma, Arizona, amending Title 15 of the Yuma City Code, Chapter 150, Building Regulations, by adding Section 008 related to establishing a Building Advisory Board**

(Community Development/Building Safety)

**Ordinance O2015-034**

**An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, rezoning certain property located in the Agriculture (AG) District to the Low Density Residential (R-1-6) District and Low Density Residential (R-1-12) District and amending the zoning map to conform with the rezoning**

(ZONE-8398-2015; applicant: Ellington Land AZ, LLC, represented by Dahl, Robins and Associates; property: 46.75 acres located north of 12<sup>th</sup> St. between Ave. D to the west and county residences on Yavapai Lane to the east)

**V. PUBLIC HEARINGS**

Resolution R2015-030: Adopt the City of Yuma Final Budget for Fiscal Year 2016-2016 in the amount of \$212,033,722, which includes a Capital Improvement Program (CIP) Budget of \$36,500,000 and an Operating Budget of \$175,533,722.  
(Finance/Administration)

Ordinance O2015-035: Adopt the 2015-2016 Primary Property Tax Levy and Mall Maintenance District Property Tax Levy (Total Tax Levy: \$11,708,878; Primary Property Tax Rate: \$2.2440; Mall Maintenance District tax rate \$3.7145)  
(Finance/Administration)

For the sake of the youth in the audience, **Mayor Nicholls** explained that the City Council looked to see if there were any parks and recreation programs that were not being attended, we found there were not. This has tempered attempts to cut parks and recreation programs and he expects no motions in that regard tonight. City Council has an obligation to look at everything in the budget with a critical eye. Contrary to rumors, at no time was Council considering the elimination of all parks and recreation programs.

**Mayor Nicholls** opened the public hearing at 6:01 p.m.

Speakers

**Charlie Castenada**, 1931 S. Arizona Avenue, representing Catch 'N Go Flag Football, stated there are 850+ kids participating in his program. He appreciates that programs will not be cut and gave kudos to Parks and Recreation Department staff. **Mayor Nicholls** thanked Castenada and all the volunteers who work tirelessly to help local youth programs.

**Kevin Tunell**, 3903 S. Plowman Drive, representing Yuma Aquatics, spoke in favor keeping parks and recreation youth program funding intact. He praised the East and West Wetlands, as community investments. The Valley Aquatic Center has given Yuma the reputation of having a "fast pool," making swimmers want to come here and compete.

**William Silva**, 12796 E. 46<sup>th</sup> Street, representing Yuma Pop Warner, stated his program has 200-300 children participating. Without the support of the City, his program and many others wouldn't exist.

**Mary Anne Easterday**, 3359 S. 15<sup>th</sup> Avenue, urged the Council not to increase program fees by 5%. Many families have multiple children in programs. Many seniors are on fixed incomes. Increased costs never go down. Yuma should be proud that it hasn't raised fees for five years. Many people in the

community voted in favor of the 2% tax specifically because of youth programs. She urged other City departments to do as the Police Department has done and cut their budget. Perhaps the City doesn't need the number of vehicles it has. .

**Robert Ingold, Jr.**, 1650 El Paseo Real, manager and co-owner of Ingold Company Investments, LLC, which owns 180-acre industrial park east of Yuma. If the City raises property taxes, his tenants have to pay the increase. Few new tenants are coming to Yuma – only the federal government has leased any spaces in the last five years. 70-acres of vacant land in his industrial park are now worth less now than five years ago. Staff knew the State pass-downs were coming; why didn't they take action? Yuma is at a standstill; Yuma needs growth. The City of Yuma can't be the only ones hiring. Increasing taxes isn't pro-growth.

**Mayor Nicholls** replied that the City is actually cutting positions with this budget. **Beeson** asked about a new manufacturer that located to Ingold's complex last year. **Ingold** stated the company was already in town, but did relocate to his industrial park.

**George Owens**, 3099 S. Arizona Avenue, President, Yuma Boys Baseball League (YBBL), and an employee in the criminal justice system, drew a connection between the availability of social leisure activities and reduced crime. Children who participate in sports have a higher graduation rate, better grades, and less truancy; they are more likely to vote and volunteer their time as adults. YBBL has been in existence since the 1950's and has partnered with the City for over 60 years. Over 1,200 families participate and YBBL recently hosted the 2015 State Cal Ripken championship, which boosted Yuma's economy. His organization will be focusing on drawing kids from the area north of 8<sup>th</sup> Street because few from this area are taking advantage of sports opportunities and the cost of playing is part of the problem.

**Gina Thompson**, 11660 E. Alpha Way, stated that Yuma is a special place – people care about youth and want to make a difference. Unlike adults, children don't get to choose where they live. The City's programs promote the equity needed for a strong community rich in purpose. Children who get to play, think, work and build together create the foundation for their community. Without this, the City will experience of the same problems that are plaguing the nation. If the City chooses not to support youth programs, it will be promoting discrimination and inequity. The City has a choice.

**Sal Castelo**, 15430 S. Avenue 4E, President, Yuma Fast Pitch and T-Ball League, stated over 1,000 players participate in their fall and spring seasons. Without Yuma's youth sports, 12 students who have recently been awarded full sports scholarships to college wouldn't be going.

**Mike Shelton**, 3681 S. Virginia Drive, #8, suggested that the duties assigned to the Marketing position and the Deputy City Administrator position could be absorbed by others, freeing up some \$200,000 in salary and benefits.

**John Courtis**, 2522 S. Elwood Drive, Executive Director, Yuma County Chamber of Commerce, thanked the Council for their effort to avoid increased taxes. Council has been given a briefing he prepared. The local economic environment is still very fragile. He presented a number of suggested employee cuts via an overhead. Also, the City should stop activities that compete with private enterprise, such as the free movies on Saturday at the Yuma Theater. Other theaters don't like the fact that the City is spending \$2,000 per showing of taxpayer money for services they provide.

In response to Curtis, **Wilkinson** replied with the following statistics:

- 1,200 City employees include full- and part-time positions.
- Eliminating part-time positions would eliminate a great many employees who work in parks and recreation youth programs.
- City of Yuma, Full-Time Positions: 952
  - Non-General Fund supported, full-time positions: 249
    - Utilities: 130
      - Not many water and sewer plant employees can be cut before regulatory requirements become an issue.
    - Public Works and Engineering: 113
      - These employees are paid by Highway User Revenue Funds and City Road Taxes
    - Radio Communications: 6 – jointly funded
  - General Fund supported full-time positions: 603
    - Public Safety: 404
      - Yuma Fire Department: Cutting a firefighter actually results in increased costs, due in part to covering shifts through overtime.
      - YPD: it costs approximately \$2,200 to send a cadet through the academy.
    - Non-Public Safety: 199
      - It is to these positions the City looks for cost savings. Curtis' suggested cut of 12% would equal 24 positions. 24 positions times three months of vacancy at the rate given would equal \$262,296 in savings. City Administration has proposed cutting \$300,000 in salaries and benefits from the General Fund Budget.

**Ray Ochoa**, 1311 N. Ridgeview Drive, one of the founders and directors of the Hoops Project. The project began in 2008. In 2010, they built the Winsor Rotary Park, with funding from private donors, fundraisers and a \$90,000 grant from a partnership with the Phoenix Suns. The City does a good job of maintaining the facility. The park will be resurfaced soon to address safety concerns; once again the Phoenix Suns will be paying for that work. Winsor Park has the only basketball courts in the City park system. Please continue to invest in youth.

**Enrique Porchas**, 5120 E. Goldwater Drive, representing Babe Ruth Baseball, noted that almost every youth sport has a volunteer board and volunteer coaches. He hopes the city appreciates those volunteers.

**Ruth Carroll**, 990 W. 11<sup>th</sup> Street, a water aerobics instructor, stated that increasing the costs for her senior classes by 5% would be acceptable. She thanked the City for maintaining beautiful pools and parks not only for her classes, but for her family.

**Mike Padilla**, 2511 S. Donna Avenue, representing Yuma Youth Soccer Association, stated that 1,500 children play soccer through YYSAs. A 5% increase for YYSAs members would result in 25 cents more per child. They have been expecting a raise in City fees and have even considered decreasing their YYSAs registration fees.

**Linda Morgan**, Executive Director, Yuma Visitors Bureau, 3827 S. Kerley Lane, tonight representing herself only, stated that some aspects of running a municipality can be like a business, but many others cannot. A municipality is more like a non-profit organization. Yuma provides parks and recreation programs of very high quality to everyone from toddlers to seniors. A huge part of economic development is quality of life; people and businesses won't come to Yuma without it. Quality of life

includes the arts, places such as the wetlands, parks and programs for kids. Though she doesn't want to see taxes increased, she appreciates the need and wouldn't oppose an increase for these purposes.

**Wayne Crittenden**, CEO, Jilam Finao Corporation, 810 E. 26<sup>th</sup> Place, suggested a solution he has developed wherein sales from his clothing company provides support to local sports. He would like to bring his brand to Yuma, but his biggest problem is trying to information on his initiative out to parents.

**Wilkinson** noted that the local economy has grown about 3% each year for the last three years, though this year it didn't quite make 3%. Staff knew that costs were coming down from the State, but the City did not know the magnitude of those costs. The State passed along \$2.7 million to the City. The City was able to cut \$1.9 million out of the budget from last year. 12 positions were cut. The City cannot handle cutting another \$1 million in costs and keep all the services at their present levels. That is what has put the Council in this position. Yuma needs to get the message to State legislators need to cover their own costs because cities have no place to go except cut programs or raise taxes or fees.

**Mayor Nicholls** noted that 80% of a resident's property tax bill goes to four local entities, not including the City. The City is only one of seven taxing entities affecting Yuma residents. Most of those entities have already adopted tax increases for the upcoming fiscal year. **Wilkinson** displayed a pie chart showing each taxing entity's percentage of the whole bill. **Mayor Nicholls** noted that the City of Yuma is responsible for only 14% of the overall bill.

**Motion** (Thomas/Beeson): To close the Public Hearing. Voice vote: **approved** 7-0. The Public Hearing closed at 6:51 p.m.

**Mayor Nicholls** declared a potential conflict of interest with regard to the CIP, Yuma County Intergovernmental Public Transportation Authority (YCIPTA) and Yuma Metropolitan Planning Organization (YMPO) budgets. He turned the meeting over to Deputy Mayor Thomas and left the room.

**Motion** (Beeson/Knight): To adopt the Fiscal Year 2015-2016 budget for YCIPTA in the amount of \$200,000. Roll call vote: **approved** 6-0-1, Mayor Nicholls abstained due to a conflict of interest.

**Motion** (Craft/McClendon): To adopt the Fiscal Year 2015-2016 budget for YMPO in the amount of \$78,772. Roll call vote: **approved** 6-0-1, Mayor Nicholls abstained due to a conflict of interest.

For the sake of the public, **Wright** asked for confirmation that the Pacific Athletic Center (PAC) would not affect property taxes. **Gallegos** stated that is correct. The PAC will be funded by 2% taxes.

Also for the sake of the public, **Thomas** stated that no one on City Council is attempting to subvert the legal system in any way.

**Motion** (Craft/Beeson): To reduce the Fiscal Year 2015-2016 Grant budget by \$1,900,000 and, further, to reduce the Fiscal Year 2015-2016 CIP budget by \$3,650,000. Roll call vote: **approved** 6-0-1, Mayor Nicholls abstained due to a conflict of interest.

**Motion** (Beeson/Knight): To adopt the Fiscal Year 2015-2016 comprehensive CIP budget, as amended in the preceding motion, in the amount of \$32,850,000. Roll call vote: **approved** 6-0-1, Mayor Nicholls abstained due to a conflict of interest.

**Mayor Nicholls** returned to the dais and control of the meeting.

**McClendon** declared a conflict of interest with regard to the Yuma Visitor's Bureau (YVB) funding due to her employment. She left the room.

**Motion** (Thomas/Beeson): To adopt the Fiscal Year 2015-2016 Budget for the Yuma Visitor's Bureau (YVB) in the amount of \$650,000. **Beeson** asked how the City could insure the Yuma Film Commission, as part of YVB, receives its appropriate amount of funding. **Moore** explained that the contract with YVB will come before the Council for adoption independently and provisions for that can be included at that time. **Beeson** noted that voters approved the 2% tax with the understanding that the film commission would be funded. Roll call vote: **approved** 6-0-1, McClendon abstained due to a conflict of interest, as stated above.

**McClendon** resumed her seat.

**Beeson** declared a conflict of interest regarding the Finance Department's budget; he exited the room.

**Motion** (Knight/): To approve the Fiscal Year 2015-2016 budget for the Finance Department in the amount of \$1,992,545. Roll call vote: **approved** 6-0-1, Beeson abstained due to a conflict of interest.

**Beeson** returned to his seat on the dais.

**Motion** (Craft/McClendon): To reduce the overall Fiscal Year 2015-2016 Budget by reducing:

- City Council travel budget in the amount of \$12,000
- Other General Fund departments' travel budgets in the amount of \$20,000
- Contingency budget in the amount of \$217,738
- Police Department budget by \$400,000
- General Government budget by \$300,000, which represents a three-month delay in hiring non-critical positions

Voice vote: **approved** 7-0.

**Motion** (Thomas/Craft): To amend the Fiscal Year 2015-2016 Budget by adding \$7,000 to fund the Mental Health Court. Voice vote: **approved** 7-0.

**Motion** (Craft/Beeson): To amend the Fiscal Year 2015-2016 Budget to add \$37,000 to fund a Bi-National Coordinator. **Thomas** asked that, prior to making its payment, the City should ensure that the other cities agree to their portions. **Mayor Nicholls** stated this will be addressed when the contract comes before the Council for approval. Voice vote: **approved** 7-0.

**Mayor Nicholls** asked whether the \$400,000 removed from the Police Department's General Fund allotment needs to be specified in other funds. **Wilkinson** stated that was not necessary.

**Motion** (Thomas/Craft): To adopt Resolution R2015-030 (Fiscal Year 2015-2016 Budget), as amended, for an amount of \$169,806,667 that excludes the comprehensive CIP, YCIPTA, YMPO, YVB and Finance Department budgets, which were adopted through prior motions; see above.

**Wright** expressed appreciation for Councilmembers' work in scrutinizing the budget. Substantial reductions have been made, but more cuts could be made, especially though consolidation of positions.

**Thomas** asked **Wright** for specific positions. **Wright** stated he is not familiar with all of the job descriptions, but in times of economic difficulty there are hard choices. He asked that the City Administrator be more reflective on the City's positions and consider consolidation, even do an audit of all positions, for next year's budget discussions. Some full-time positions could be part-time. **Wilkinson** stated that 12 positions have been cut. More positions can be cut, but not without the loss of programs and the lowering of service levels. His responsibility is to bring forward a budget that supports the services provided by the City at levels specified by City Council.

(Clerk's Note: Display of Resolution R2015-030 occurred later in the meeting; see below.)

Roll call vote: **adopted** 6-1; **Wright** voting Nay.

**Motion** (Thomas/Craft): To amend Ordinance O2015-035 (Primary Property Tax Levy) at Section 1 to a primary property tax rate of \$2.0704 on each \$100 of assessed valuation, and that introduction be given, as amended.

**Knight** stated he is not happy with the amount of this tax levy increase. In Fiscal Year 2014-2015, the General Fund's approved total was \$63,088,607. Actual 2014-2015 General Fund expenditures totaled \$60,018,498, some \$3 million below budget. This year's proposed General Fund budget is \$64,212,523. The difference between last years (2014-2015) and this year (2015-2016) proposed General Fund is \$1,123,916. If you add this amount to the amount actually spent last year, you get \$61,142,415. Last night, the Council determined \$905,738 in cuts. Subtracting \$905,738 from the \$61,142,415, you're left with \$60,236,676. The difference between \$60,236,676 and what was spent last year, \$60,018,498, is \$218,178 – the net increase. So, he would agree to an increase in the tax levy of \$189,143 over last year, which amount to an increase of \$8 per year on a \$160,000 home. This increase translates to a tax rate of \$1.8785. Though staff is to be applauded, he can't support a million dollar increase to the tax levy. **Wright** concurred.

**Mayor Nicholls** stated that to change the levy would mean the budget would have to be reopened for more cuts. **Knight** stated that wouldn't be necessary. Staff would just have to figure out how to stay within the budget. It amounts to removing the City's built-in cushion.

**Beeson** stated that no one on City Council wants to raise taxes, but the Council has the obligation and duty to make sure the City is in a solid financial position. How many months would the City's reserve buy it, if revenues failed. **Wicks** stated the City routinely keeps a 20% reserve, which would allow operations to continue for some 2-3 months. The purpose of having reserves left over after a fiscal year is to allow the City to continue into the next fiscal year. **Beeson** noted that the City's model is on par with that of other counties and cities. It is irresponsible to take the budget to zero. It is dangerous to eliminate the safety cushion.

**Wilkinson** added that Yuma County cut their reserve to 13% and got into financial trouble. The City of San Luis keeps a 35% reserve. Staff doesn't feel that level is necessary. Comparing last year's budget with this year's proposal doesn't take into account the extra \$2.2 million that Yuma will have to put into the Public Safety Retirement System. The City is facing \$300,000 in increased medical costs that didn't exist last year. In reality, this year's expenditures will be some \$3 million more than last year's.

**Craft** stated that the tax levy is not an arbitrary number. It is the product of the amount of money the City needs to balance the adopted budget. The budget has been thoroughly digested, discussed and cut. The approved budget is the result of a great deal of work.

**Knight** stated that Beeson is confusing this with the rainy day fund, but he, Knight, isn't talking about the rainy day fund. He reiterated his numbers, saying staff has inflated the figures to provide itself built-in safety. He doesn't agree with asking taxpayers to pay for extra funds.

**Mayor Nicholls** stated that he could not follow Knight's math. Knight's idea of money being left over doesn't coincide with the \$2.7 million the state passed down to the City. Council cut approximately \$1 million. The City can't match last year's budget because it has almost \$3 million more in expenses than last year. Those \$2.7 million in expenditures are hard numbers – not estimates – and they are not potential expenditures, they are absolute expenditures.

**Thomas** recalled that, as a candidate, he stated he wouldn't vote to increase taxes, but sitting on City Council you see reality. The cost of business – the cost of living – has increased and the City has to adjust because City Council doesn't want to affect the quality of life of the community. The state dumped \$2.7 million in costs on Yuma, but it had \$231 million in its coffers that isn't being used. Being opposed without offering a solution only hampers the process.

**McClendon** stated that this is a difficult decision for everyone, but to maintain what people love about this community comes at a price. Others in the community have voiced the same opinion. Not allowing the tax levy to rise in its normal flow probably hurt the City these last couple of years, but now's the time to focus on the road to recovery, which this small increase will provide.

Voice vote: **approved** 5-2; Knight and Wright voting Nay.

**Bushong** displayed the following titles:

**Resolution R2015-030, as amended**

**A resolution of the City Council of the City of Yuma, Arizona, adopting estimates of proposed expenditures by the City of Yuma for the fiscal year beginning July 1, 2015, and ending June 30, 2016; and declaring that such shall constitute the adopted budget of the City of Yuma for such fiscal year; and a declaring necessity of boards and commissions**  
(Finance/Administration)

**Ordinance O2015-035, as amended**

**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 2015-2016 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, 2016**  
(property tax rate \$2.0704; Main Street mall tax rate: \$3.7145 ) (Finance/Administration)

**Mayor Nicholls** summarized that after many meetings and much good discussion the City's budget has been brought down to approximately \$205 million with a minimal increase in property taxes.

#### **FINAL CALL – CALL TO THE PUBLIC**

**Mayor Nicholls** made a final call for Speaker Request Cards for those wishing to address the City Council at the Call to the Public.

#### **VI. APPOINTMENTS, ANNOUNCEMENTS AND SCHEDULING**

**Wright** noted the Yuma County Business-Education Summit will take place tomorrow. **Mayor Nicholls** reported on attending an organizational meeting for the United for Yuma Anti-Methamphetamine and Anti-Heroin Education Campaign

**Beeson** asked that the City discuss an ordinance addressing adults who smoke in cars when children are present. The City of Tempe recently passed an ordinance banning the activity. **Wilkinson** stated staff will pull together the necessary information. Smoking in parks has also become an issue.

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

**Wilkinson** recalled the recent gaming proceeds donation to the Children's Museum of Yuma County. The museum organization has been awarded a grant and the \$2,500 donation provides half of the grants needed matching funds. **Mayor Nicholls** added they were able to raise the other half through fund raising. The grant will fund their visibility study. The project is something for the community to look forward to.

#### **VIII. CALL TO THE PUBLIC - NONE**

#### **IX. EXECUTIVE SESSION/ADJOURNMENT**

There being no further business, **Mayor Nicholls** adjourned the meeting at 7:46 p.m. No Executive Session was held.

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Lynda L. Bushong, City Clerk

APPROVED:

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Douglas J. Nicholls, Mayor

**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 15, 2015**  
**5:30 p.m.**

**CALL TO ORDER**

**Mayor Nicholls** called the City Council meeting to order at 5:35 p.m.

**INVOCATION/PLEDGE**

**George Boundey**, Pastor, Seventh Day Adventist Church, gave the invocation. **Pat Wicks**, Director of Finance, led the City Council in the Pledge of Allegiance.

**ROLL CALL**

Councilmembers Present: Knight, Thomas, McClendon, Wright, Craft, and Mayor Nicholls  
Councilmembers Absent: Beeson  
Staffmembers Present: City Administrator, Gregory K. Wilkinson  
Director of Finance, Pat Wicks  
Director of Parks and Recreation, Debbie Wendt  
Senior Planner, Jennifer Albers  
Various Department Heads or their representative  
City Attorney, Steven W. Moore  
City Clerk, Lynda L. Bushong

**FINAL CALL - AGENDA ITEMS**

**Mayor Nicholls** made a final call for the submission of Speaker Request Forms from members of the audience interested in addressing items scheduled on tonight's agenda.

**PRESENTATIONS**

**Wilkinson** presented to **Mayor Nicholls** the City the Arizona Transportation Excellence Award given to the City for the Avenue 3E Bridge Widening Project. He read the letter accompanying the award penned by Rene Bermudez, Project Engineer, Skanska.

**I. MOTION CONSENT AGENDA**

**Motion** (Craft/McClendon): To approve the Motion Consent Agenda, as recommended. Voice vote: **approved** 6-0.

A. Approval of minutes of the following City Council meetings:

Regular City Council Worksession

June 2, 2015

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). (City Atty)
2. Authorize the purchase of Information Technology Products and Services utilizing any one of the below listed cooperative purchase agreements, at an estimated amount of \$2,726,282.00 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- 2016-20000001)
3. Authorize the purchase of two Pierce Arrow XT, Mid Mounted Pumpers utilizing the cooperative purchase agreement originated by the Houston-Galveston Area Council at a total cost of \$1,299,981.21 to Pierce Manufacturing, Inc., Appleton, Wisconsin (Bid #2016-20000005) (Fire)
4. Authorize Authorize the City Administrator to execute an Intergovernmental Agreement (IGA) with the Arizona Department of Fire, Building and Life Safety, Office of Manufactured Housing (OMH) permitting the City of Yuma (City) to conduct installation inspections for manufactured homes and factory-built buildings on behalf of the State of Arizona. (DCD/Bldg Safety)
5. Approve Authorize the City Administrator to execute seven Subrecipient Agreements totaling \$160,767.00 in accordance with the 2015 Community Development Block Grant (CDBG) Action Plan. Subrecipients: Catholic Community Services; Child and Family Services; Community Legal Services; Crossroads Mission; Services Maximizing Independent Living; The Healing Journey; and, United Way of Yuma County. (DCD/Neighborhood Svs)
6. Approve an Infrastructure and Services Report for Annexation Area No. ANEX-8817-2015, identified as the Moran Annexation, located at the southwest corner of 38th Place and Avenue 10E. (DCD/ Planning)
7. Approve an Infrastructure and Services Report for Annexation Area No. ANEX-8845-2015, identified as the Saguaro Desert Land Annexation, located at the northwest corner of 24th Street and Avenue 9E. (DCD/ Planning)

## II. RESOLUTION CONSENT AGENDA

Resolution R2015-034: MPC Senior Lien Excise Tax Revenue and Revenue Refunding Bonds, refunding/refinancing Series 2003B and Series 2007B Excise Tax Bonds and obtaining funds for the Pacific Athletic Center and the Fleet Services Maintenance Shop

**Mayor Nicholls** declared a potential conflict of interest with regard to R2015-034 due to the fact that his company may become involved in the resulting project. He turned the meeting over to Deputy Mayor Thomas and exited the room.

**Wright** questioned Wicks about 2% tax revenues and the impact the Pacific Athletic Center (PAC) bond payments might have on other 2% tax funded services. **Wicks** stated that the debt service payments will total approximately \$960,000. The money to pay the principal and interest on that portion of the bond will come from 2% Hospitality Tax revenues. The 2% tax brings in just under \$5 million each year. In the last several months, 2% revenues have been increasing approximately 6%. The 2% tax has been in effect since 1970's, so the amount of revenue has changed dramatically over time. The last few years have seen an increase primarily from bar and restaurant sales, with hotel collections being fairly flat. A portion of the Parks and Recreation Department's maintenance activities are paid by 2% taxes, depending on the facility. The City's operating budget for the fiscal year 2015/2016 includes the \$1 million debt service payment and a fully-funded Parks and Recreation Department with no cuts in their services. Whether 2% revenues remain at their current level remains to be seen, but staff expects them to increase gradually, as they have in the past; they should be able to fund debt service on the PAC and Parks and Recreation 2%-funded activities.

**Craft** recalled prior statements by staff that 2% revenues generated by the PAC will more than make up for the \$1 million needed for debt service. **Wright** stated that the revenue estimates given by staff were simply projections and he questions where staff got its figures.

**Wright** asked about the amount of interest \$1 million would accrue over the life of the bonds. **Wicks** stated the PAC bond will have a 20-year maturity, which will generate a considerable amount of interest. However, were the City to begin saving money toward the construction of the PAC, rather than go out for bonds, it would take 20 years to accumulate enough to build it. While the City is paying interest on these bonds, it will be earning interest on its investments, although, at the moment, the City's investments are earning less than the expected interest rate on the bonds. Putting money aside ahead of time is just like spending it to pay off a bond – it's a trade off. Staff will reserve \$1 million of the 2% taxes to make the PAC debt service payments for at least the next 10 years.

**Wright** replied that the Fleet Services Maintenance Facility is a need, but the City already has the facilities the PAC will duplicate. He is concerned that the PAC might drain revenues from other City services and burden the City with more maintenance and personnel costs.

**Thomas** asked **Wright** if he doubted the PAC would generate additional revenue. **Wright** stated that revenue is more important than projections.

In response to Deputy Mayor Thomas, **Wendt** explained that she has just been working on estimates for an individual who wants to come to Yuma and hold three tournaments over the course of three months. The revenues for rentals and field maintenance will bring in \$4,000 to the City, which doesn't include

what each of the teammembers – 12 teams with 12-15 players each - and their families will spend to stay in Yuma. **Thomas** noted that one father of a child who plays in sports tournaments told him personally that he spent \$4,000 in one weekend to take his family to a tournament. The PAC will be a great investment. The City and local hotels and restaurants will reap big benefits.

**Wright** questioned **Wendt**. **Wendt** stated that Linda Morgan, Executive Director, Yuma Visitors Bureau, provided the revenue estimation formula. She gathered information nationwide. City staff considered the numerous tournaments held all over the state that could be brought to Yuma. This includes Hispanic tournaments now held in the Las Vegas area. Marine Corps Air Station – Yuma has approached the City concerning tournaments that would bring Marines from Twenty-Nine Palms, Camp Pendleton, and numerous other military bases. Right now, the City cannot accommodate all of the tournaments that just the local community wants. The PAC would be used for tournaments, allowing the existing City facilities to become areas for practice and additional younger-player tournaments. PAC tournaments would include softball and baseball.

**Wright** asked if the City would be depending on promoters to bring in tournaments. **Wendt** noted that would be the case. The particular promoter she is working with now is very trustworthy – Cecil Fielder and his Baseball Legends event. His organization has been coming to Yuma for the last four to five years. Baseball Legends is a huge event with tournaments throughout September, October and November. Fielder is very interested in the PAC and intends to grow his tournaments once the new facility is available.

In response to **Wright**, **Wendt** explained that Fielder's current program brings in 40 – 50 teams, mostly composed of individuals 18 years old and older. This year his program will be accommodated at the Ray Kroc Complex and the Elena Orendain Complex and the younger kids will be playing in some of the City's other fields. Fielder wants to be able to take the younger teams to the PAC and still do his tournament for the older kids there, too. Older players must play on a regulation-sized field, not the smaller fields. PAC will have regulation softball plus sized fields, which can accommodate younger and older baseball and all softball.

In terms of the amount of 2% taxes the PAC tournaments will bring in, **Wendt** stated that she did not have those numbers in front of her.

**Wright** reiterated his concerns about having enough 2% tax revenues to continue City services and pay debt service. **Wicks** stated the City would have enough.

**Wilkinson** asked how much would be saved by the City by the proposed bond refunding. **Wicks** stated that the City would save almost \$1 million on the refunding of Series 2003B and Series 2007B – the Senior Lien Excise Tax Revenue and Revenue Refunding Bonds, Series 2015 (R2015-34). The City will reap a gross savings of \$17 million on the Utility bonds, which will include \$6 million set aside for its debt service until it becomes callable, which would be approximately \$1 million a year. The Road Tax bond savings would be close to \$4 million. Bear in mind, that the \$960,000 debt service estimate was figured on 4% interest to be conservative. It's likely that the City would sell the bond at a lower interest rate. So, the debt service payment has probably been overstated. Once the bonds are sold, the interest rate will be set and the City's specific costs will be known.

**Wilkinson** stated that the City will save some \$22 million over the life of the three proposed bond refundings, so this vote is about saving money. One of the concerns staff has had all along is increasing

interest rates; the next possible increase could come in September. If these bonds are not adopted and the City has to begin again, this window of opportunity on low interest rates could close. Higher interest rates could cost the City – City taxpayers – millions of dollars.

**Wright** reiterated his concerns about costs of the PAC, but was in favor of the bond refunding because of the savings. The PAC is going to cost the City a lot of money in interest and will wipe out these savings. He'd like to protect the 2% tax; taking on a new project puts it at risk. Projected revenues may not materialize, but the City would still have to pay the debt. He would have preferred a financial plan showing how money could be set aside to build the complex in the future; that's saving money. There's no question, though, that the fleet services facility is needed. The PAC is a want, not a need. He would have preferred private-public partnership financing.

**Thomas** asked **Wright** how much money the fleet services facility would bring into the community. **Wright** stated the fleet services facility is not a revenue-generating project; it's a matter of protecting the City's ability to service its equipment. It's also a matter of protecting City personnel – the working conditions are deplorable and fire safety is an issue in the existing facility.

**Thomas** asked **Wright** if he thought the PAC would generate any revenues. **Wright** stated that he has nothing to compare the projections to. His focus is on the expenditure side. There's no financial plan for this. He mentioned the lack of public input and City Council's fiduciary responsibilities.

**Wilkinson** stated that there appears to be a misunderstanding. If Resolution R2015-034 fails, the refunding of Series 2003B and Series 2007B bonds also fail, along with the fleet services facility and PAC new funding. There's no separating them out at this late date. The three bond issuances must move forward together. If these bonds are pushed into September, there's a good chance interest rates will be higher. **Wicks** added that amending any of the bonds would require that the resolutions be re-written and re-reviewed before returning to City Council. **Wilkinson** reiterated that denying these bonds will be destructive to the City and City taxpayers.

**Craft** agreed that a no vote would be a colossal mistake. He noted, however, that the list of tournaments presented by staff was not a wish list; it was a list of well-established tournaments. Nothing on the list was just possible events – they are established events every year. Even if staff's projections are off by half, there would still be more than enough to pay the debt service.

**Wright** reiterated his concerns. Staff shouldn't have conglomerated the refunding with the fleet services facility and the PAC; they should have been presented to City Council separately. **Wicks** responded that the inclusion of the two capital projects – the fleet services facility and the PAC – have been in the budget process since March. It was introduced to the public in April before the Planning and Zoning Commission, at a public hearing before City Council in May and adopted in the Preliminary and Final Budget. Tonight the financing mechanism is before the Council. The decision regarding whether to build the PAC was made some time ago. Staff explained during bond discussions that the two projects would be included in a refunding bond in order to reduce the costs associated with issuing bonds. They can be separated, given enough time. Revised bonds would have to be reconsidered by MPC. There have been a number of opportunities for the public to comment, but there's been little response. Combining the needs into one bond is the most expedient way to get the prior bonds refunded and the new money established. **Thomas** added that voters spoke in favor of the PAC.

**Knight** stated that combining the fleet services facility and the PAC and the refunding is the best way to save money on issuance. Separating them out will delay them and cost more money.

**Motion** (Knight/McClendon): To approve R2015-034, as presented.

**Bushong** displayed the following title:

**Resolution R2015-034**

**An ordinance of the City Council of the City of Yuma, Arizona, authorizing the issuance of not to exceed \$52,000,000 aggregate principal amount of bonds by the Municipal Property Corporation; authorizing the completion, execution and delivery of all agreements necessary or appropriate for the financing or refinancing of costs of municipal facilities improvements for the City and related financing of costs including the delegation to the Finance Director of certain authority with respect thereto; authorizing the expenditure of all necessary funds therefor and declaring an emergency**

[refunding of Series 2003B and Series 2007B and financing of new capital projects: Pacific Athletic Complex (PAC) and Fleet Services Maintenance Facility; *City of Yuma, MPC, Senior Lien Excise Tax Revenue and Revenue Refunding Bonds, Series 2015*] (Finance Administration)

Roll call vote: **failed** 3-2-1, Wright and Craft voting Nay and Mayor Nicholls abstaining due to a conflict of interest.

**Motion** (Craft/McClendon): To schedule an emergency meeting tomorrow evening to reconsider R2015-034 further. **Bushong** noted that posting requirements prohibit a meeting as soon as tomorrow. **Craft** and **McClendon** amended their motion to set the Special Meeting on Monday, July 20, 2015.

**Wilkinson** explained that an item carrying the emergency clause must be passed by a majority of five votes in support; thus, R2015-034 has failed

Roll call vote (scheduling of Special Meeting): **approved** 5-0-1; Mayor Nicholls abstaining due to a conflict of interest.

**Mayor Nicholls** returned to the dais and control of the meeting.

(Clerk's Note: Further action was taken on this item in the Summary of Current Events at the request of Wilkinson; see below.)

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**Motion** (Knight/Thomas): To adopt the Resolution Consent Agenda, as presented, with the exception of R2015-034, which was addressed previously; see above.

**Bushong** displayed the following titles:

**Resolution R2015-031**

**An ordinance of the City Council of the City of Yuma, Arizona, repealing Resolution R2008-59 and authorizing the City Administrator to execute a standard form of license with the Yuma County Water Users' Association to construct, operate and maintain utility and roadway infrastructure to pay costs related thereto**

(YCWUA License of Encroachment master form) (Engineering)

**Resolution R2015-033**

**An ordinance of the City Council of the City of Yuma, Arizona, appointing the election board officers (poll workers) to serve at the City Primary and General Elections to be held on August 25, 2015 and November 3, 2015, respectively, and further approve voting centers as adopted by the Yuma County Board of Supervisors, pursuant to State Statute as the election process through the current intergovernmental agreement**

[ARS§16-411 B(4); early board and 3 voting centers] (City Administration/City Clerk)

**Resolution R2015-035**

**An ordinance of the City Council of the City of Yuma, Arizona, authorizing the issuance of not to exceed \$110,000,000 aggregate principal amount of bonds by the Municipal Property Corporation; authorizing the completion, execution and delivery of all agreements necessary or appropriate for the refinancing of costs of acquiring expanding and improving the utility system serving the City and related financing costs including the delegation to the Finance Director of the City certain authority with respect thereto; authorizing the expenditure of all necessary funds thereto and declaring an emergency**

(refunding of Utility Series 2007 Bonds; *City of Yuma, MPC, Senior Lien Utility System Revenue Refunding Bonds, Series 2015*) (Finance/Administration)

**Resolution R2015-036**

**An ordinance of the City Council of the City of Yuma, Arizona, authorizing the issuance of not to exceed \$43,000,000 aggregate principal amount of bonds by the Municipal Property Corporation; authorizing the completion, execution and delivery of all agreements necessary or appropriate for the refinancing of costs of street and roadway improvements for the City and related financing costs including the delegation to the Finance Director of the City certain authority with respect thereto; authorizing the expenditure of all necessary funds thereto and declaring an emergency**

(refunding of Series 2007D Bonds; *City of Yuma, MPC, Senior Lien Road Tax and Subordinate Lien Excise Tax Revenue Refunding Bonds, Series 2015*) (Finance/Administration)

Roll call vote: **adopted** 6-0.

**III. ADOPTION OF ORDINANCES CONSENT AGENDA**

**Mayor Nicholls** declared a potential conflict of interest with regard to O2015-036 and O2015-41. He turned the meeting over to Deputy Mayor Thomas and left the room.

**Motion** (Knight/Craft): To adopt O2015-036 and O2015-041, as presented.

**Bushong** presented the following titles:

**Ordinance O2015-036**

**An ordinance of the City Council of the City of Yuma, Arizona, reverting the zoning of the described real property from the High Density Residential/Conditional Planned Unit Development (R-3/Conditional PUD) District to the High Density Residential (R-3) District by repealing Ordinance No. 1888, and amending the zoning map to conform thereto**

(property at the southwest corner of 21<sup>st</sup> Avenue and 7<sup>th</sup> Street) (Community Development/Planning)

**Ordinance O2015-041**

**An ordinance of the City Council of the City of Yuma, Arizona, reserving an easement for aesthetic enhancement purposes in a portion of City-owned real property, authorizing the reservation of a utility easement in a City-Owned alleyway prior to vacating the alleyway through the recording of a Special Warranty Deed, vacating a portion of 15<sup>th</sup> Place right-of-way for use as a City street upon the recording of a Special Warranty Deed, authorizing the reservation or transfer of a joint access easement on certain described City-owned real property, declaring the underlying fee title of the aesthetic enhancement easement, the utility easement and the joint access easement properties and certain other City-owned property, all of which is described in this ordinance and located at the northwest corner of 16<sup>th</sup> Street and 4<sup>th</sup> Avenue surplus for City use and available for exchange through a separate City Council approved real property exchange and development agreement, authorizing and directing that certain parcels of real property, hereafter described, be acquired by the City of Yuma by gift, purchase, exchange for the described surplus City-owned property, or under the power of eminent domain, for the reason that the property to be acquired by the City is necessary to improve the public roadway and utility infrastructure and other related public purposes, and authorizing payment for certain enumerated costs for acquisition**

(Property acquisition – property in the vicinity of the northwest corner of 16<sup>th</sup> St. and 4<sup>th</sup> Ave.; property owner: Kenyon’s Market, Inc.) (Engineering)

Roll call vote: **adopted** 5-0-1; Mayor Nicholls abstaining due to a conflict of interest.

Mayor Nicholls returned to the dais and control of the meeting.

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**Motion** (Craft/McClendon): To adopt the Ordinances Consent Agenda, as presented, with the exception of O2015-036 and O2015-041, which were previously addressed; see above.

**Bushong** displayed the following titles:

**Ordinance O2015-037**

**An ordinance of the City Council of the City of Yuma, Arizona, amending Title 15 of the Yuma City Code, Chapter 150, Sections 150-045, 150-046, adopting by reference the 2012 *International Mechanical Code*, and the amendments recommended by the Building Advisory Board dated December 17, 2014, and providing a penalty for violations thereof**

(2012 IMC and local amendments; declared a Public Record by R2015-028) (Community Development/Building Safety)

**Ordinance O2015-038**

**An ordinance of the City Council of the City of Yuma, Arizona, amending Title 15 of the Yuma City Code, Chapter 150, Sections 150-060, 150-061, adopting by reference the 2012 *International Plumbing Code*, including Appendices C, E, F, and the amendments recommended by the Building Advisory Board dated December 17, 2014, and providing a penalty for violations thereof**

(2012 IPC and local amendments; declared a Public Record by R2015-028) (Community Development/Building Safety)

**Ordinance O2015-039**

**An ordinance of the City Council of the City of Yuma, Arizona, amending Title 15 of the Yuma City Code, Chapter 150, Sections 150-065, 150-067, adopting by reference the 2012 *International Fuel Gas Code*, and the amendments recommended by the Building Advisory Board dated**

**February 18, 2015, and providing a penalty for violations thereof**

(2012 IFGC and local amendments; declared a Public Record by R2015-028) (Community Development/Building Safety)

**Ordinance O2015-040**

**An ordinance of the City Council of the City of Yuma, Arizona, amending Title 15 of the Yuma City Code, Chapter 150, Sections 150-076, 150-077, adopting by reference the “NFPA 70 National Electrical Code 2014 Edition,” and “Amendments dated March 11, 2015,” and providing a penalty for violations thereof**

(2014 NEC and local amendments; declared a Public Record by R2015-028) (Community Development/Building Safety)

**Ordinance O2015-042**

**An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, rezoning certain property located in the High Density Residential (R-3) District to the Limited Commercial (B-1) District and amending the zoning map to conform with the rezoning**

(ZONE-9101-2015; property at 1280 W. 24<sup>th</sup> St.; applicant: Marguerite Bryan, represented by Richard Neault) (Community Development/Planning)

**Ordinance O2015-043**

**An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, rezoning certain property located in the Agriculture (AG) District to the Low Density Residential (R-1-12) District and amending the zoning map to conform with the rezoning**

(ZONE-9378-2015; property located at 2070 and 2090 S. Araby Rd.; applicant: Richard Musgrove, represented by Fowler Malone) (Community Development/Planning)

Roll call vote: **adopted** 6-0.

**IV. INTRODUCTION OF ORDINANCES**

Ordinance O2015-046: Authorize annexation of property generally located at the northwest corner of 24th Street and Avenue 9E. (ANEX-8845-2015) (Community Development/Community Planning)

**Mayor Nicholls** asked that those individuals who have signed up to speak to O2015-046 hold their comments until the following public hearing on R2015-032 at which time they will be called to speak.

**Motion** (Knight/McClendon): To continue O2015-046 to the Regular City Council Meeting of August 5, 2015 to allow for consultation with the owner of the canal right-of-way.

**Mayor Nicholls** asked about procedures. Can the public hearing on the rezoning of the same property go forward without the annexation? **Moore** stated that the City can change the General Plan regardless of annexation. A General Plan amendment is not a rezoning.

Voice vote: **approved** 6-0.

At the direction of Mayor Nicholls, **Bushong** displayed the following titles:

**Ordinance O2015-045**

**An ordinance of the City Council of the City of Yuma, Arizona, adopting and approving an amendment to Ordinance No. O2014-01 to include Exhibit A and authorize the City Administrator to waive the Advance Four-Year Notice of Abandonment and Pavement Quality Report required by A.R.S. §28-7209**

(O2014-01 – acquisition of former ADOT rights-of-way/real property at 4<sup>th</sup> Ave. and 1<sup>st</sup> St.)  
(Engineering/Services)

**Ordinance O2015-047**

**An ordinance of the City Council of the City of Yuma, Arizona, annexing to said City a portion of Section 12 of Township 9 South, Range 22 West and a portion of Section 7 of Township 9 South, Range 21 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona, and amending Chapter 154 of the Yuma City Code, as amended, designating the zoning of certain property to the Recreational Vehicle Subdivision (RVS) District and designating certain of the property to the Low Density Residential (R-1-40) Zoning District and amending the zoning map to conform thereto, pursuant to the provisions of Title 9, Chapter 4, Article 7, Arizona Revised Statutes and amendments thereto**

(ANEX-8817-2015; three parcels located generally at the southwest corner of 38<sup>th</sup> Pl. and Ave. 10E within Ranchos El Toreo subdivision; applicant: Earnest Moran) (Community Development/Planning)

**Ordinance O2015-048**

**An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, rezoning certain property located in the Agriculture/General Commercial/Aesthetic Overlay (AG/B-2/AO) District to the General Commercial/Aesthetic Overlay (B-2/AO) District and amending the zoning map to conform with the rezoning**

(ZONE-9762-2015; property at 3049 S Ave. B; applicants: Stephen D. & Shirley R. Kleppe and Bobby J. and Elizabeth J. Merritt Trust, agent: Amber Rider) (Community Development/Planning)

**V. PUBLIC HEARINGS**

Resolution R2015-032: Amend the City of Yuma General Plan to change the land use designation from Low Density Residential to Medium Density Residential, for property located at the northwest corner of 24th Street and Avenue 9E. The applicant is Saguaro Desert Land Inc. (GP-8866-2015). (Community Development/Community Planning)

**Mayor Nicholls** opened the public hearing at 6:46 p.m.

**Albers** explained that the property owner has requested a land use designation of Medium Density Residential for their 7 acre parcel. The original request was to High Density Residential to allow them to develop an apartment complex; however, they have revised their request to a lower density use based on the topography of the site. The private property is 7 acres, but the General Plan amendment would apply to 13 acres because General Plan land use designations are generally taken to the centerline of any adjacent roadways. Therefore, this change would include property along Avenue 9E, 24<sup>th</sup> Street and the midsection of the South Gila Canal, as well as the City's retention basin. However, none of these public lands will develop; the development will be focused on the privately-owned 7 acres.

To the north of the property is the South Gila Canal and agriculture. To the south, there are single-family homes within City limits, Castle Butte Subdivision. To the east is the South Gila Canal and large lot residential development, and to the west is the Jack Rabbit Mesa wastewater treatment facility. Further west is the local school districts' bus barn. Significant public comment has been received in opposition to the request; those comments are included in staff's report to City Council. This afternoon the City received a site plan sketch from the project engineer, which has been handed out to Council. The sketch is a rough idea of where the units would be located; however, the engineering and design of the project has not been finalized. After two public hearing, the Planning and Zoning Commission recommended approval of the requested amendment to the General Plan.

**McClendon** asked about the lowering of densities. **Albers** explained that the General Plan Land Use Designation for property is the umbrella designation for the kind of uses that can occur on a site. For this piece of property, the current land use designation is Low Density Residential, which typically is single-family homes. They have requested a change to Medium Density Residential, which would allow apartments, duplexes and townhouses. The land use designation identifies minimum and maximum densities. Right now the property can develop from 1 to 4.9 dwelling units per acre. Medium Density allows 5 to 12.9 units per acre. High Density would be 13 to 18 dwelling units per acre.

Continuing, **Albers** explained further that on a one-acre parcel of Medium Density land use designated property the developer could construct no less than 5 and no more than 12.9 dwelling units. Low Density would allow this developer to have 7 to less than 35 units on the 7-acre parcel.

**Mayor Nicholls** asked about the developer's original request. **Albers** stated that the developer originally requested High Density Residential; the case was so advertised through the process. High Density would allow them the highest density – up to 18 units per acre. However, that request was revised before the case went before the Planning and Zoning Commission from High to Medium Density Residential – a lower density and fewer units. The applicant indicated the revision was made due to the feasibility of the design of the site.

**John Weil**, legal counsel for the Hall companies, 3064 S. Avenue B, pointed out that this comes before the Council tonight not as a zoning case. Tonight's case involves a General Plan amendment. Even if the plan amendment is granted, the applicant must return to Council, through the rezoning process, to request the applicable zoning. Part of the rezoning process is to provide more detail about the developer's specific plans for the site. The applicant revised his requested land use designation from High Density to Medium Density. Under the Medium Density designation, they could request zoning that would allow up to 90 units on the 7 acres. Their preliminary analysis of the site is that the maximum number of units would be 84, as shown in the site plan sketch that was prepared for today's meeting. He displayed the sketch on the overhead depicting apartment buildings and their relative number of units.

The revision of the request from High Density to Medium Density was an attempt to accommodate the neighbors and the community, as well as the practical matter that the project engineer determined that no more than 90 units could be fit on the property.

This project was initiated by the Hall brothers in response to the community's need for upscale apartments. In the last 30 years, the only apartments built in Yuma have been government subsidized HUD housing or affordable housing. There is a need for this type of apartments, but there is also a need

for an alternative housing choice for professionals and those who can afford higher rent, but who don't want the responsibilities of home ownership. Targeted consumers would be anyone who does not want to deal with the purchase costs and responsibilities of a single-family residence – yard maintenance, pool maintenance, and home repair and maintenance. There is a national trend of individuals who enjoy signing a one-year lease and move into an apartment with pool and landscaping maintenance and repairs left to the landlord. These types of people would include contractors who work short-term at the military bases or private industry. Planning and Zoning Commissioner Koopman noted that he sees a lot of need for this type of housing, but there's nothing presently available in Yuma. A city the size of Yuma should have this kind of upscale alternative housing.

Why this location? The property has been owned by the Hall brothers for many years. The parcel is only 7 acres because part of the property was taken by Yuma County (it may have been conveyed to the City of Yuma) for a retention basin. The property is irregularly shaped and would not lend itself easily to a subdivision of single-family homes. The property is a sand hill on the side of the Mesa; the topography involves extreme elevation differentials between the top of the Mesa to the bottom of the valley. That being the case, it offers tremendous views across the valley to the mountains. The apartments, as drawn, are oriented to take maximum advantage of the views.

The costs to build on this property will be extremely high because of engineering difficulties and retention walls. If the developer was interested in developing low-income housing apartments, this parcel would not be the one to use. He reassured the community that these apartments will not be government subsidized.

Concerning certain misinformation on social media, **Weil** stated that the developer has no special deal with the City on this property. There is no development agreement or "understandings." The developer will pay the standard costs for connection fees, development fees, and infrastructure fees— just like any other developer for any other parcel. The idea that the City will incur costs by granting this General Plan amendment is incorrect. There will be no on-street parking; that is not allowed. It is required that apartments be developed that have sufficient parking on-site. Concerning the impact of this project, the population for an apartment building is less than half the population of single-family homes. Single-family homes statistically are occupied by 3.4 people. A multi-family dwellings, which is the code term that would include apartments, statistically are occupied by 1.6 persons. The City's staff report indicates that under the existing General Plan land use designation, the site would allow zoning for 34 units of single-family housing at 3.4 people per house, adding a population to the area of 116 people. Under the requested land use designation, the maximum number of units allowed would be 90 and at 1.6 persons per unit that would add 144 people to the area.

Overcrowding of the schools has been mentioned. A single-family subdivision, per the staff report, would add 23 school students to the area's population. The requested plan amendment would add 29. The difference between these population increases is insignificant. This small project will not have a significant impact on the adult or child population. Concerning traffic, the City spent millions of dollars recently to improve 24<sup>th</sup> Street; it is a state of the art minor arterial, divided four-lane roadway, with a design capacity of 25,000 trips per day. Yuma Metropolitan Planning Organization's present trips-per-day count is 3,365, 13% of its capacity. Avenue 9E is a Yuma County road. The preliminary design for the entrance would be one entry – a left-turn/right-turn out – because of the roadway divide on 24<sup>th</sup> Street, which is the street that all of this development's traffic would use.

**Knight** asked if there would be ingress/egress from Avenue 9E for emergency vehicles. **Weil** stated no. Emergency access would probably be from the west end of the property. There's no way to get emergency vehicles past the retention basin on the east. There's no intention of using the canal right-of-way.

**Mayor Nicholls** asked what the property with no buildings on it would be used for. **Weil** stated those areas would house amenities for resident use only – the clubhouse and pools. **Mayor Nicholls** asked how the buildings would accommodate the steep incline. **Weil** stated that the concept is for stepped units, so that the apartments further south would have a view over the apartments north of them. Certain units would have a poorer view.

In response to **Knight**, **Weil** stated that the developer is contemplating two-story units. However, **Weil** reminded Council that the details of the plan have not been considered or finalized, but those details will become finalized before the development is approved at rezoning. The engineering is expensive and the applicant doesn't want to complete the engineering unless the project is legislatively viable.

In response to **McClendon**, **Weil** stated that their intention is to build 84 units based on their engineer's assessment today; however, the requested plan amendment would allow up to 90 as the legal limit. The population figures he presented earlier are based on 90, not 84 units.

**Mayor Nicholls** asked if there is a chance this would become condominiums versus apartments. **Weil** stated that is a possibility.

**Mayor Nicholls** addressed certain rumors going around in emails. Has the City agreed to pay for upgrades to the sewer lift station, telephone poles, and stop lights, and, repaving streets and rebuilding fences? **Wilkinson** stated these things are the responsibility of the developer.

#### Speakers

**Donna White**, 8166 E. Lorenzo Lane, representing Residents Against Saguaro Apartments, noted that the City has received several letters that are not included in the meeting packet information – letters from Patty Franklin and the owner of the land JV Farms. Has anyone contacted these individuals? **Craft** responded that he has been trying to contact JV Farms for several days and no one will return his calls. **Knight** indicated he has talked to the owner of the agricultural land farmed by JV. Farms. **White** continued. The owner of the agricultural land bought the property from the Hall brothers thinking he would be free to farm the area without difficulty. Now, the Hall brothers want to put apartments in his backyard that puts his livelihood in jeopardy. She compared the luxury Terraces condos on 24<sup>th</sup> Street to the proposed development – 19 acres with 113 condos. How can 90 units be built on 7 acres? This development would be nothing like luxury. The neighbors don't want a transient population; they want low density and are prepared to fight for it.

**McClendon** asked if the neighbors would be opposed to Hall developing low density apartments. **White** stated that any owner-occupied, low density development would be welcome.

**Luis Arroyo**, 2664 S. Pinedale Avenue, stated that it's unclear whether the developer intends to put as many people as possible on 7 acres or on the entire annexation area. He is concerned about ingress/egress because most services are to the southeast of this area. Drivers will have to make a u-turn at the Castle Dome Middle School stop light or try to cross both lanes of traffic to go southeast. Both

pose additional risks. It's good to know where the lift station is planned. Flyovers and crop dusters will expose people who live in this area to aerial risks – crashes and chemicals. The community cannot afford to encroach on agriculture because the community's economy revolves around farming. There are already plenty of houses available in this area for anyone needing to rent, lease or purchase. Another 90 units will increase the number of short sales and foreclosures occurring. The City Council should deny this request because it will have a greater adverse effect on current property owners than on the owners of this parcel. 24<sup>th</sup> Street is a scenic route; walkers use it every day. The City should allow it to develop only as the buyer bought it – low density residential. It will be a turnkey windfall for the Hall's at the expense of the nearby neighbors.

In response to **Knigh**, **Luis Arroyo** stated there is no way they can deny the Hall's the opportunity to develop the property as low density.

**Wright** asked about the crop dusting. **Luis Arroyo** stated the crop dusters fly north/south to avoid existing development to the east. Depending on the type of aircraft being used, they fly below 100 feet above the ground. The topography and power lines require very restricted flying. The crops go right up to the boundary of the canal right-of-way, so the planes fly over this property. **Mayor Nicholls** asked if the crop dusters fly over the nearby schools. **Luis Arroyo** stated they do not. The solar array separates the school from the farm land.

**Thomas** asked Luis Arroyo about property rights. **Luis Arroyo** stated all property owners, himself included, have to follow building restrictions. This development will not infringe on his civil liberties, but it will infringe upon his personal liberties because he uses this property's right-of-way as a walking path. This parcel is just about the only open space available. **Thomas** stated that his concerns center around personal liberty and government intrusion, yet the neighbors are asking the City government to deny the Hall brothers the opportunity to develop their property as they want. It's a fine line between opposing interests.

**Craft** stated that, in talking to the farmers in the area, they have stated that ground applications would be used, not crop dusters, once this property develops.

**Wright** stated he is concerned about crop dusting and building heights.

**Austin Arroyo**, 2664 S. Pinedale Avenue, stated he is a student at Castle Dome Middle School. The classrooms are already crowded and should more students come into the district, the boundary lines will have to be redrawn and he or his friends might be reassigned to another school. Don't force a mediocre education on them. Rather than apartments, the area needs a park.

**Billie Wooten**, 7736 E. Lorenzo Lane, confirmed that Castle Dome Middle School is crowded. The latest move by the Hall brothers to lower the requested density from High Density to Medium Density with the intention of creating luxury apartments that will attract young professionals is a good thing and would be beneficial to the community, but why at this location? There are no sport activities and no restaurants; the area is residential homes and schools. If the Halls want to help the community, why not build these apartments downtown to draw people to an area that needs and is undergoing restoration? The developer can build something else on this property.

**Mayor Nicholls** stated he, too, would like to see apartments downtown, but it is not his prerogative to tell people where they can develop.

**Knight** noted that this area has been designated Low Density Residential since 2012. He agreed with Luis Arroyo that agriculture is one of Yuma's main economic drivers and it must be protected. Yuma Irrigation District (YID) and the nearby farmer have expressed opposition and concerns with any residential development greater than Low Density Residential, which has proven itself capable of compatibility with farming. He cannot support the change without agriculture's support of it, too. He fears this would set a precedent for future development in proximity to agriculture in the Yuma Valley. The Hall brothers developed low density on Avenue D and 12<sup>th</sup> Street.

**Mayor Nicholls** asked about Knight's information from YID and farmers. **Knight** stated he received letters from Bud Groat, the owner of the agricultural land, and JV Farms; the JV Farms letter is reproduced in the meeting packet information. **Mayor Nicholls** pointed out that the JV Farms' letter expresses opposition to High Density; it does not mention Medium or Low Density. **Knight** stated he has been trying to get into contact with JV Farms to find out what their feelings would be about Medium Density. **Mayor Nicholls** stated he, too, would like that clarification. He would prefer to continue this resolution until that information can be had.

**Wright** agreed with Knight that compatibility with the farming community is very important. Drainage also poses an issue. He'd like more time for input. **Mayor Nicholls** explained that the A Canal creates a berm and a large rainstorm would flood out these houses before runoff from this property would flood the fields. The project engineer will see to this issue.

**Motion** (Knight/Wright): To continue R2015-032 to the August 5<sup>th</sup>, 2015 Regular City Council Meeting.

**Wilkinson** stated that staff will contact the farmers directly and get their input prior to August 5, 2015.

Voice vote: **passed** 6-0.

**Knight** stated that he would also like to hear from Bud Groat, the owner of the agricultural land that JV Farms is farming. **Wilkinson** agreed to contact him.

#### **FINAL CALL – CALL TO THE PUBLIC**

**Mayor Nicholls** made a final call for Speaker Request Cards for those wishing to address the City Council at the Call to the Public.

#### **VI. APPOINTMENTS, ANNOUNCEMENTS AND SCHEDULING**

**Knight, Wright** and **Mayor Nicholls** reported on events/meetings they attended during the last two weeks.

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

**Wilkinson** began to clarify his comments on R2015-34. **Mayor Nicholls** recused himself and left the room because of a potential conflict of interest.

Resolution R2015-034: MPC Senior Lien Excise Tax Revenue and Revenue Refunding Bonds, replacing Series 2003B and Series 2007B Bonds and obtaining funds for the Pacific Athletic Center and the Fleet Services Maintenance Shop

As clarification, **Wilkinson** asked that a member of the prevailing side on the vote offer a motion to reconsider Resolution R2015-034 at the Special Council Meeting scheduled on July 20, 2015.

**Motion** (McClendon/Knight): To reconsider R2015-034 to a Special Council Meeting on Monday, July 20, 2015. Voice vote: 5-0-1; Mayor Nicholls abstaining due to a conflict of interest.

Mayor Nicholls returned to the dais and control of the meeting.

**Wilkinson** noted the following upcoming events:

- July 16 and continuing: Summer Skate Park Championships
- July 24: 12" Paul Riley, Late Night Men's Softball Tournament
- July 25: 4<sup>th</sup> Annual Back to School Rodeo
- July 27: Catch Fire Archery Camp

#### **IX. CALL TO THE PUBLIC**

There was no public comment.

#### **X. EXECUTIVE SESSION/ADJOURNMENT**

There being no further business, **Mayor Nicholls** adjourned the meeting at 8:09 p.m. No Executive Session was held.

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Lynda L. Bushong, City Clerk

APPROVED:

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Douglas J. Nicholls, Mayor

**MINUTES**  
**SPECIAL CITY COUNCIL MEETING**  
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA  
CITY COUNCIL CHAMBERS, YUMA CITY HALL  
ONE CITY PLAZA, YUMA, ARIZONA  
**JULY 20, 2015**  
**5:30 p.m.**

**CALL TO ORDER**

**Deputy Mayor Thomas** called the City Council meeting to order at 5:30 p.m. He noted that Mayor Nicholls is absent due to he has declared a potential conflict of interest with tonight's sole item.

**ROLL CALL**

Councilmembers Present: Beeson, Knight, McClendon, Wright, Craft, and Deputy Mayor Thomas  
Councilmembers Absent: Mayor Nicholls  
Staffmembers Present: City Administrator, Gregory K. Wilkinson  
Various Department Heads or their representative  
City Attorney, Steven W. Moore  
City Clerk, Lynda L. Bushong

**Deputy Mayor Thomas** acknowledged State Senator, Lynne Pancrazi, who was in the audience.

**I. RESOLUTION CONSENT AGENDA**

Resolution R2015-034: Approving the issuance of City of Yuma Municipal Property Corporation (MPC) Senior Lien Excise Tax Revenue and Revenue Refunding Bonds, Series 2015; delegate to the Finance Director the authority to determine various terms with respect to such series 2015 bonds; approve certain agreements and an official statement with respect thereto and the execution and delivery thereof; authorize the taking of all other actions necessary to the consummation of the transactions contemplated by this resolution; and declare an emergency. (Finance/Administration)

**Deputy Mayor Thomas** commented that approving the item before City Council tonight will address many longstanding concerns about Yuma's economy and job creation. R2015-034 was discussed in detail at the last City Council Meeting on July 15, 2015. He asked for only new information and set a time limit for comments.

**Beeson** stated that, being absent from the last meeting, he has reviewed the video of the discussion and feels there is nothing new to be added.

At the direction of Deputy Mayor Thomas, **Bushong** read the following title:

**Resolution R2015-034**

**A resolution of the City Council of the City of Yuma, Arizona, authorizing the issuance of not to exceed \$52,000,000 aggregate principal amount of bonds by the Municipal Property Corporation; authorizing the completion, execution and delivery of all agreements necessary or appropriate for the financing or refinancing of costs of municipal facilities improvements for the City and related financing of costs including the delegation to the Finance Director of certain authority with respect thereto; authorizing the expenditure of all necessary funds therefor and declaring an emergency**

[refunding of Series 2003B and Series 2007B Bonds and new money for the Pacific Athletic Complex (PAC) and Fleet Services Maintenance Facility] (Finance/Administration)

**Motion** (Beeson/Craft): To adopt R2015-034 as recommended, including the emergency clause.

**Wright** reiterated his concerns about borrowing money for the development of the PAC, though he has no objection to refinancing previous bonds or building of a new Fleet Services maintenance shop. The PAC, however, hinges on community support and Yuma's past history with professional soccer and baseball has been spotty. He questioned whether there was enough community support to make this softball complex financially successful, given the principal (\$14.5 million) and interest costs (20-years) of the bond. The PAC will require the City to add new personnel and manage additional facilities maintenance.

**Deputy Mayor Thomas** asked what project Wright could support for economic development if he is against the PAC. **Wright** expressed support for lowering the interest rates on the City's existing bonds and creating a safe place for Fleet Service employees to do their job, but the baseball complex is not a need.

**McClendon** commented that **Wright's** concerns about money are valid, but the PAC is intended to fill the needs of both adult and youth activities. Right now, the City has to turn away group tournaments that it cannot accommodate. The PAC will allow the City to host them. In her experience, Yuma is a great sport destination because of its weather. Besides softball and baseball tournaments, the PAC will be able to accommodate shows and rallies of other types that will bring big benefits to the economy. Staff just barely scratched the surface in their prior presentations of what the PAC will be able to provide.

**Beeson** noted that there is a definite demand for the PAC by the community; Yuma lacks regulation-sized softball fields. This resolution is in answer to that demand.

**Craft** stated that if the City were building a facility for a sport that wasn't actively participated in or trying to attract interest from scratch would be one thing. However, every playing field in Yuma is used multiple times on a daily basis. The demand and need already exists.

**Deputy Mayor Thomas** added that voters expressed their support for the PAC when they passed the 2% Hospitality Tax renewal in 2009. **Wright** noted that no matter where the money comes from for the PAC, it still must be found.

Roll call vote: **approved** 5-1; Wright voting Nay.

## II. ADJOURNMENT

There being no further business, **Deputy Mayor Thomas** adjourned the meeting at 5:45 p.m. No Executive Session was held.

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Lynda L. Bushong, City Clerk

APPROVED:

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Douglas J. Nicholls, Mayor



# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:**

November 18, 2015

**DEPARTMENT:**

City Administration

**DIVISION:**

City Clerk

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

**TITLE:**

Special Event Liquor License: Navy League of U.S., Yuma Council - Military Appreciation Day

**SUMMARY RECOMMENDATION:**

Approve a Special Event Liquor License application submitted by Dean D. Hager, on behalf of the Navy League of U.S., Yuma Council, for Military Appreciation Day. The event will be held on the 200 block of Main Street, located in downtown Yuma, on Saturday, December 5, 2015 from 9:00 a.m. to 5:00 p.m. (SP15-53)

**REPORT:**

Dean D. Hager, on behalf of the Navy League of U.S., Yuma Council, has applied for a Special Event Liquor License for Military Appreciation Day. The event will be held on the 200 block of Main Street, located in downtown Yuma, on Saturday, December 5, 2015 from 9:00 a.m. to 5:00 p.m.

The application has been sent to Community Development, the Police Department, the Fire Department, Risk Management, City Engineering (Traffic) and Parks and Recreation 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 type="radio"/> Department <input type="radio"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:		DATE:	
	Gregory K. Wilkinson		11/9/2015	
	REVIEWED BY CITY ATTORNEY:		DATE:	
	Steven W. Moore		11/9/2015	
	RECOMMENDED BY (DEPT/DIV HEAD):		DATE:	
Lynda L. Bushong		10/29/2015		
WRITTEN/SUBMITTED BY:		DATE:		
Janet Pierson		10/29/2015		



# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:**

November 18, 2015

**DEPARTMENT:**

City Administration

**DIVISION:**

City Clerk

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

**TITLE:**

Special Event Liquor License: Yuma Metropolitan Planning Organization - 2016 Rural Transportation Summit

**SUMMARY RECOMMENDATION:**

Approve a Special Event Liquor License application submitted by Charlene FitzGerald, on behalf of the Yuma Metropolitan Planning Organization for the 2016 Rural Transportation Summit. The summit will be held at the Yuma Quartermaster Depot, located at 201 N. 4<sup>th</sup> Avenue, on Tuesday, January 12, 2016 from 4:00 p.m. to 8:00 p.m. (SP15-54)

**REPORT:**

Charlene FitzGerald, on behalf of the Yuma Metropolitan Planning Organization, has applied for a Special Event Liquor License for the 2016 Rural Transportation Summit. The summit will be held at the Yuma Quartermaster Depot, located at 201 N. 4<sup>th</sup> Avenue, on Tuesday, January 12, 2016 from 4:00 p.m. to 8:00 p.m.

The application has been sent to Community Development, the Police Department, the Fire Department, Risk Management, City Engineering (Traffic), Parks and Recreation and Heritage Area 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 type="radio"/> Department <input type="radio"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			11/9/2015
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			11/9/2015
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
Lynda L. Bushong			10/29/2015	
WRITTEN/SUBMITTED BY:			DATE:	
Janet Pierson			10/29/2015	



# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:**

November 18, 2015

**DEPARTMENT:**

City Administration

**DIVISION:**

City Clerk

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

**TITLE:**

Special Event Liquor License: Fort Yuma Rotary Club, Inc. - Traxx Christmas Party

**SUMMARY RECOMMENDATION:**

Approve a Special Event Liquor License application submitted by Xanthi Panos, on behalf of the Fort Yuma Rotary Club, Inc., for the Traxx Christmas Party. The party will be held at the Quartermaster Depot State Historic Park, located at 201 North 4<sup>th</sup> Avenue on Saturday, December 12, 2015 from 4:00 p.m. to 10:00 p.m. (SP15-55)

**REPORT:**

Xanthi Panos, on behalf of the Fort Yuma Rotary Club, Inc., has applied for a Special Event Liquor License for the Traxx Christmas Party. The party will be held at the Quartermaster Depot State Historic Park, located at 201 North 4<sup>th</sup> Avenue, on Saturday, December 12, 2015 from 4:00 p.m. to 10:00 p.m.

The application has been sent to Community Development, the Police Department, the Fire Department, Risk Management, Parks and Recreation, Heritage Area, 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 type="radio"/> Department <input type="radio"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:		DATE:	
	Gregory K. Wilkinson		11/9/2015	
	REVIEWED BY CITY ATTORNEY:		DATE:	
	Steven W. Moore		11/9/2015	
	RECOMMENDED BY (DEPT/DIV HEAD):		DATE:	
Lynda L. Bushong		10/29/2015		
WRITTEN/SUBMITTED BY:		DATE:		
Cara Smothers		10/29/2015		



# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:**

November 18, 2015

**DEPARTMENT:**

Finance

**DIVISION:**

Purchasing

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

**TITLE:**

Sole Source Purchase: Closed Circuit Television Mobile Video System

**SUMMARY RECOMMENDATION:**

Authorize the purchase of a Closed Circuit Television Mobile Video System following sole source guidelines at a total cost of \$119,998.97 to:

RS Technical Services Inc., Petaluma, California

(Bid #2016-20000062) (Jay Simonton)

**REPORT:**

Closed Circuit Television (CCTV) is a system used to film all City sewer lines. The sewer lines should be filmed every other year, checking the integrity of the pipes and joints. Funds are included in the Equipment Replacement Program for the replacement of a 1999 GMC Workhorse Camera Van with ONAN Generator (mobile video system). This mobile video system is being replaced due to continuous vehicular, mechanical, and equipment breakdowns.

Proper operation and maintenance of this system includes jet cleaning the wastewater collection lines and follow-up video inspections using a specialized CCTV equipment system installed on a van or trailer. Utilities personnel certified in pipeline inspection conduct videotaping of the lines and document any abnormalities or deficiencies. This video inspection information is archived for five years. Cleaning, inspecting, and archiving are all requirements of the Capacity, Management, Operation and Maintenance (CMOM) regulations as administered by the US Environmental Protection Agency.

Over the years, this mobile video system has had substantial amounts of downtime due to the failures. It has been down 490 hours in just the past two and one half years with escalating repair costs. Replacing this failing mobile video system with a new one is necessary to resume proper wastewater collection system video inspections as required by federal regulations.

FISCAL REQUIREMENTS	CITY FUNDS:	\$119,998.97	BUDGETED:	\$120,000.00
	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: 511-41-52.8930	
	TOTAL:	\$119,998.97		
	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="radio"/> Department <input type="radio"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:		DATE:	
	Gregory K. Wilkinson		11/9/2015	
	REVIEWED BY CITY ATTORNEY:		DATE:	
	Steven W. Moore		11/9/2015	
	RECOMMENDED BY (DEPT/DIV HEAD):		DATE:	
Wendy Wrenn		11/3/2015		
WRITTEN/SUBMITTED BY:		DATE:		
Mary E. Roman / Robin R. Wilson		11/2/2015		



# REQUEST FOR CITY COUNCIL ACTION

<b>MEETING DATE:</b>	November 18, 2015	<input checked="" type="checkbox"/> Motion
<b>DEPARTMENT:</b>	Finance	<input type="checkbox"/> Resolution
<b>DIVISION:</b>	Purchasing	<input type="checkbox"/> Ordinance - Introduction
		<input type="checkbox"/> Ordinance - Adoption
		<input type="checkbox"/> Public Hearing

**TITLE:**  
 Contract Amendment: Environmental Engineering Services for Brownfields Assessment and Area-Wide Planning

**SUMMARY RECOMMENDATION:**  
 Authorize the City Administrator to execute a 13-month extension to the existing contract for Environmental Engineering Services for Brownfields Assessment with Ayres Associates, Tempe, Arizona.  
 (City Administration - RFQ #2013-20000049) (Ricky Rinehart)

**REPORT:**  
 In 2012, the City of Yuma received a Brownfields Grant from U.S. Environmental Protection Agency (USEPA) to conduct an inventory and assessment of brownfield sites and to develop a revitalization strategy for the sites' redevelopment and re-use.  
 Pursuant to the grant requirements, the City of Yuma issued an RFQ for Environmental Engineering Services, and on December 5, 2012, the City of Yuma awarded a contract to Ayres Associates. The USEPA grant term was for a three-year period from 10/1/2012 through 10/31/2015. The USEPA approved a grant extension through 10/31/2016.  
 While most of the work has been completed and funding utilized, there is still some work that is included in the original funding cycle yet to be finalized. The purpose of this action is to extend the existing Ayres Associates contract for an additional 13 months from 9/30/2015 through 10/31/2016, consistent with the grant term. This is solely a time extension and involves no additional contract cost.  
 NOTE: This action is not to be confused with another RFCCA on this agenda which authorizes the receipt of an additional USEPA Brownfields Grant, which will require a new RFQ for Environmental Engineering Services.

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0	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: No additional contract costs for this contract amendment.			
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="radio"/> Department <input type="radio"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			11/9/2015
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			11/9/2015
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
Pat Wicks			10/25/2015	
WRITTEN/SUBMITTED BY:			DATE:	
Melinda Holmes / Robin R Wilson			10/22/2015	

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Assistance Amendment</b>	<b>GRANT NUMBER (FAIN):</b> 00T91501 <b>MODIFICATION NUMBER:</b> 1 <b>PROGRAM CODE:</b> BF	<b>DATE OF AWARD</b> 08/27/2015
		<b>TYPE OF ACTION</b> No Cost Amendment	<b>MAILING DATE</b> 08/27/2015
		<b>PAYMENT METHOD:</b> Advance	<b>ACH#</b> 90766
		<b>Send Payment Request to:</b> Las Vegas Finance Center, Fax (702) 798-2423	
<b>RECIPIENT TYPE:</b> Municipal		<b>PAYEE:</b>	
<b>RECIPIENT:</b> City of Yuma 1 City Plaza Yuma, AZ 85364 <b>EIN:</b> 86-6000273		City of Yuma 1 City Plaza Yuma, AZ 85364	
<b>PROJECT MANAGER</b> Charles Flynn 1 City Plaza Yuma, AZ 85364 <b>E-Mail:</b> <a href="mailto:charles.flynn@yumaaz.gov">charles.flynn@yumaaz.gov</a> <b>Phone:</b> 928-373-5192		<b>EPA PROJECT OFFICER</b> Jose Garcia 75 Hawthorne Street, SFD-6-1 San Francisco, CA 94105 <b>E-Mail:</b> <a href="mailto:garcia.jose@epa.gov">garcia.jose@epa.gov</a> <b>Phone:</b> 213-244-1811	<b>EPA GRANT SPECIALIST</b> Alba Espitia Grants Management Office, MTS-7 <b>E-Mail:</b> <a href="mailto:Espitia.Alba@epa.gov">Espitia.Alba@epa.gov</a> <b>Phone:</b> 415-972-3667
<b>PROJECT TITLE AND EXPLANATION OF CHANGES</b> BROWNFIELDS ASSESSMENT COOPERATIVE AGREEMENT This Cooperative agreement will be used to conduct community wide assessments at potential Brownfields sites contaminated with Petroleum or Hazardous Substances. Activities include conducting site prioritization, followed by Phase I and Phase II at selected sites, public outreach and community involvement/public participation. This amendment extends the budget and project period end dates to October 31, 2016. Terms and conditions remain in full force and effect.			
<b>BUDGET PERIOD</b> 10/01/2012 - 10/31/2016	<b>PROJECT PERIOD</b> 10/01/2012 - 10/31/2016	<b>TOTAL BUDGET PERIOD COST</b> \$400,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$400,000.00
<b>NOTICE OF AWARD</b>			
Based on your Application dated 07/03/2012 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$0. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$400,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.			
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>		<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Grants Management Section, EMD 6-1 75 Hawthorne Street San Francisco, CA 94105		<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Superfund Division, SFD-1 75 Hawthorne Street San Francisco, CA 94105	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>			
Digital signature applied by EPA Award Official for Carolyn Truong - Deputy Director Alba Espitia - Award Official delegate			<b>DATE</b> 08/27/2015



City of YUMA

# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:** November 18, 2015  
**DEPARTMENT:** Finance  
**DIVISION:** Purchasing

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

**TITLE:**  
 Contract: Arizona Department of Corrections

**SUMMARY RECOMMENDATION:**  
 Authorize the City Administrator to execute a contract with the Arizona Department of Corrections (ADOC) for inmate labor work within the City of Yuma.

**REPORT:**  
 In September 1989, the City Council approved the first five-year contract between the City of Yuma (City) and ADOC for a work program using inmates. The City has negotiated and signed a new contract every five years since that time and all inmate labor continued to work under the terms of the old contract. Inmates providing work for the City are minimum security inmates serving time for non-violent crimes. No sex offenders or convicted murderers are utilized in this program. The City utilizes an inmate work force to perform manual labor in various city-owned rights-of-ways and property, including, but not limited to cleaning City streets and maintaining retention basins, parkways and park facilities.

Under the proposed contract, ADOC shall screen all applicants for the program, taking into consideration the inmates' skills and abilities. ADOC also provides a training program for City employees involved in the work program. ADOC is responsible for the security of the inmates and the public; transporting the inmates to and from the work site; and providing food and clothing for the inmates. The inmates work under the direct supervision of an ADOC correctional officer and a City employee approved and trained by ADOC.

The City will pay the inmates at the rate of \$.50 per hour. In addition the City shall pay ADOC for transportation costs at the state prevailing rate per mile for distance traveled by each ADOC transportation vehicle to and from the work site(s). Such payment shall be rendered by separate check or warrant at the same time and place as payment for inmate wages. The contract has a five-year term.

This recommendation has the concurrence of Director of Public Works, Joel Olea and the Director of Parks and Recreation, Debbie Wendt.

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$104,000.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP: 412-5071-6205 101-4036-6205	
		\$0.00		
		\$0.00		
TOTAL:	\$0.00			
FISCAL IMPACT STATEMENT:  The budgeted amount of \$104,000.00 is an estimated amount over a five-year period.				
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="radio"/> Department <input checked="" type="radio"/> City Clerk's Office			
SIGNATURES	CITY ADMINISTRATOR:		DATE:	
	Gregory K. Wilkinson		11/9/2015	
	REVIEWED BY CITY ATTORNEY:		DATE:	
	Steven W. Moore		11/9/2015	
	RECOMMENDED BY (DEPT/DIV HEAD):		DATE:	
Debbie Wendt		11/3/2015		
WRITTEN/SUBMITTED BY:		DATE:		
Jasmin Rodriguez		11/2/2015		

STATE OF ARIZONA  
DEPARTMENT OF CORRECTIONS  
1645 West Jefferson Street, Mail Code 55302  
Phoenix, Arizona 85007-3002

**INMATE WORK CONTRACT**

This **Contract** is entered into between **City of Yuma**, hereinafter referred to as the **Contractor**, and the Director of the **Arizona Department of Corrections**, for and on behalf of its **Arizona State Prison Complex –Yuma**, hereinafter known as the **Department**.

This document, including the Scope of Services, Special Terms and Conditions, Standard Work Provisions, any addendums, attachments or modifications, shall constitute the entire Contract between the parties and supersedes all other understandings, oral or written.

**IN WITNESS WHEREOF**, the parties hereto agree to carry out the terms of this Contract.

**CITY OF YUMA**  
**FEDERAL TAX I.D. #86-6000273**

**ARIZONA DEPARTMENT OF CORRECTIONS**

\_\_\_\_\_  
Signature of Authorized Individual      Date  
**Gregory K. Wilkinson**  
\_\_\_\_\_  
Typed Name  
City Administrator  
\_\_\_\_\_  
Typed Title  
P.O. Box 13014  
Yuma, Arizona 85366  
\_\_\_\_\_  
Address

\_\_\_\_\_  
Signature of Authorized Individual      Date  
**Michael P. Kearns**  
\_\_\_\_\_  
Typed Name  
Division Director, Administrative Services  
\_\_\_\_\_  
Typed Title  
1645 West Jefferson Street, Mail Code 328  
Phoenix, Arizona 85007-3002  
\_\_\_\_\_  
Address

Additional Signatures as Applicable

\_\_\_\_\_  
Signature of Authorized Individual      Date  
\_\_\_\_\_  
Typed Name  
\_\_\_\_\_  
Typed Title

\_\_\_\_\_  
Signature of Authorized Individual      Date  
\_\_\_\_\_  
Typed Name  
\_\_\_\_\_  
Typed Title

Prepared by: Linda Wright, Senior Procurement Specialist  
Date: October 20, 2015

**WITNESSETH**

**WHEREAS**, the Department is duly authorized by A.R.S. § 41-1604, et seq.; § 31-252 and § 31-254, to execute and administer contracts and;

**WHEREAS**, the Contractor is authorized by A.R.S. § 9-240 to enter into agreements for services, and;

**WHEREAS**, the Department desires to implement the requirement that each able-bodied inmate under commitment to the Department shall engage in work activity during such term of imprisonment, and;

**WHEREAS**, the Director of the Department has the authority to maintain and administer facilities and programs as may be required for the custody, control and rehabilitation of all inmates committed to the Department, and;

**WHEREAS**, the Director of the Department may authorize inmate work crews to perform acceptable tasks in any part of the State, and;

**WHEREAS**, the Contractor has a need for a labor force to support its Public Works and Parks and Recreation Departments' projects, and;

**WHEREAS**, the Department is able to supply an inmate labor pool to support this work program for its Arizona State Prison Complex – Yuma, as identified herein.

**NOW, THEREFORE**, the Department and the Contractor do hereby agree as follows:

**1 THE CONTRACTOR AGREES:**

- 1.1 To provide necessary tools/equipment, drinking water, sanitary facilities and any special clothing required to accomplish work assignments.
- 1.2 To appoint a work crew leader who may provide both technical and job supervision as necessary. Appointed supervisors shall abide by and put into operational practice the Standard Work Provision for Inmate Work Programs included as Attachment #1 of this contract.
  - 1.2.1 Technical supervision means the Contractor shall provide staff who know the types of work tasks to be accomplished and correct way to complete each task. Technical supervisors teach assigned inmates how to complete their job assignments.
  - 1.2.2 Job supervision means that Contractor personnel shall remain with assigned inmates for the length of the work day to ensure inmates are supervised and accounted for, and report results to the Department liaison. If an inmate fails to remain at the work site, if an inmate becomes ill at the work site and needs to be returned to the prison and if an inmate poses security concerns, the liaison shall be contacted immediately.
- 1.3 To obtain the Department's written approval for the Contractor's technical supervisor prior to initiation of this contract.
  - 1.3.1 Subsequent to Contract initiation, should the Contractor's technical supervisor(s) change, the Contractor shall notify the Department at least two (2) workdays prior to the impending change to permit completion of the Department's approval process.
  - 1.3.2 If prior notice is not possible, the Department may withhold the inmate work crew from further service until the necessary approval process is completed.

- 1.4 To provide, if applicable, pesticide protection and Hazardous Material Training (HAZMAT) for inmates prior to initiating the work activities described in this Contract.
  - 1.4.1 The Contractor shall comply with the Site Safety and Health Plan included as Attachment #2 of this contract.
  - 1.4.2 Inmates shall not be allowed to be present while hazardous materials, inclusive of pesticides, are being used or applied. Pursuant to the Arizona Office of Pest Management, no inmate shall be allowed to handle or to apply pesticides. However, all hazardous materials (inclusive of pesticides), if stored and/or used on this site, and while ADC staff and/or inmates are present, require they be trained to recognize such hazardous materials and relative adverse medical signs and symptoms associated with the chemical, in accordance with the federal chemical "Right-to-Know Act" (SARA Title III).
- 1.5 To provide a working environment which meets the requirements of the Occupational Safety and Health Act (OSHA), Safety and Health Standards for General and or Construction Industry, 29 CFR Part 1910 and 1926, as adopted by the State of Arizona.
- 1.6 To provide emergency first aid for minor injuries or to contact the nearest medical provider to assist if more extensive first aid services are needed.
- 1.7 The Contractor shall follow all Department Orders (DO's), and Director's Instructions (DI's), i.e. drug-free workplace, grooming code, etc. The policies, procedures, DO's, and DI's are available on the following web site [www.azcorrections.gov](http://www.azcorrections.gov).
- 1.8 To designate a staff member who shall serve as liaison between the Contractor and the Department. The Contractor shall ensure that the Department is given the name and phone number/extension of the contact person.
- 1.9 To notify the Department 24 hours prior to necessity should workload require inmates to stay beyond their normal work hours. Said notice shall be provided by contacting the Department's institution contact person.
- 1.10 To assign work hours, work location(s), and job assignments subject to the concurrence of the Department. Work sites shall be confined to locations which are within the Contractor's authority to manage, maintain and finance.
- 1.11 To allocate sufficient time from job responsibilities to allow Contractor's staff assigned to this work program to attend mandatory training given by the Department prior to initiating the work activities described in this Contract. Subsequent to Contract execution, replacement staff assigned to this program must receive Department training prior to assuming work responsibilities.
- 1.12 To maintain the work site in the manner/condition in which it was approved by the Department as complying with the requirements imposed by the custody level of assigned inmates and assigned work responsibilities. If, during the term of this Contract, security/safety concerns become evident, or the Contractor wishes to change or alter the work site(s), the following procedures shall be followed:
  - 1.12.1 Security/safety concerns shall be rectified immediately by the Contractor in accordance with direction received from the Department.
  - 1.12.2 The Contractor shall provide written notice to the Department if changes or alterations are

planned for the work site(s) prior to any changes or alteration being accomplished.

- 1.12.3 Representatives from the Department and the Contractor shall conduct an inspection of the work site(s). If the proposed change or alteration shall negatively impact the security and/or safety of assigned inmate workers, corrective action shall be determined by the Department.
- 1.12.4 If in the opinion of the Department, said security/safety concern(s) poses an immediate threat to the inmate workers, the Department may withhold further assignments of the inmate work crew until the concern is rectified.
- 1.13 To pay for inmate labor at the rate of fifty cents (50¢) per hour, to include approved extra hours, if applicable as authorized by the Department.
- 1.14 If applicable; to pay for Correctional Officer (CO) supervision of inmate work crews under this Contract, including overtime approved by Contractor, if applicable, and all employee related expenses. Should additional crews be needed, Contractor will hire additional staff to supervise inmate work crews. The Contractor in agreement with the Department must authorize the expense of additional Departmental staff before the expense is incurred.
- 1.15 If applicable; in addition to payment for inmate labor and CO overtime, the Contractor shall pay the Department for transportation costs at the State prevailing rate per mile, as determined by the Arizona Department of Administration, General Accounting Office, for distance traveled by each Department transportation vehicle to and from the work site(s). Such payment shall be rendered by separate check or warrant at the same time and place as payment for inmate wages.
- 1.16 That on or before the 15<sup>th</sup> business day of each calendar month, the Contractor shall make payment for all work performed during the preceding month. The check or warrant shall be made payable to Arizona State Prison Complex-Safford and sent to the following address:
- Arizona State Prison Complex – Yuma  
Attention: Business Manager  
P.O. Box 8909  
San Luis, Arizona 85349
- 1.17 To maintain records and other evidence sufficient to reflect properly all payments related to this work program. Such records shall be made available for inspection and audit upon request by the Department.
- 1.18 That inmates assigned to this work program **shall not** drive any licensed, over-the road vehicle as part of their job responsibilities. However, assigned inmates may be permitted to operate the Contractor's off-road mobile equipment, in accordance with the following guidelines.
- 1.18.1 The Contractor shall provide written notice to the Department advising of the need to have inmates operate mobile equipment. The notice shall describe the type(s) of off-road mobile equipment to be operated in accordance with Attachment #3.
- 1.18.2 No inmate shall operate any mobile equipment until the Contractor receives written authorization from the Department in accordance with Attachment #3.
- 1.18.3 If the Contractor receives written authorization from the Department, the Contractor shall document training provided to inmates specific to each type of off-road mobile equipment to be operated.

1.18.4 Acquire and maintain applicable insurance in compliance with State requirements.

1.18.5 Designated off-road mobile equipment may be:

1.18.5.1 Riding lawnmowers and golf carts or similar type equipment.

2 **THE DEPARTMENT AGREES:**

- 2.1 To provide a mutually agreed number of inmates, subject to availability of said work force, to support the Contractor's property maintenance and construction projects.
- 2.2 Inmates classified as sexual predators/offenders **shall not** be utilized for this public works Contract.
- 2.3 That work assignments shall be performed at the Contractor's business location(s) as shown on Attachment No. 4.
- 2.4 To provide transportation of inmate workers to and from selected work site(s) in Department owned vehicles. Inmate workers shall not be transported in privately owned vehicles at any time.
- 2.5 To provide sack lunches for inmates and furnish all clothing, except special protective clothing or footwear.
- 2.6 To provide security supervision of inmate workers in accordance with Department written instructions.
- 2.7 When mutually agreed to by the Department and the Contractor: to provide a Correctional Officer (CO) who shall remain on site to provide security supervision of the inmate workers each workday. The assigned CO shall follow Department notification procedures if:
- 2.7.1 An inmate fails to remain at the work site.
- 2.7.2 An inmate has an accident or becomes seriously ill at the work site.
- 2.8 To remove and replace as soon as possible any inmate who does not perform to the satisfaction of the Contractor.
- 2.9 To approve/disapprove the Contractor's technical supervisor(s) assigned to this work program in accordance with Department written instructions.
- 2.10 To present training to Contractor's staff who will be involved in supervising or interacting with inmate workers. This training shall be given **prior** to initiating the work activities described in this Contract. Subsequent to Contract execution, replacement staff assigned to this work program must receive Department training prior to assuming work responsibilities.
- 2.11 To keep the Contractor fully informed of Department written instructions and activities that have bearing upon the Contractor fulfilling assigned obligations under this Contract.
- 2.12 To designate an institutional contact person who shall function as a liaison between the Institution, Department and the Contractor in developing and coordinating work schedules, assignments, hours and transportation. The Department shall ensure the Contractor is given the name and telephone number/extension of the contact person.

- 2.13 To ensure that any inmate(s) who drives the Contractor's off-road mobile equipment as an assigned work duty is in compliance with Department written instructions governing the use of inmate drivers.
- 2.14 That prior to the initiation of this work program, the proposed work site shall be inspected relative to security and safety concerns to ensure the work environment satisfies all requirements imposed by custody level of assigned inmate workers and assigned work responsibilities. If, during the term of this Contract, security or safety concerns should become evident, or the Contractor wishes to change or alter the work site, the procedure described in Section 1.12 of this Contract shall be followed.
- 2.15 To invoice the Contractor for payments due no later than the fifth (5<sup>th</sup>) business day of each month. Invoices shall identify the following:
  - 2.15.1 Inmate name and ADC number
  - 2.15.2 Hours worked
  - 2.15.3 Rate of pay
  - 2.15.4 Mileage (if applicable)
  - 2.15.5 Vehicle repair expense (if applicable)
  - 2.15.6 Total amount invoiced
- 2.16 Invoices for CO supervision shall identify at a minimum the following:
  - 2.16.1 CO name(s)
  - 2.16.2 CO hours worked including overtime hours, if applicable
  - 2.16.3 Total amount invoiced
- 2.17 That invoices shall be sent to the Contractor at the following address:

City of Yuma  
City Administrator  
P.O. Box 13014  
Yuma, Arizona 85366

**3 SPECIAL TERMS AND CONDITIONS**

- 3.1 Term of Contract This Contract shall begin when all signatures are affixed and executed by the Department and shall continue for a period of five (5) years thereafter, unless terminated, canceled or extended as otherwise provided herein.
- 3.2 This Contract may be terminated, without cause, by either party by provision of prior written notice to the other. Such **Notice of Termination** shall be effective thirty (30) calendar days after mailing by certified mail, return receipt requested, to the other party.
- 3.3 Circumstances may arise during the term of this Contract which may prohibit the assignment of inmates for work assignments. Such circumstances could include acts of nature, institution riots, lockdowns, inmate work strikes, etc. The following guidelines shall govern, if such circumstances should occur:
- 3.3.1 The Department shall provide verbal notice within 24 hours to the Contractor if circumstances will impact work activities.
- 3.3.2 The Contractor shall not hold the Department liable for failure to perform, or in default of Contract terms due to circumstances described above.
- 3.4 Inmates working under this Contract are not employees of the Contractor and any compensation is provided solely pursuant to A.R.S. § 31-254.
- 3.5 Non-Availability of Funds In accordance with A.R.S. § 35-154, every payment obligation of the State and City under this Contract is conditioned upon the availability of funds appropriated or allocated for payment of such obligation. If funds are not allocated and available for the continuance of this Contract, this Contract may be terminated by the State or City at the end of the period for which funds are available. No liability shall accrue to the State or City in the event this provision is exercised, and the State or City shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.
- 3.6 Cancellation for Conflict of Interest In accordance with A.R.S. § 38-511, State or City may within three years after execution cancel the Contract, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State or City, at any time while the Contract is in effect, becomes an employee or agent or any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the matter of the Contract.
- 3.7 The Department reserves the right to terminate the contract for default in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits. The Department shall provide written notice of the termination and the reasons for it to the Contractor.
- 3.8 Changes to the Contract shall be handled by formal amendment through Procurement Services
- 3.9 Arbitration In accordance with A.R.S. § 12-1518, the parties agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review except as may be required by other applicable statutes.
- 3.9.1 Records which relate to disputes, litigations or the settlement of claims arising out of the performance of this Contract, or to cost and expenses of this Contract as to which exception has been taken by either party, or their designees, shall be retained by the parties

until such appeals, litigations, claims or exceptions have been finally resolved.

- 3.10 Applicable Law In accordance with A.R.S. § 41-2501, et seq. and AAC R2-7-101, et seq. Contract shall be governed and interpreted by the laws of the State of Arizona and the Arizona Procurement Code.
- 3.11 Non-Discrimination In accordance with A.R.S. § 41-1461, Contractor shall provide equal employment opportunities for all persons, regardless of race, color, creed, religion, sex, age, national origin, disability or political affiliation. Contractor shall comply with the Americans with Disabilities Act.
- 3.12 Each party to this contract shall be responsible for any and all costs, including but not limited to, attorney fees, court costs and other litigation expenses incurred as a result of the errors and omissions of its officers, employees, agents, or assigns arising out of the performance of this contract.
- 3.13 Audit of Records In accordance with A.R.S. § 35-214, the Contractor shall retain and shall contractually require each subcontractor to retain all data, books and other records (“records”) relating to this Contract for a period of five years after completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce the original of any or all such records.
- 3.14 Any and all notices, requests or demands given or made upon the parties hereto, pursuant to or in connection with this Contract, unless otherwise noted, shall be delivered in person or sent by United States Mail, postage prepaid, to the parties at their respective addresses as shown on the signature page of this document.
- 3.15 Third Party Antitrust Violations The Contractor assigns to the State any claims for charges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the Contractor.
- 3.16 Notice Warning Any person who takes into or out of or attempts to take into or out of correctional facility or the grounds belonging to or adjacent to a correctional facility, any item not specifically authorized by the correctional facility, shall be prosecuted under the provisions of the Arizona Revised Statutes. All persons, including employee and visitors, entering upon these confines are subject to routine searches of their persons, vehicles, property of packages.

Definition: A.R.S. § 13-2501:  
A.R.S. § 13-2505:  
ADC Department Order 708

3.17 Unlawful Sexual Conduct

- 3.17.1 A person – who is employed by the State Department of Corrections or the Department of Juvenile Corrections; is employed by a private prison facility or a city or county jail; Contracts to provide services with the State Department of Corrections, the Department of Juvenile Corrections, a private prison facility or a city or county jail; is an official visitor, volunteer or agency representative of the State Department of Corrections, the Department of Juvenile Corrections, a private prison facility or a city or county jail – commits unlawful sexual conduct by intentionally or knowingly engaging in any act of a sexual nature with an offender who is in the custody of the State Department of Corrections, the Department of Juvenile Corrections, a private prison facility or a city or county jail or with an offender who is under the supervision of either Department or a city or county

- 3.17.2 This section does not apply to a person who is employed by the State Department of Corrections, a private prison facility or a city or county jail or who Contracts to provide services with the State Department of Corrections, a private prison facility or a city or county jail or an offender who is on release status if the person was lawfully married to the prisoner or offender on release status before the prisoner or offender was sentenced to the State Department of Corrections or was incarcerated in a city or county jail.
- 3.17.3 Unlawful sexual conduct with an offender who is under fifteen years of age is a class 2 felony. Unlawful sexual conduct with an offender who is between fifteen and seventeen years of age is a class 3 felony. All other unlawful sexual conduct is a class 5 felony.
- 3.17.4 Unlawful sexual conduct; correctional facilities; classification; Definition  
A.R.S. § 13-1419.
- 3.18 Federal Prison Rape Elimination Act 2003 The Contractor shall comply with the Federal Prison Rape Elimination Act of 2003. Reference 28 C.F.R., Part § 115.

3.19 Contraband

- 3.19.1 Contraband means any dangerous drug, narcotic drug, intoxicating liquor of any kind, deadly weapon, dangerous instrument, explosive or any other article whose use of or possession would endanger the safety, security or preservation of order in a correctional facility or any person therein. (Any other article includes any substance which could cause abnormal behavior, i.e. marijuana, nonprescription medications, etc.

Promoting prison contraband A.R.S. § 13-2505:

A person, not otherwise authorized by law, commits promoting prison contraband:

- By knowingly taking contraband into a correctional facility or the grounds of such a facility; or
- By knowingly conveying contraband to any persons confined in a correctional facility; or
- By knowingly making, obtaining, or possessing contraband while being confined in a correctional facility.

Promoting Prison Contraband is a Class 5 felony.

Authority           A.R.S. § 13-2501  
                          A.R.S. § 13-2505  
                          ADC Department Order 708

- 3.20 Offshore Performance of Work Prohibited. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or overhead services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.
- 3.21 Electronic and Information Technology. Unless specifically authorized in the Contract, any

electronic or information technology offered to the State of Arizona under this Contract shall comply with A.R.S. § 41-2531 and A.R.S. § 41-2532 and Section 508 of the Rehabilitation Act of 1973, which requires that employees and members of the public shall have access to and use of information technology that is comparable to the access and use by employees and members of the public who are not individuals with disabilities.

3.22 E-Verify Requirement

3.22.1 In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with AAC Section A.R.S. § 23-214, Subsection A.

3.23 **INDEMNIFICATION:** Each party (as "Indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims which result in vicarious/derivative liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

*(Choice a) Note: Use the Standard Work Provisions below if there will be an on-site Correctional Officer.*

**INMATE WORK PROGRAM UTILIZING ON-SITE CORRECTIONAL OFFICER(S) (CO)**

- A. The Contractor shall provide training and special protective clothing if work environment necessitates use of specific safety precautions or if inmates must work with, near, or around hazardous materials, e.g., asbestos, explosives, radioactive substances. Provision of training shall be documented in writing for each inmate participant. Special protective clothing may include, but shall not be limited to, shoes, safety glasses, gloves, goggles, protective outerwear, hats, etc.
- B. The Contractor shall provide instruction to all inmate workers regarding necessary safety precautions at the job site. If inmate workers are required to operate special equipment as part of their job duties, appropriate training specific to its use shall be provided and documented.
- C. Contractor's supervisors shall have knowledge and training related to the particular work tasks described in the Contract to ensure that qualified technical supervision and assistance shall be provided to inmate workers as applicable to job requirements.
- D. All equipment, machinery and tools needed to accomplish designated work assignments shall be maintained in good repair and working condition by the Contractor.
- E. The Contractor shall comply with the required standards of the Occupational Safety and Health Act (OSHA) during the term of this Contract relative to safety of the work environment and equipment used by assigned inmate workers.
- F. The confidentiality of information regarding any inmate worker acquired in the course of service pursuant to this Contract shall be maintained in accordance with A.R.S. § 31-221, and *no* information shall be released without prior written authorization from a representative of the Department.
- G. The Contractor's personnel shall be instructed that it is unlawful for anyone to give, take or in any manner barter with inmates, i.e., the supplying of any goods, including food and soft drinks or monies, constitutes a felony for which they can be prosecuted. Inmates are not permitted to work where there are alcoholic beverages or illegal drugs. The Contractor's personnel shall not handle any mail, notes, packages, or verbal messages for assigned inmates. No inmate shall be permitted to make or receive telephone calls unless the call is made to or received from the prison facility in which the inmate is incarcerated.
- H. An authorized representative of the Department shall be permitted to visit or telephone assigned inmates at the prescribed place of work, or to otherwise communicate with the Contractor to discuss each inmate's work performance, work attendance and general behavior.
- I. No inmate shall be placed in a supervisory capacity over any other inmate.
- J. The Contractor shall provide immediate notification to the on-site CO of the following:
  - 1. Unsatisfactory work or malingering of inmates. If requested, the Contractor shall furnish a written account of such unsatisfactory performance.
  - 2. The discovery or suspicion of any intoxicant or unprescribed drug in the possession of any inmate worker.
- K. **The visiting of an inmate by any unauthorized person shall not be permitted.** If any person is found visiting with an inmate, his or her name and description shall be given to Department authorities. If it is

not possible or feasible to obtain names, other identification such as automobile make, description and license number shall be obtained when possible.

- L. Any allegations of non-compliance with Department written instructions, or other Contractor misconduct, shall be subject to investigation by the Department.

*(Choice b) Note: Use the Standard Work Provisions below if there will not be an on-site Correctional Officer.*

**INMATE WORK PROGRAM UTILIZING CONTRACTOR SUPERVISION**

- A. No inmate shall be placed in a supervisory capacity over any other inmate.
- B. Department authorities shall be notified of unsatisfactory work or malingering of inmates and, if requested, the Contractor shall furnish a written account of such unsatisfactory performance.
- C. The Department shall receive immediate notification of an inmate's failure to remain at work in accordance with assigned job duties.
- D. The Department shall receive immediate notification of the discovery or suspicion of any intoxicant or unprescribed drug in the possession of any inmate worker.
- E. In the event of accident or serious illness while on the job, the Contractor may administer first aid as necessary and shall notify Department authorities without delay. If necessary, in the interest of life or limb, the inmate may be transported to the nearest hospital. Inmate workers **shall not** be transported in privately owned vehicles at any time.
- F. The Contractor shall provide training and special protective clothing if work environment necessitates use of specific safety precautions or if inmates must work with, near, or around hazardous materials, e.g., asbestos, explosives, radioactive substances. Provision of training shall be documented in writing for each inmate participant. Special protective clothing may include, but shall not be limited to, shoes, safety glasses, gloves, goggles, protective outerwear, hats, etc.
- G. The Contractor shall provide instruction to all inmate workers regarding necessary safety precautions at the job site. If inmate workers are required to operate special equipment as part of their job duties, appropriate training specific to its use shall be provided and documented.
- H. Contractor's supervisors shall have knowledge and training related to the particular work tasks described in the Contract to ensure that qualified technical supervision and assistance shall be provided to inmate workers as applicable to job requirements.
- I. All equipment, machinery and tools needed to accomplish designated work assignments shall be maintained in good repair and working condition by the Contractor.
- J. The Contractor shall comply with the required standards of the Occupational Safety and Health Act (OSHA) during the term of this Contract relative to safety of the work environment and equipment used by assigned inmate workers.
- K. The confidentiality of information regarding any inmate worker acquired in the course of service pursuant to this Contract shall be maintained in accordance with A.R.S. § 31-221, and **no** information shall be released without prior written authorization from a representative of the Department.

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**STANDARD WORK PROVISION  
INMATE WORK PROGRAMS**

**Attachment #1  
ADC Contract No. 16-033-21**

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- L. The Contractor's personnel shall be instructed that it is unlawful for anyone to give, take or in any manner barter with inmates, i.e., the supplying of any goods, including food and soft drinks or monies, constitutes a felony for which they can be prosecuted. Inmates are not permitted to work where there are alcoholic beverages or illegal drugs.
  
- M. The Contractor's personnel shall not handle any mail, notes, packages, or verbal messages for assigned inmates. No inmate shall be permitted to make or receive telephone calls unless the call is made to or received from the prison facility in which the inmate is incarcerated.
  
- N. An authorized representative of the Department shall be permitted to visit or telephone assigned inmates at the prescribed place of work, or to otherwise communicate with the Contractor to discuss each inmate's work performance, work attendance and general behavior.
  
- O. **The visiting of an inmate by any unauthorized person shall not be permitted.** If any person is found visiting with an inmate, his or her name and description shall be given to Department authorities. If it is not possible or feasible to obtain names, other identification such as automobile make, description and license number shall be obtained when possible.
  
- P. Any allegations of non-compliance with Department written instructions, or other Contractor misconduct, shall be subject to investigation by the Department.

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**STANDARD WORK PROVISION  
SITE SAFETY AND  
HEALTH PLAN**

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**Attachment #2  
ADC Contract No. 16-033-21**

Developed by: State of Arizona, Department of Administration  
Risk Management Section

Provided by: Mike Foster, Manager, Safety and Environmental Services,  
Administrative Services Division

**1 PROGRAM OBJECTIVES**

- 1.1 This Safety and Loss Prevention Program is established to exercise all available means of eliminating or controlling hazards and risks associated with renovation and construction projects.
  - 1.1.1 Minimize Personal injuries;
  - 1.1.2 Maximize Property Conservations;
  - 1.1.3 Achieve Greater Efficiency; and
  - 1.1.4 Reduce Direct and Indirect Costs
- 1.2 The effectiveness of Safety and Loss Prevention Program will depend on the active participation and full cooperation of all involved with the project to include management, supervisors, inmates, and employees, and their efforts in carrying out the following basic responsibilities.
  - 1.2.1 Plan all work to minimize personal injury, property damage and loss of productive time.
  - 1.2.2 Properly select inmates/employees based upon their skill level for the necessary job tasks.
  - 1.2.3 Provide for the protection of adjacent property and safety of the public.
  - 1.2.4 Coordinate activities with others at the work location.
  - 1.2.5 Establish and conduct an educational program to stimulate and maintain interest and participation of all inmates and employees through:
    - 1.2.5.1 Safety Meetings;
    - 1.2.5.2 Prompt investigation of all accidents and serious potential incidents to determine cause or causes and take necessary corrective action to eliminate a recurrence of a loss or incident;
    - 1.2.5.3 Use of proper work methods, personal protective equipment, and mechanical guards;
    - 1.2.5.4 Employee/inmate safety instructions to all assigned work; and
    - 1.2.5.5 Safety training programs.

**2 RESPONSIBILITIES**

- 2.1 It is the purpose of the program to organize and direct activities, which will:
  - 2.1.1 Avoid injuries.
  - 2.1.2 Reduce construction interruption due to an accident.
  - 2.1.3 Assure a safe and healthy place to work.

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**STANDARD WORK PROVISION  
SITE SAFETY AND  
HEALTH PLAN**

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**Attachment #2  
ADC Contract No. 16-033-21**

- 2.2 The Project Manager is required to establish and administer a site-specific safety program and will:
- 2.2.1 Make periodic loss prevention surveys.
  - 2.2.2 Submit written recommendations.
  - 2.2.3 Periodically attend safety meetings.
  - 2.2.4 Assure safety orientation meetings for employees/inmates are conducted and documented.
  - 2.2.5 Provide warning signs, safety literature, reporting forms, and other educational and training materials as deemed appropriate.
  - 2.2.6 Maintain a written comprehensive Safety and Loss Prevention manual.
  - 2.2.7 Give due consideration to all safety factors during pre-planning.
  - 2.2.8 Employ only those individuals physically and mentally capable of performing in a safe manner.
  - 2.2.9 Comply with the Occupational Safety and Health Act and all other applicable Federal, State and Local regulations.
  - 2.2.10 Provide and enforce the use of all necessary testing equipment for employee/inmate health and safety. Provide and enforce the use of personal protective equipment and use only where Engineering controls are not feasible.
  - 2.2.11 Provide properly guarded and maintained tools, machinery and equipment.
  - 2.2.12 Maintain necessary accident records and promptly file the reports required by the State or Federal authorities and the insurer.
  - 2.2.13 Promptly investigate any incident that causes injury or damage to property.
  - 2.2.14 Plan and schedule work operations so as to control personal injury and property damage hazards.
  - 2.2.15 Maintain good housekeeping conditions and fire protection equipment.
  - 2.2.16 Maintain an effective equipment inspection and maintenance program.
  - 2.2.17 Provide proper and specific work task training for employees/inmates regarding the hazards of their jobs and how to work safely.
  - 2.2.18 Correct unsafe work habits of employees/inmates as soon as they are observed.
  - 2.2.19 Eliminate unsafe conditions under their control and promptly report those they cannot eliminate to the proper authority.
  - 2.2.20 Conduct weekly toolbox meetings with all employees/inmates and maintain written records of these meetings. The written record shall include the date, topic discussed, comments, and attendees.

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**STANDARD WORK PROVISION  
SITE SAFETY AND  
HEALTH PLAN**

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**Attachment #2  
ADC Contract No. 16-033-21**

- 2.2.21 Ensure each employee/inmate understands that violations of the project safety program will not be tolerated and that proper disciplinary action will be administered, including removal from the Project for violation of safety policy.

**3 GENERAL SAFETY REQUIREMENTS**

3.1 Laws and Regulations:

- 3.1.1 Responsible project management representatives shall comply with and enforce all local, state and federal laws, rules, statutes and regulations of governing or regulatory bodies within the geographical scope of its operations. They will also cooperate with all regulatory agencies regarding job site safety and health, and allow full access to the project for visitation.

3.2 Audit Procedures:

- 3.2.1 All documentation regarding safety training, hazard communication, electrical safety programs, equipment safety programs, equipment inspection and maintenance records, and fire protection inspection shall be kept on the job site.

3.3 Drug and Alcohol Policy:

- 3.3.1 The possession or use of any non-prescribed drug or any alcohol beverage on the job site is strictly prohibited.

**4 SPECIFIC REQUIREMENTS**

4.1 Emergency Procedures Guideline:

- 4.1.1 The Project Manager will set up emergency procedures for the following categories:

- 4.1.1.1 Fire
- 4.1.1.2 Injuries
- 4.1.1.3 Injury to the general public
- 4.1.1.4 Property damage, particularly to utilities; i.e., gas, water, sewage, electrical, telephone, or pedestrian and vehicle routes.
- 4.1.1.5 Public demonstrations
- 4.1.1.6 Bomb threats
- 4.1.1.7 Other exposures at the construction site

- 4.1.2 In order that necessary emergency services are supplied promptly, the Project Manager shall:

- 4.1.2.1 Post in a conspicuous place, a list of emergency phone numbers, along with the type of information to be transmitted for each emergency situation.
- 4.1.2.2 Delegate responsibility for making emergency calls.

- 4.1.3 It is the responsibility of the Project Manager to ensure immediate (5 min or less) reliable emergency medical response is available or to provide full time dedicated, trained emergency medical staff and facilities to be available to all employees/inmates If employees/inmates are working with materials that could adversely affect their respiration, or are subject to electrical shock that could cause loss of the breathing function, and medical response is longer than 3 to 4

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**STANDARD WORK PROVISION  
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**Attachment #2  
ADC Contract No. 16-033-21**

minutes, the Project Manger must adhere to the OSHA rules and regulations, 29 CFR 1926.50, regarding medical response for a construction site.

4.1.4 The Project Manager's emergency procedures should be reviewed regularly and, where necessary, adjusted to provide maximum effectiveness.

4.2 Protection of the Public:

4.2.1 The Project Manager shall take all necessary precautions to prevent injury to the public or damage to property of others. The term "public" shall include all persons not engaged in the project or others working under his/her direction. Precautions to be taken shall include, but not limited to, the following:

4.2.1.1 Work shall not be performed in any area occupied by the public unless specified permitted by the contract or in writing by the Project Manager.

4.2.1.2 When it is necessary to maintain public use of work areas involving sidewalks, entrances to buildings, lobbies, corridors, aisles, stairways and vehicular roadways, the Project Manager s shall protect the public with appropriate guardrails, barricades, temporary partition shields, and adequate visibility. Such protection shall guard against harmful radioactive rays or particles, flying materials, falling or moving materials and equipment, hot or poisonous materials, explosives and explosive atmospheres, flammable or toxic liquids and gasses, open flames, energized circuits or other harmful exposures.

4.2.1.3 Sidewalks, entrances to buildings, lobbies, corridors, aisles, doors or exits shall be kept clear of obstructions to permit safe ingress and egress of the public at all times.

4.2.1.4 Appropriate warnings, signs, and instructional safety signs shall be conspicuously posted where necessary. In addition, a signal shall control the movement of motorized equipment in areas where the public might be endangered.

4.2.1.5 Sidewalk sheds, canopies, catch platforms and appropriate fences shall be provided when it is necessary to maintain public pedestrian traffic adjacent to the erection, demolition or structural, alteration of outside walls on any structure. The protection required shall be in accordance with the laws and regulations of the regulatory bodies.

4.2.1.6 A temporary fence shall be provided around the perimeter of above ground operations adjacent to public areas except where a sidewalk shed or fence is, if provided by the contract or as required by Subparagraph 5 above. Perimeter fences shall be at least six feet high and/or in compliance with the laws and regulations of the regulatory bodies involved.

4.2.1.7 Guardrails shall be provided on both sides of vehicular and pedestrian bridges, ramps, runways and platforms. Pedestrian walkways elevated above adjoining surfaces, or walkways within six feet of the top of excavated slopes or vertical banks shall be protected with guardrails, except where sidewalk sheds or fences are provided as required by Subparagraph 5 above. Guardrails shall be made of

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**STANDARD WORK PROVISION  
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rigid materials capable of withstanding a force of at least 200 pounds applied in any direction at any point in their structure. Their height shall be approximately 42-inches. Top rails and post may be 2-inches by 4-inches dressed wood or equal. Intermediate horizontal rails at mid-height and toe boards at platform level may be 1-inch by 6-inch wood or equal. Posts shall not be over eight feet apart.

- 4.2.1.8 Barricades meeting the requirements of the political subdivision involved shall provided where sidewalk sheds, fences or guardrails as referenced above, are not required between work areas and pedestrian walkways, roadways or occupied buildings. Barricades shall be secured against accidental displacement and shall be maintained to perform the work. During the period a barricade is removed temporarily for the purposes of work, a watchman shall be placed at all openings.
- 4.2.1.9 Temporary sidewalks shall be provided when a permanent sidewalk is obstructed by the Trade Subcontractor's or any tier operations. They shall be in accordance with the requirements of the political subdivision involved. Guardrails shall be provided on both sides of temporary sidewalks.
- 4.2.1.10 Warning signs and lights including lanterns, torches, flares and electric lights, meeting requirements of the political subdivision involved, shall be maintained from dusk to sunrise along guardrails, barricades, temporary sidewalks and at every obstruction to the public. These shall be placed at both ends of such protection or obstructions and not over 20 feet apart alongside of such protection or obstructions.

#### 4.3 Housekeeping

- 4.3.1 During the course of construction/renovation, housekeeping practices will be followed to keep the work areas, passageways, and stairs in and around the buildings or other structures, free from debris of all types.
  - 4.3.1.1 This shall include scrap lumber and form lumber with protruding nails.
  - 4.3.1.2 Combustible scrap and debris shall be removed at regular intervals. Containers shall be provided for the collection of scrap, trash and other debris.

#### 4.4 Personal Protective Equipment:

- 4.4.1 The Project Manager shall be responsible for requiring the wearing of appropriate personal protective equipment in all operation where there is an exposure to hazardous conditions or where there is an indication of the need for using such equipment to reduce the hazard to employees/inmates. Such equipment will be used where engineering out the hazard is not feasible.

#### 4.5 Flammable and Combustible Liquids:

- 4.5.1 Flammable and combustible liquids shall be stored and dispensed in compliance with regulations and rules established by the governing regulatory bodies.

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**STANDARD WORK PROVISION  
SITE SAFETY AND  
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ADC Contract No. 16-033-21**

- 4.5.2 Any leakage or spillage of flammable or combustible liquids shall be cleaned up immediately and disposed of promptly and safely.
- 4.5.3 Transfer of flammable liquids from one container to another shall require electrically bonding the containers.
- 4.5.4 Small quantities of flammable liquids that may be used at various points on the Job Site shall be handled in approved safety cans.
- 4.5.5 No smoking, matches, or open flames will be permitted within 50 feet of the area where flammable liquids are used or transferred, unless conditions warrant greater clearance.
- 4.5.6 Fuel trucks will properly marked, contents clearly identified, posted and with proper fire protection.
- 4.5.7 Fuel tanks over 500 gallons will be diked, grounded, and protected from contact by vehicles on all sides. Proper identification of tanks and access for measurement will be maintained.
- 4.6 Tools – Hand and Power:
  - 4.6.1 All hand and power tools and equipment shall be maintained in a safe condition. The Project Manager shall be responsible for the condition of all tools or equipment used by employees/inmates.
  - 4.6.2 Power operated tools that are designed to accommodate guards shall be equipped with such guards while in use.
  - 4.6.3 Belts, gears, shafts, pulleys, sprockets, spindles, drums, flywheels, chains, or other reciprocating, rotating or moving parts of such equipment or tools shall be guarded if such parts are exposed to contact.
  - 4.6.4 Wrenches shall not be used when the jaws are sprung or worn to the point that slippage occurs.
  - 4.6.5 Impact tool such as wedges and chisels shall be kept free of mushroomed heads.
  - 4.6.6 Wooden handles of tool shall be kept free of splinters and cracks and shall be kept tight in the tool.
  - 4.6.7 All hand-held powered drills, fastener drivers, grinders with wheels greater than 2-inches in diameter, disc sanders, belt sanders, reciprocating saws, saber saws and similar operating power tools shall be equipped with a momentary contact off-on control and may have a lock-on control provided that turn off can be accomplished with a single motion of the same finger or fingers that turn it on.
  - 4.6.8 All other hand-held powered tools such as circular saws, chain saws, and percussion tools with positive accessory holding means, shall be equipped with a constant pressure switch that will shut off power when the pressure is released.
  - 4.6.9 The use of electrical cords for hoisting or lowering tools shall not be permitted.

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**STANDARD WORK PROVISION  
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- 4.6.10 Pneumatic power tools shall be secured to the hose or whip by some positive means to prevent the tool from becoming accidentally disconnected. Each section of supply hose to pneumatic tool shall also be secured by some positive means to prevent accidental disconnection.
  - 4.6.11 Safety clips or retainers shall be securely installed and maintained on pneumatic impact tools to prevent attachments from being accidentally expelled.
  - 4.6.12 Pneumatic hoses shall not be used as a means of hoisting or lowering tools.
  - 4.6.13 Only employees/inmates who have been trained in the operation of the particular tool in use shall be allowed to operate a power-actuated tool.
  - 4.6.14 Power-actuated tools shall be tested each day before loading to see that safety devices are in proper working condition. The testing shall be done in accordance with the manufacturer's recommended pressure.
- 4.7 Earth Moving Equipment:
- 4.7.1 Operators will receive instructions on proper mounting and dismounting of equipment.
  - 4.7.2 Operators shall wear seat belts while vehicle is in motion.
  - 4.7.3 Equipment shall be in safe operating condition and inspected daily for proper braking and hydraulic systems and tires.
  - 4.7.4 Dozer, loader, scraper, backhoe buckets, glades and pans will be grounded before the operator dismounts.
  - 4.7.5 Prior to mounting any equipment, the operator will visually inspect the area not visible from the operator's station.
  - 4.7.6 Equipment will have audible warning devices in good working order.

LETTER OF INSTRUCTION  
REQUEST FOR AUTHORIZATION

UTILIZING INMATE WORKERS FOR OPERATION OF OFF-ROAD MOBILE EQUIPMENT

Inmate Work Contracts between the Department and the Contractor provide authorization for assigned inmate workers to operate off-road mobile equipment under certain conditions. This Letter of Instruction provides the procedure for obtaining approval to utilize inmate workers on Contractor's off-road mobile equipment.

- 1 The Contractor shall provide written notice advising of the need to utilize inmate workers to operate specific off-road mobile equipment. The request shall include the following information:
  - 1.1 A complete list describing the type(s) of off-road mobile equipment to be operated;
  - 1.2 Identification of specific training inmates will receive for each type of off-road mobile equipment; and
  - 1.3 A list of inmates, to include the inmate's Department identification number, for whom approval is being requested. The list **shall** reflect the type(s) of mobile equipment to be operated, specific to each inmate worker.
- 2 The Department shall acknowledge the Contractor's request and, after coordinating with institution officials, notify the Contractor in writing of those inmates approved to be trained to operate off-road mobile equipment. The Contractor **shall not** proceed with training until written notice of authorization is received from the Department.
- 3 Once approval to proceed with training is received, the Contractor shall provide safety and operational training to approved inmates for each type of specified off-road mobile equipment. The manufacturer's supplied training materials and/or materials developed in accordance with Occupational Safety and Health Act (OSHA) guidelines, for each specific type of mobile equipment, should meet the training requirements for each inmate operator. Copies of training materials shall be provided to the Department for record keeping purposes.
- 4 Once training is complete, the Contractor shall furnish documentary evidence of satisfactory completion of training for each inmate. The documentation shall include the inmate's certification by signature that he/she understands the operation and safety issues of each type of mobile equipment he/she has been trained to operate.
- 5 Following review of training documents provided by the Contractor, and/or designee, the Department shall furnish the Contractor with notification of approval for individual inmates. Contractor shall maintain records of training and authorization for all inmate workers as long as they are engaged in this inmate work program.
- 6 The Contractor shall acquire and maintain applicable insurance in compliance with State requirements.

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**CONTRACTOR  
AUTHORIZED WORK LOCATION (s)**

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**Attachment #4  
ADC Contract No. 16-033-21**

1	<p><b>City of Yuma City Hall One City Plaza Yuma, Arizona 85364</b></p> <p><b>Other locations within the City of Yuma to include: Public Works and Parks and Recreation Depts.</b></p>
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# REQUEST FOR CITY COUNCIL ACTION

<b>MEETING DATE:</b>	November 18, 2015	<input checked="" type="checkbox"/> Motion
<b>DEPARTMENT:</b>	City Administration	<input type="checkbox"/> Resolution
<b>DIVISION:</b>	Yuma Crossing National Heritage Area	<input type="checkbox"/> Ordinance - Introduction
		<input type="checkbox"/> Ordinance - Adoption
		<input type="checkbox"/> Public Hearing

**TITLE:**  
Grant Award: U.S. Environmental Protection Agency Brownfields Assessment

**SUMMARY RECOMMENDATION:**  
Authorize the City Administrator to execute all documents necessary for acceptance of the U.S. Environmental Protection Agency (EPA) Community-Wide Brownfields Assessment Cooperative Agreement (BF-99T32901-0) which provides funding for the inventory, assessment, and redevelopment planning activities for the brownfields sites in the "Old Town South" redevelopment area.

**REPORT:**  
The brownfields assessment and redevelopment process began in the Old Town South redevelopment area in 2012 when the City received a \$400,000.00 EPA Brownfields Assessment grant. The City has completed several Phase I and Phase II environmental site assessments, plus a significant amount of public outreach, site inventory, and redevelopment planning. The City wishes to maintain the momentum behind the Old Town South revitalization project but additional environmental assessment, community outreach, and redevelopment planning work is still needed.

The EPA has approved an additional community-wide Brownfields Assessment Cooperative Agreement in the amount of \$400,000.00, which will cover all project costs. The City is not required to provide any matching funds. This EPA grant will pay for the following costs: 1) site inventory to prioritize the assessment and redevelopment of the brownfield sites to accelerate their reuse by providing accessible information to developers; 2) Phase I and Phase II environmental site assessments; 3) area-wide planning activities targeted at integrating brownfield reuse efforts with the community's vision for the Old Town South area; 4) programmatic and travel costs; 5) preparation of comprehensive analysis of brownfield cleanup alternatives and remedial action plans to address individual site contamination; and, 6) community outreach events to educate community members on brownfield issues and to solicit feedback on project direction.

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$400,000.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$400,000.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP: CIP #0131-Heritage Downtown Revitalization	
	TOTAL:	\$400,000.00		
	FISCAL IMPACT STATEMENT: Funds are budgeted under the FY16 Capital Improvement Program (100% federally funded)			
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="radio"/> Department <input checked="" type="radio"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			11/9/2015
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			11/9/2015
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
Ricky Rinehart			11/3/2015	
WRITTEN/SUBMITTED BY:			DATE:	
Cathy Douglas			11/3/2015	

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>		<b>GRANT NUMBER (FAIN):</b> 99T32901 <b>MODIFICATION NUMBER:</b> 0 <b>PROGRAM CODE:</b> BF	<b>DATE OF AWARD</b> 08/19/2015
			<b>TYPE OF ACTION</b> New	<b>MAILING DATE</b> 08/26/2015
			<b>PAYMENT METHOD:</b> ASAP	<b>ACH#</b> 90766
			<b>RECIPIENT TYPE:</b> Municipal	
<b>RECIPIENT:</b> City of Yuma 1 City Plaza Yuma, AZ 85364 EIN: 86-6000273		<b>PAYEE:</b> City of Yuma 1 City Plaza Yuma, AZ 85364		
<b>PROJECT MANAGER</b> Charles Flynn 1 City Plaza Yuma, AZ 85364 E-Mail: <a href="mailto:charles.flynn@yumaaz.gov">charles.flynn@yumaaz.gov</a> Phone: 928-373-5192		<b>EPA PROJECT OFFICER</b> Jose Garcia 75 Hawthorne Street, SFD-6-1 San Francisco, CA 94105 E-Mail: <a href="mailto:garcia.jose@epa.gov">garcia.jose@epa.gov</a> Phone: 213-244-1811		<b>EPA GRANT SPECIALIST</b> Alba Espitia Grants Management Office, MTS-7 E-Mail: <a href="mailto:espitia.alba@epa.gov">espitia.alba@epa.gov</a> Phone: 415-972-3667
<b>PROJECT TITLE AND DESCRIPTION</b> Brownfields Assessment Cooperative Agreement  This project provides funding for the City of Yuma to inventory, characterize, assess, and conduct cleanup planning and community involvement related activities for Brownfields sites in the "Old Town South" Redevelopment Area. The grantee plans to conduct approximately 14 Phase I Assessments and 7 Phase II Assessments. The project will build help with assessments related to redevelopment of the area to include more commercial and recreational opportunities for the community.  This agreement provides federal funding in the amount of \$400,000.				
<b>BUDGET PERIOD</b> 10/01/2015 - 10/31/2018	<b>PROJECT PERIOD</b> 10/01/2015 - 10/31/2018	<b>TOTAL BUDGET PERIOD COST</b> \$400,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$400,000.00	
<b>NOTICE OF AWARD</b>				
Based on your Application dated 06/29/2015 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$400,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$400,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.				
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>			<b>AWARD APPROVAL OFFICE</b>	
<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Grants Management Section, EMD 6-1 75 Hawthorne Street San Francisco, CA 94105			<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 9 Superfund Division 75 Hawthorne Street San Francisco, CA 94105	
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>				
<b>Digital signature applied by EPA Award Official</b> Sara L. Russell - Grants Management Officer				<b>DATE</b> 08/19/2015

# EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 400,000	\$ 400,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
<b>Allowable Project Cost</b>	<b>\$ 0</b>	<b>\$ 400,000</b>	<b>\$ 400,000</b>

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(2)	2 CFR 200 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1509K0B028	15	E4	09K1AG7	301D79	4114	G900NY00		200,000
-	1509K0B028	15	E4	09K1AG7	301D79XBP	4114	G900OR00		200,000
									400,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$6,000
4. Equipment	\$0
5. Supplies	\$4,500
6. Contractual	\$389,500
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$400,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient 0.00 % Federal 100.00 %.)	\$400,000
12. Total Approved Assistance Amount	\$400,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$400,000
15. Total EPA Amount Awarded To Date	\$400,000

## **Administrative Conditions**

The recipient agrees to comply with the current EPA general terms and conditions available at: [http://www.epa.gov/ogd/tc/general\\_tc\\_applicable\\_aa\\_recipients\\_dec\\_26\\_2014.pdf](http://www.epa.gov/ogd/tc/general_tc_applicable_aa_recipients_dec_26_2014.pdf). These terms and conditions are in addition to the assurances and certifications made as part of the award and the terms, conditions or restrictions cited below. The EPA repository for the general terms and conditions by year can be found at: <http://www.epa.gov/ogd/tc.htm>.

### **A. Annual Federal Financial Report (FFR) - SF 425**

For awards with cumulative project and budget periods greater than 12 months, the recipient will submit an annual FFR (SF 425) covering the period from "project/budget period start date" to **September 30** of each calendar year to the U.S. EPA Las Vegas Finance Center (LVFC). The FFR will be submitted electronically to [lvfc-grants@epa.gov](mailto:lvfc-grants@epa.gov) no later than **December 30** of the same calendar year. The form with instructions can be found on LVFC's website at <http://www2.epa.gov/financial/forms>.

### **B. Procurement**

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with 2 CFR Part 200.319. In accordance 2 CFR Part 200.323 the grantee and subgrantee(s) must perform a cost or price analysis in connection with applicable procurement actions, including contract modifications.

### **C. Six Good Faith Efforts 40 CFR Part 33, Subpart C**

Pursuant to 40 CFR Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

### **D. Utilization of Disadvantaged Business Enterprises General Compliance, 40 CFR Part 33**

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR Part 33. A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

In accordance with 40 CFR Section 33.411 some recipients may be exempt from the fair share objective

requirements as described in 40 CFR Part 33, Subpart D. Recipients should work with their DBE coordinator if they think their organization may qualify for an exemption.

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000 or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the [AZ Department of Environmental Quality \(AZ DEQ\)](#), as follows:

	MBE	WBE
Construction	12%	5%
Equipment	4%	4%
Services	3%	2%
Supplies	1%	1%

The recipient accepts the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as [AZ DEQ](#).

#### **Negotiating Fair Share Objectives/Goals, Section 33.404**

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator, Joe Ochab at [Ochab.Joe@epa.gov](mailto:Ochab.Joe@epa.gov), within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

#### **Contract Administration Provisions, 40 CFR Section 33.302**

The recipient agrees to comply with the contract administration provisions of 40 CFR Section 33.302.

#### **Bidders List, 40 CFR Section 33.501(b) and (c)**

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

### **E. MBE/WBE Reporting**

#### **General Compliance, 40 CFR Part 33, Subpart E – Reporting Condition**

MBE/WBE reporting is required annually. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category, that exceed the threshold amount of \$150,000, including amendments and/or modifications.

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to Disadvantaged Business Enterprise (DBE) Program reporting requirements. Conversely, the recipient must submit to the [GrantsRegion9@epa.gov](mailto:GrantsRegion9@epa.gov) a justification and budget detail within 21 days of the award date demonstrating that this award is not subject to the DBE reporting requirements.

The recipient agrees to complete and submit a "MBE/WBE Utilization under Federal Grants, Cooperative agreements" report (EPA Form 5700-52A) on an annual basis. All procurement actions that are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled "annual:" in section 1B of the form. For the final report, recipients must check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30<sup>th</sup> of each year. Final reports are due by

October 30<sup>th</sup> or 90 days after the end of the project period, whichever comes first.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to [GrantsRegion9@epa.gov](mailto:GrantsRegion9@epa.gov) . The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at [http://www.epa.gov/osbp/dbe\\_reporting.htm](http://www.epa.gov/osbp/dbe_reporting.htm) .

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33, Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33, Subpart D.

#### **F. Indirect Costs**

The Cost Principles under 2 CFR Part 200, Subpart E apply to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

### **Programmatic Conditions**

Refer to **Attachment A** for applicable programmatic conditions.

**END OF DOCUMENT**

# Attachment A

## Assessment Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfields Assessment Grants awarded under CERCLA § 104(k).

### City of Yuma BF-99T32901-0

#### I. GENERAL FEDERAL REQUIREMENTS

**NOTE: For the purposes of these Terms and Conditions the term “assessment” includes, eligible activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k)(2)(A)(i) such as activities involving the inventory, characterization, assessment, and planning relating to brownfield sites as described in the EPA approved work plan.**

##### A. Federal Policy and Guidance

1. a. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2015 competition for Brownfields assessment cooperative agreements. OPTIONAL - include if the work plan is not approved or conditionally approved: By awarding this cooperative agreement, EPA has not approved/conditionally approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2015 competition for Brownfields assessment cooperative agreements. The CAR may not expend (“draw down”) funds to carry out this agreement until EPA’s award official approves the work plan.
- b. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations.
- c. The recipient must comply with Federal cross-cutting requirements. These requirements include but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC § 327-333) the Anti Kickback Act (40 USC § 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.
- d. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration and repair contracts and subcontracts awarded with funds provided under this agreement. Activities conducted under assessment grants generally do not involve construction, alteration and repair within the meaning of the Davis-Bacon

Act. The recipient must contact EPA's Project Officer if there are unique circumstances (e.g. removal of an underground storage tank or another structure and restoration of the site) which indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. The Agency will provide guidance on Davis-Bacon Act compliance if necessary.

## **B. Eligible Brownfields Site Determinations**

1. a. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's work plan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, whether the CAR is the potentially responsible party under CERCLA 107 and/or has defenses to liability.
  - b. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination. In their request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.
2. a. For any petroleum contaminated brownfield site that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (refer to the latest version of EPA's *Proposal Guidelines for Brownfields Assessment Grants* dated October 2014 for discussion of this element) documenting that:
    - (1) a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum-only sites in the State,
    - (2) the State determines there is "no viable responsible party" for the site;
    - (3) the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and
    - (4) the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate petroleum program official.
  - b. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion relating to the state's determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing or investigating the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must

also be provided to the EPA Project Officer.

- c. If the State chooses not to make the determinations described in 2.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.
- d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in 2.a. above.

## **II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS**

### **A. Term of the Agreement**

1. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR's request.
2. If after 18 months from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the recipient must implement a corrective action plan approved by the EPA Project Officer, or EPA may terminate this agreement for material non-compliance with its terms. For purposes of assessment grants, the recipient demonstrates "sufficient progress" when 35% of funds have been drawn down and obligated to eligible activities; for assessment coalition grants "sufficient progress" is demonstrated when a solicitation for services has been released, sites are prioritized or an inventory has been initiated if necessary, community involvement activities have been initiated and a Memorandum of Agreement (for Assessment Coalitions) is in place.
3. Assessment funding for an eligible brownfield site may not exceed \$200,000 unless a waiver has been granted by EPA. Following the granting of a waiver, funding is not to exceed \$350,000 at the site.

### **B. Substantial Involvement**

1. The EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by EPA generally includes administrative activities such as monitoring, reviewing project phases, and approving substantive terms included in professional services contracts.
  - b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a subaward for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determine whether the statutory prohibition found in

section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition precludes the subrecipient from using EPA funds to assess a site for which the subrecipient is potentially liable under § 107 of CERCLA. (See Section II.C.3 for more information on subawards.)

- c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
  - d. EPA may waive any of the provisions in term and condition II.B.1. with the exception of property-specific funding determinations. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
- a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any Federal statute.
  - b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.
  - c. The CAR and its subrecipients remain responsible for incurring costs that are allowable under 2 CFR Part 200 Subpart E.

### **C. Cooperative Agreement Recipient Roles and Responsibilities**

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment activities at a particular site, if they do not have such a professional on staff.
2. The CAR is responsible for ensuring that contractors and subrecipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subrecipients and contractors comply with the terms and conditions of this agreement.
3. Subawards are defined at 2 CFR 200.92. The CAR may not subaward to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 2 CFR Part 200.317 through 200.326. In addition, EPA policy encourages awarding subawards competitively and the CAR must consider awarding subawards through competition.
4. The CAR is responsible for assuring that EPA's Brownfields Assessment Grant funding received under this grant, or in combination with any other previously awarded Brownfields Assessment grant does not exceed the \$200,000 assessment grant funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfields site must be approved by EPA prior to the expenditure of funding exceeding \$200,000. In no case may EPA funding exceed \$350,000 on a site receiving a waiver.

5. CARs expending funding from a community-wide assessment grant on a particular site must include such funding amount in any total funding expended on the site.
6. **Competency of Organizations Generating Environmental Measurement Data:** In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, the CAR agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the CAR agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The CAR shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at [http://www.epa.gov/fem/lab\\_comp.htm](http://www.epa.gov/fem/lab_comp.htm) or a copy may also be requested by contacting the EPA project officer for this award.

#### **D. Quarterly Progress Reports**

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, 200.328 *monitoring and reporting program performance*), the CAR agrees to submit quarterly progress reports to the EPA Project Officer within thirty days after each reporting period. These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

Quarterly progress reports must clearly differentiate which activities were completed with EPA funds provided under the BF Assessment grant, versus any other funding source used to help accomplish grant activities.

In addition, the report shall include brief information on each of the following areas: 1) a comparison of actual accomplishments to the anticipated outputs/outcomes specified in the cooperative agreement work plan; 2) reasons why anticipated outputs/outcomes were not met; and 3) other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs. The CAR agrees that it will notify EPA of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the cooperative agreement work plan.

2. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. Quarterly progress reports must include:
  - a. Summary and status of approved activities performed during the reporting quarter, summary of the performance outputs/outcomes achieved during the reporting quarter, a description of problems encountered or difficulties during the reporting quarter that may affect the project schedule and a discussion of meeting the performance outputs/outcomes.

- b. An update on project schedules and milestones; including an explanation of any discrepancies from the approved workplan.
  - c. A list of the properties where assessment activities were performed and/or completed during the reporting quarter.
  - d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); and total remaining funds. The CAR should include an explanation of any discrepancies in the budget from the approved workplan.
3. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.
  4. In accordance with 2 CFR 200.328 (d) (1), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved workplan.

### **E. Property Profile Submission**

1. The CAR must report on interim progress (i.e., assessment started) and any final accomplishments (i.e., assessment completed, cleanup required, contaminants, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize and submit the Property Profile Form instead.

### **F. Community Outreach**

The cooperative agreement recipient agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved work plan, which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed. Specifically:

1. Public or Media Events  
The Recipient agrees to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days notice.
2. Limited English Proficiency Communities  
To increase public awareness of projects serving communities where English is not the predominant language, recipients are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

### **G. Final Technical Cooperative Agreement Report with Environmental Results**

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, 200.328 *monitoring and reporting program performance*), the CAR agrees to submit to the EPA Project Officer within 90 days after the expiration or termination of the approved project period a final technical report on the cooperative agreement and at least one reproducible copy suitable for printing. The final technical report shall document project activities over the entire project period and shall include brief information on each of the following areas: 1) a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the assistance agreement work plan; 2) reasons why anticipated outputs/outcomes were not met; and 3) other pertinent information, including, when appropriate, analysis and explanation of cost overruns or high unit costs. The CAR agrees that it will notify EPA of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the cooperative agreement workplan.

### **III. FINANCIAL ADMINISTRATION REQUIREMENTS**

#### **A. Eligible Uses of the Funds for the Cooperative Agreement Recipient**

1. To the extent allowable under the work plan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and conduct planning and outreach. Eligible programmatic expenses include activities described in Section IV of these Terms and Conditions. In addition, such eligible programmatic expenses may include:
  - a. Determining whether assessment activities at a particular site are authorized by CERCLA § 104(k);
  - b. Ensuring that an assessment complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);
  - c. Using a portion of the grant to purchase environmental insurance for the characterization or assessment of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section III.B.
  - d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subawards to the extent allowable under III. B. 2; and carrying out community involvement pertaining to the assessment activities.
2. ***Local Governments only.*** *No more than 10% of the funds awarded by this agreement may be used for brownfield program development and implementation (including monitoring of health and institutional controls) as described in Task \_\_\_ of the EPA approved work plan. The CAR must maintain records on funds that will be used to carry out Task \_\_\_ of its EPA approved workplan to ensure compliance with this requirement.*

#### **B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient**

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:

- a. Cleanup activities;
  - b. Development activities that are not brownfields assessment activities (e.g., construction of a new facility);
  - c. Job training unrelated to performing a specific assessment at a site covered by the grant;
  - d. To pay for a penalty or fine;
  - e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
  - f. To pay for a response cost at a brownfields site for which the recipient of the grant or subaward is potentially liable under CERCLA § 107;
  - g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and
  - h. Unallowable costs (e.g., lobbying and fund raising) under 2 CFR Part 225 for state, local and tribal governments, as applicable.
2. Under CERCLA § 104(k) (4) (B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under 2 CFR Part 225 for state, local and tribal governments, as applicable.
- a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements, Cost Principles and Audit requirements for Federal Awards at 2 CFR 200 and 2 CFR 1500*. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement.
  - b. Ineligible grant administration costs include direct costs for:
    - (1) Preparation of applications for brownfields grants;
    - (2) Record retention required under 2 CFR 1500.6;
    - (3) Record-keeping associated with equipment purchases required under 2 CFR 200.313;
    - (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR 200.308;
    - (5) Maintaining and operating financial management systems required under 2 CFR 200.302;
    - (6) Preparing payment requests and handling payments under 2 CFR 200.305;

- (7) Non-federal audits required under 2 CFR 200 Subpart F; and
  - (8) Close out under 2 CFR 200.343.
3. Cooperative agreement funds may not be used for any of the following properties:
- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
  - b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
  - c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
  - d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

### **C. Interest -Bearing Accounts and Program Income**

- 1. In accordance with 2 CFR 1500.7, the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the assessment CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, clean up planning or other activities when the costs for the activity is charged to this agreement.
- 2. The CAR must deposit advances of grant funds and program income (i.e. fees) in an interest bearing account.
  - a. For interest earned on advances, CARs are subject to the provisions of 2 CFR 200.305(b)(7)(ii) relating to remitting interest on advances to EPA on a quarterly basis.
  - b. Interest earned on program income is considered additional program income.
  - c. The CAR must disburse program income (including interest earned on program income) before requesting additional payments from EPA as required by 2 CFR 1500.8.

## **IV. ASSESSMENT ENVIRONMENTAL REQUIREMENTS**

### **A. Authorized Assessment Activities**

- 1. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling), the CAR shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if

applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

## **B. Quality Assurance (QA) Requirements**

1. When environmental data is collected as part of the brownfields assessment, the CAR shall comply with 2 CFR 1500.11 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.
2. In addition, the recipient must comply with the following QA requirements:
  - a. This grant includes the performance of environmental measurements, therefore, a QA Plan, a Sampling and Analysis Plan, or other comparable document covering QA activities, must be prepared before any sampling or cleanup activities at the site may begin. An example of a comparable document is a Sampling Plan approved by the state oversight authority. If the document submitted does not meet EPA's basic information requirements, an addendum or supplemental Sampling and Analysis Plan may be required before sampling work may begin. The recipient should consult with the Region 9 Quality Assurance Office at 415-972-3411 to determine if a QA document is required. The Quality Assurance Manager will determine what type of QA documentation would be most appropriate and what QA guidance should be followed if a document is required. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, and the recipient's Quality Assurance Officer before measurement activities are undertaken. Typically, measurement activities must be described by the type of media (soil, water, air), by the phase of the project (i.e.: sampling backfill material, air monitoring during removal work, confirmation sampling), and by location.
  - b. Emergency measurements may be taken without a QA Plan being prepared if the Region 9 Quality Assurance Manager agrees that the nature of the data collection activity required due to the emergency warrants an exemption and the recipient contacts the Quality Assurance Manager to obtain approval prior to beginning the sampling work. Contact the QA Office at 415-972-3411. In the event an unforeseen site condition arises during the cleanup work, changes or deviations to the type of contaminant sampled, methodology, or sample spacing, the recipient must contact the Quality Assurance Manager to determine if the Sampling and Analysis Plan must be amended before new work is initiated. If the change is such that a site hazard is created by a delay in the work, the recipient shall contact the Quality Assurance Manager to obtain approval prior to formally revising the document. Minor field deviations (i.e: slight location changes) should be noted in the final cleanup report, but do not require EPA approval.
  - c. In general, a QAPP or Sampling and Analysis Plan will require approximately two to four weeks for the EPA Quality Assurance Manager to review and return comments. Documents generally require one revision and re-submittal. The re-submittal review time is typically two weeks.

### C. Completion of Assessment Activities

1. The CAR shall properly document the completion of all activities described in the EPA approved work plan. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows assessments are complete.

### D. All Appropriate Inquiry

1. As required by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), the CAR shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's standard for all appropriate inquiries. The CAR shall utilize the practices in ASTM standard E1527-13 "Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process," or EPA's All Appropriate Inquiries Final Rule "All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content", (Publication Number: EPA 560-F-14-003). This does not preclude the use of grant funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable State standards.
2. All Appropriate Inquiries (AAI) final reports produced with funding from this agreement must comply with 40 C.F.R. Part 312 and must, at a minimum, include the information below. All AAI reports submitted to EPA Project Officers as deliverables under this agreement must be accompanied by a completed "All Appropriate Inquiries Final Rule: Reporting Requirements Checklist for Assessment Grant Recipients" (Publication Number: EPA 560-R-10-030) that EPA's Project Officer will provide to the recipient. The checklist also is available to grantees on the EPA website at [www.epa.gov/brownfields](http://www.epa.gov/brownfields).
  - a. An *opinion* as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property.
  - b. An identification of "*significant*" *data gaps* (as defined in 40 C.F.R. 312.10), if any, in the information collected for the inquiry. Significant data gaps include missing or unattainable information that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property. The documentation of significant data gaps must include information regarding the significance of these data gaps.
  - c. *Qualifications and signature* of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:
    - "[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part."

- “[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.”

**Note: Please use either “I” or “We.”**

- d. In compliance with §312.31(b), the environmental professional must include in the final report an *opinion regarding additional appropriate investigation*, if the environmental professional has such an opinion.
3. EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation requirements at 40 CFR part 312 (or comparable requirements for those using ASTM Standard 1527-13). Any deficiencies identified during an EPA review of these documents must be corrected by the recipient within 30 days of notification. Failure to correct any identified deficiencies may result in EPA disallowing the costs for the entire AAI report as authorized by 2 CFR 200.338 through 2 CFR 200.342. If a recipient willfully fails to correct the deficiencies the Agency may consider other available remedies under 2 CFR 200.342.

## **V. CONFLICT OF INTEREST: APPEARANCE OF LACK OF IMPARTIALITY**

### **A. Conflict of Interest**

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subawards that create real or apparent personal conflicts of interest, or the CAR’s appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subawards to a subrecipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:
  - (i) The affected party,
  - (ii) Any member of his immediate family,
  - (iii) His or her partner, or
  - (iv) An organization which employs, or is about to employ, any of the above,
 has a financial or other interest in the subrecipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

## **VI. PAYMENT AND CLOSEOUT**

## **A. Payment Schedule**

The CAR may request payment from EPA pursuant to 2 CFR 200.305.

## **B. Schedule for Closeout**

1. Closeout will be conducted in accordance with 2 CFR 200.343. EPA will close out the award when it determines that all applicable administrative actions and all required work of the grant have been completed.
2. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.
  - a. The CAR must submit the following documentation:
    - (1) The Final Report as described in II.G. of the Assessment Terms and Conditions.
    - (2) A Final Federal Financial Report (FFR - SF425). Submitted to:  
  
US EPA, Las Vegas Finance Center  
4220 S. Maryland Pkwy, Bld C, Rm 503  
Las Vegas, NV 89119  
Fax: (702) 798-2423  
LVFC-grants@epa.gov
    - (3) A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional Grants Management Office.
  - b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region.
  - c. The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.



City of YUMA

# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:** November 18, 2015

**DEPARTMENT:** Police

**DIVISION:** Patrol

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

**TITLE:**  
Grant Award: Governor's Office of Highway Safety

**SUMMARY RECOMMENDATION:**

Authorize the City Administrator to execute a contract with the Arizona Governor's Office of Highway Safety for highway safety projects in accordance with Arizona's Federal Fiscal Year 2015-2016 Highway Safety Plan.

**REPORT:**

The Arizona Governor's Office of Highway Safety sought proposals from state and local agencies for projects relating to all aspects of highway safety for the 2014-2015 federal fiscal year.

The City of Yuma Police Department (YPD) was originally awarded \$84,000.00 to purchase three (3) fully equipped police motorcycles for use while supporting the projects of the Governor's Office of Highway Safety. No matching funds were required.

During the 2014-2015 federal fiscal year, YPD was able to purchase and receive two of the three motorcycles. The third motorcycle is still on order and remains authorized through the Arizona Governor's Office of Highway Safety. It will be received under the 2015-2016 federal fiscal year. Because the third motorcycle was not received by the end of the 2014-15 federal fiscal year, a new contract was needed to complete the purchase.

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$27,000.00	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:	\$27,000.00		
	FISCAL IMPACT STATEMENT: This is a grant funded program from the 2015-2016 Arizona Governor's Office of Highway Safety (GOHS). GOHS agrees to pay \$27,000.00 for the purchase of one (1) fully equipped police motorcycle.			
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="radio"/> Department <input type="radio"/> City Clerk's Office			
SIGNATURES	CITY ADMINISTRATOR:		DATE:	
	Gregory K. Wilkinson		11/9/2015	
	REVIEWED BY CITY ATTORNEY:		DATE:	
	Steven W. Moore		11/9/2015	
	RECOMMENDED BY (DEPT/DIV HEAD):		DATE:	
John Lekan		11/3/2015		
WRITTEN/SUBMITTED BY:		DATE:		
Lisa Y. Culp		11/2/2015		

HIGHWAY SAFETY CONTRACT

This page, the Project Directors Manual and attached hereto and incorporated herein by reference, constitute the entire contract between the parties hereto unless the Governor's Highway Safety Representative authorizes deviation in writing.

CFDA: 20.600 and 20.616

<b>1. APPLICANT AGENCY</b> Yuma Police Department	<b>GOHS CONTRACT NUMBER:</b> 2016-405d-011 (402)
<b>ADDRESS</b> 1500 S. 1 <sup>st</sup> Ave, Yuma, Arizona 85364	<b>PROGRAM AREA:</b> 405d (402)

<b>2. GOVERNMENTAL UNIT</b> City of Yuma	<b>AGENCY CONTACT:</b> Eric Egan
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<b>ADDRESS</b> 1500 S. 1 <sup>st</sup> Ave, Yuma, Arizona 85364	<b>3. PROJECT TITLE:</b>
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<b>4. GUIDELINES:</b> 405d – DUI/Impaired Driving 402 – Police Traffic (PT)	DUI/Impaired Driving Enforcement Equipment – One (1) Fully-Equipped Police Package Motorcycle
---	---

**5. BRIEFLY STATE PURPOSE OF PROJECT:**  
Federal 405 funds will support Capital Outlay for One (1) Fully-Equipped Police Package Motorcycle to enhance DUI/Impaired Driving Enforcement throughout the City of Yuma. The total amount of funding for this contract will include 75% GOHS 405d funds and 25% GOHS 402 funds to support and/or enhance DUI/Impaired Driving enforcement activities.

<b>6. BUDGET COST CATEGORY</b>	<b>Project Period FFY 2016</b>
<b>I. Personnel Services</b>	\$0.00
<b>II. Employee Related Expenses</b>	\$0.00
<b>III. Professional and Outside Services</b>	\$0.00
<b>IV. Travel In-State</b>	\$0.00
<b>V. Travel Out-of-State</b>	\$0.00
<b>VI. Materials and Supplies</b>	\$0.00
<b>VII. Capital Outlay</b>	\$27,000.00
<b>TOTAL ESTIMATED COSTS</b>	<b>\$27,000.00</b>

<b>PROJECT PERIOD</b>	<b>FROM:</b> Effective Date ( <i>Date of GOHS Director Signature</i> )	<b>TO:</b> 09-30-2016
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<b>CURRENT GRANT PERIOD</b>	<b>FROM:</b> 10-01-2015	<b>TO:</b> 09-30-2016
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**TOTAL FEDERAL FUNDS OBLIGATED THIS FFY: \$27,000.00**

A political subdivision or state agency that is mandated to provide a certified resolution or ordinance authorizing entry into this contract must do so prior to incurring any expenditures. Failure to do so may result in termination of the awarded contract.



# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:**

November 18, 2015

**DEPARTMENT:**

Police

**DIVISION:**

Public Safety Communication Center

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

**TITLE:**

Memorandum of Understanding: San Luis Police Department

**SUMMARY RECOMMENDATION:**

Authorize the City Administrator to execute a Memorandum of Understanding with the San Luis Police Department (SLPD) providing shared access to the Arizona Criminal Justice Information Services (ACJIS) interface.

**REPORT:**

The City of Yuma, as part of the Yuma Regional Communications System (YRCS), purchased a “message switch” with the intent to use it for ACJIS transactions for Yuma Police Department (YPD) and hosted law enforcement agencies. The message switch allows other law enforcement agencies to use YPD’s connection to ACJIS for ACJIS transactions.

The ACJIS interface component is now being added for SLPD. This interface will allow SLPD to access ACJIS information through their New World Records Management System using YPD’s shared message switch.

Under this memorandum of understanding (MOU), SLPD must comply with the Criminal Justice Information Systems security policy. SLPD is also responsible for any misuse of or security incidents involving the ACJIS system. This MOU is for a term of five years.

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="radio"/> Department <input type="radio"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			11/9/2015
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			11/9/2015
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
John Lekan			11/5/2015	
WRITTEN/SUBMITTED BY:			DATE:	
Claudia Leyva			10/20/2015	

# MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF YUMA AND CITY OF SAN LUIS

This Memorandum of Understanding (“Agreement”) is made and entered into by and between the City of Yuma, through the Yuma Police Department (“YPD”) and the City of San Luis, through the San Luis Police Department (“SLPD”) for the purpose of providing shared access of the Arizona Criminal Justice Information Services (ACJIS) Interface. YPD and SLPD are sometimes referred to individually as the “Party” and collectively as “the Parties”.

**NOW, THEREFORE, IT IS HEREBY AGREED** by and between the Parties, as follows:

1. **PURPOSE:** The purpose of this Agreement is to provide shared access of the Arizona Criminal Justice Information Services (ACJIS) interface.
2. **DEFINITIONS:**
  - A. **YPD:** Yuma Police Department
  - B. **Hosted Agency:** A law enforcement agency with an approved ACJIS interface that primarily transits through the YPD message switch.
  - C. **DPS:** Arizona Department of Public Safety, designated by the Federal Bureau of Investigation to serve as the CJIS systems Agency for Arizona.
  - D. **ACJIS:** Arizona Criminal Justice Information Services
  - E. **CJIS:** Criminal Justice Information Services
  - F. **SSO:** System Security Officer
  - G. **LASO:** Local Agency Security Officer
3. **PROCEDURE**
  - A. **Roles:**
    1. **YPD:**
      - i. YPD hosts a message switch for ACJIS transactions for the use of YPD and Hosted Agencies through the Yuma Regional Communications System (YRCS). YPD also has a T-1 connection to DPS from the ACJIS line fund for message switch transactions to transit. YPD has designated a SSO and LASO to maintain compliance with CJIS Security Policy.

## **2. Hosted Agency:**

- i. SLPD will host New World Aegis application and mobile servers that connect to the YPD message switch through the YRCS wide area network to run ACJIS transactions.

## **B. Responsibilities:**

### **1. YPD:**

- i. YPD is responsible for network and communications security of the communication path from the SLPD to the message switch at YPD.
- ii. YPD is responsible for oversight of any modification of the message switch configuration.
- iii. Technical assistance with the message switch must be made by the SLPD's SSO, LASO or other designated personnel.
- iv. YPD shall retain the ACJIS message switch transaction logs for one (1) year. Any request for inspection of message switch log data must be made through the YPD SSO.

### **2. SLPD:**

- i. SLPD shall designate a SSO and LASO to maintain compliance with CJIS Security Policy.
- ii. SLPD, through its designated SSO and LASO, is responsible for CJIS security controls, terminal operator certifications, and policies and procedures regarding the use of each ACJIS device.
- iii. SLPD's SSO is responsible for any misuse of the ACJIS systems and security incidents.
- iv. SLPD's SSO is responsible for the monthly validations entered in ACJIS by SLPD, and SLPD's user reports provided by DPS.
- v. SLPD will provide and keep current, the personnel roster of its current SSO, LASO, and other designated ACJIS interface contacts, if applicable, to YPD.

## **C. Compliance with CJIS Security Policy:**

1. YPD will ensure CJIS Security Policy compliance for the systems that YPD is responsible for, to include the communications path from the SLPD to YPD, the message switch, and the communications path to DPS.
2. SLPD will ensure CJIS Security Policy compliance for the systems the SLPD is responsible for, to include all ACJIS devices, associated networks, and physical locations.

3. Compliance with CJIS Security Policy is the minimum required security measures to use the shared ACJIS interface.

**D. Violations:**

SLPD shall comply with the CJIS Security Policy and the ACJIS Operating Manual, which are incorporated into this Agreement by reference. Any violation by SLPD of CJIS Security Policy or ACJIS Operating Manual may result in suspension or termination of SLPD's access to, pending review and determination of continued access to, the shared ACJIS interface. SLPD will have thirty (30) days after notice from DPS to remedy violations. SLPD will be notified by DPS of any further penalties or remedial action if necessary.

4. **INDEMNIFICATION:** To the fullest extent permitted by law, each Party (the "Indemnitor") agree to indemnify, defend and hold harmless the other Party, and their respective departments, agencies, officers, directors, employees and agents (the "Indemnitee") for, from and against any and all losses, expenses, damages, liabilities, demands, or claims, including reasonable attorneys' fees and litigation expenses, to which Indemnitee may become subject, under any theory of liability whatsoever, (collectively "Claims") resulting from and/or arising out of Indemnitor's intentional, reckless, or negligent acts, directives, mistakes, errors, or omissions in performance or non-performance of any provisions of this Agreement, except to the extent such Claims arise out of or are based upon acts or omissions of Indemnitee. This indemnification provision shall apply to any and all any intentional, reckless, or negligent acts, mistakes, errors, or omissions of Indemnitor's departments, agencies, directors, officers, employees, and agents whether employed directly or indirectly by Indemnitor.
5. **TERM:** This Agreement shall commence on the Effective Date defined in Section 7 of this Agreement and be for a period of five (5) years unless terminated as set forth in this Agreement.
6. **JURISDICTION:** Nothing in this Agreement shall be construed as otherwise limiting or extending the legal jurisdiction of any Party. Nothing in this Agreement is intended to confer any rights or remedies to any person or entity that is not a Party.
7. **EFFECTIVE DATE:** This Agreement shall become effective when signed by both Parties.
8. **TERMINATION:** Termination of this Agreement may be affected by either Party with thirty (30) days written notice to the other Party. Upon termination or withdrawal, the Parties shall return any property to its original owner.
9. **MODIFICATIONS:** Changes or modifications to this Agreement are not effective unless made in writing and signed by both Parties.

10. **ENTIRE AGREEMENT:** This document constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and all prior or contemporaneous agreements and understandings, oral or written, are hereby superseded.
11. **SEVERABILITY:** The Parties agree that should any part of this Agreement be held invalid or void, the remainder of the Agreement shall remain in full force and effect.
12. **GOVERNING LAW:** This Agreement shall be construed under the laws of the State of Arizona and applicable federal law.
13. **DISPUTE RESOLUTION:** If there is a dispute, the Parties agree to negotiate in good faith to resolve the matter.
14. **WORKER'S COMPENSATION:** The primary employer of an employee shall be solely liable for any workers' compensation benefits, which may accrue.
15. **NOTIFICATIONS:** Notices permitted or required to be given under this Agreement or under law shall be in writing and shall be deemed given upon personal delivery or upon deposit in the United States Mail, certified, return receipt requested, postage fully prepaid, addressed as follows or to such other addresses as the parties may designate from time to time by notice given in accordance with this Section:

**To SLPD:** City of San Luis  
1030 E. Union St.  
PO Box 3720  
San Luis, Arizona 85349

**To YPD:** City of Yuma  
Attn: Police Chief  
1500 South 1st Avenue  
Yuma, Arizona 85364-1436

**For City of Yuma:**

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Gregory K. Wilkinson,  
City Administrator

---

Date Signed

**APPROVED AS TO FORM:**

---

Steven W. Moore  
City Attorney

**For City of San Luis:**

---

Tadeo De La Hoya  
Acting City Manager

---

Date Signed

**APPROVED AS TO FORM:**

---

Kay M. Macuil  
City Attorney

**For Yuma Police Department:**

---

John Lekan,  
Police Chief

---

Date Signed

**ATTEST:**

---

Lynda L. Bushong  
City Clerk

**For San Luis Police Department:**

---

Victor Figueroa  
Acting Chief of Police

---

Date Signed



# REQUEST FOR CITY COUNCIL ACTION

<b>MEETING DATE:</b>	November 18, 2015	<input type="checkbox"/> Motion
<b>DEPARTMENT:</b>	Community Development	<input type="checkbox"/> Resolution
<b>DIVISION:</b>	Neighborhood Services	<input type="checkbox"/> Ordinance - Introduction
		<input checked="" type="checkbox"/> Ordinance - Adoption
		<input type="checkbox"/> Public Hearing

**TITLE:**  
 Yuma City Code: Amend Chapter 138, Residential Rental Inspection

**SUMMARY RECOMMENDATION:**  
 Amend City of Yuma Code Title 13, Chapter 138: Residential Rental Inspection, replacing reference to the Housing Quality Standard (HQS), with International Property Maintenance Code (IPMC) as adopted at Title 15, Section 150-090: Housing Code.

**REPORT:**  
 The 2012 International Property Maintenance Code (IPMC) is adopted as the City of Yuma Housing Code pursuant to Chapter 150 of the Code of Ordinances. Yet, Chapter 138: Residential Rental Inspection cites the Housing Quality Standards (HQS) as the code used in the administration of the Residential Rental Inspection Program.

In order to establish consistency in all housing codes applicable to residential properties throughout the City, Chapter 138: Residential Rental Inspection should be amended to replace the HQS with the latest adopted City of Yuma Housing Code requirements.

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="radio"/> Department <input checked="" type="radio"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			10/28/2015
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			10/28/2015
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
Laurie Lineberry			10/19/2015	
WRITTEN/SUBMITTED BY:			DATE:	
Rhonda Lee-James			10/19/2015	

**ORDINANCE NO. O2015-058**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUMA,  
ARIZONA, AMENDING ORDINANCE O2003-06 TO REPLACE  
REFERENCE TO THE HOUSING QUALITY STANDARDS (HQS) WITH  
THE CURRENT HOUSING CODE OF THE CITY OF YUMA (IPMC)**

WHEREAS, the City Council adopted Ordinance O2003-06 on February 19, 2003 implementing the Residential Rental Inspection program in Neighborhood Revitalization Areas; and,

WHEREAS, the Residential Rental Inspection program adopts the Housing Quality Standards (HQS) as the code for use in implementation of the program; and,

WHEREAS, the City Council adopted Ordinance O2013-13 on April 3, 2013, establishing the 2012 International Property Maintenance (IPMC) as the Housing Code for the City of Yuma; and

WHEREAS, there should be consistency in all housing codes applicable to residential properties throughout the City of Yuma;

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

All reference to the Housing Quality Standard (HQS) in Title 13, Chapter 138: Residential Rental Inspection shall be replaced with reference to the latest City of Yuma Housing Code as adopted at Title 15, Section 150-090.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

APPROVED:

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

ATTESTED:

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

APPROVED AS TO FORM:

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

**Chapter 138: Residential Rental Inspection**

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Section

138-01	Purpose
138-02	Definitions
138-02.1	Enforcement; rules
138-03	Registration
138-04	Certificate of Compliance
138-05	<del>Housing Quality Standards</del> , <a href="#">Housing Code</a>
138-06	Inspections; consent; election of non-inspection
138-07	[Repealed]
138-08	Notices
138-09	Renewal of Certificate of Compliance
138-10	Administrative review
138-11	Declaration of a residential rental property unfit for habitation
138-12	Notice to vacate
138-13	Posting of building unfit for human habitation
138-14	Occupancy prohibited
138-15	Reliance on Certificate of Compliance; liability
138-98	Severability
138-99	Penalty

~~Appendix: Housing Quality Standards (HQS)~~

**§ 138-01 Purpose.**

The purpose of the Rental Inspection program is to protect the health, safety and welfare of persons residing in residential rental properties located in a Neighborhood Revitalization Area. Additionally, the Rental Inspection program will improve and preserve the quality of rental dwelling unit(s), and the character and stability in such neighborhoods will be greatly enhanced. To accomplish this, every residential rental property in a Neighborhood Revitalization Area is subject to the requirements of this chapter. This chapter shall not apply to any residential rental property located outside a Neighborhood Revitalization Area.

(Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

**§ 138-02 Definitions.**

For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADMINISTRATIVE REVIEW** . An appeal procedure, requested by the owner or managing agent to the Director of the Department of Community Development.

**BUILDING AND HOUSING CODES** . Any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any premises, dwelling unit(s), or residential rental property.

**CERTIFICATE OF COMPLIANCE** . A certificate issued by the Department that the owner of a residential rental property has complied with this chapter.

**COMMON AREAS** . That portion of the premises where one or more tenants and the owner have a common right of access.

**DEPARTMENT** . The Department of Community Development.

**DIRECTOR** . The Director of the Department of Community Development or the Director's designee.

**DWELLING UNIT(S)** . A structure, a part of a structure, a mobile home or a recreational vehicle subject to a rental agreement or used as a home, residence, or sleeping quarters by any person.

~~**HOUSING QUALITY STANDARDS** . Housing standards issued by the United States Department of Housing and Urban Development (HUD), as modified by the city; these standards will be used in conducting inspections. The Housing Quality Standards are attached as an Appendix to this chapter.~~

~~**Housing Code** . The current property maintenance code as adopted by the City of Yuma at §150-090.~~

**MANAGING AGENT** . A person, corporation, partnership, LLC, association or any other entity authorized to manage the residential rental property.

**MULTIPLE-FAMILY RENTAL COMMUNITY** . Residential dwelling units consisting of no less than 20 units on a single lot or adjacent lots under common ownership.

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**NEIGHBORHOOD REVITALIZATION AREA** . A defined neighborhood where the City Council has approved a comprehensive revitalization strategy.

**OWNER** . One or more persons, jointly or severally, vested with all or part of the legal title to the residential rental property.

**RENTAL AGREEMENT** . Any agreement, whether written, oral or implied by law, together with any valid rules and regulations of the owner, embodying the terms and conditions concerning the use and occupancy of a dwelling unit.

**RESIDENTIAL RENTAL PROPERTY** . A property that is used, in whole or in part, as leased or rented for residential purposes and occupied by anyone, including family members. If only a portion of a property is so leased or rented, only that portion and the premises and common areas associated therewith shall be **RESIDENTIAL RENTAL PROPERTY** . If the property is a space rental, **RESIDENTIAL RENTAL PROPERTY** includes the rental space but does not include a mobile home or recreational vehicle that is owned and occupied by the tenant of the rental space and not by the owner of the rental space.

**TENANT** . A person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others. (Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

**§ 138-02.1 Enforcement; Rules.**

(A) The Director shall exercise the power granted by this chapter.

(B) The Director is authorized to adopt such rules as are necessary to implement the requirements of this chapter and to carry out the duties hereunder.

(Ord. O2003-06, passed 2-19-03)

**§ 138-03 Registration.**

(A) The owner or managing agent of any residential rental property located in a Neighborhood Revitalization Area shall register each dwelling unit on a form designated by the Director.

(B) The owner may designate a managing agent. If the owner is domiciled outside the State of Arizona, the owner shall designate a managing agent that is domiciled within the State of Arizona. The owner shall provide to the city in writing the name, street address, and telephone number of the managing agent. The owner shall keep such information current and notify the city within ten days of any change in such information. When designated, the managing agent shall:

(1) Have the authority to grant the owner's consent to inspections in accordance with § 138-06(A), but only where the owner may grant such consent;

(2) Have the authority to take such actions as are necessary to ensure compliance with this chapter and all other applicable statutes, regulations, codes and ordinances adopted by the city;

(3) Be authorized to accept service on behalf of the owner.

Designation of a managing agent does not relieve the owner of the responsibility for compliance with this chapter.

(C) No owner or managing agent shall lease, rent or cause any dwelling unit(s) to be occupied in a Neighborhood Revitalization Area unless the property is registered in accordance with this section.

(Ord. O2002-15, passed 3-6-02; Ord. 2003-06, passed 2-19-03)

#### **§ 138-04 Certificate of Compliance required.**

(A) A Certificate of Compliance shall not be issued unless the owner registers the dwelling unit in accordance with § 138-03.

(B) Subject to §§ 138-04(B)(5) and 138-04B(6), the Department shall issue a Certificate of Compliance or a Waiver to the Certificate of Compliance to an owner upon the occurrence of one of the following:

(1) Upon completion of an inspection in accordance with § 138-06(A) and certification by the Department that the residential rental property, including all dwelling unit(s) thereon, meets all applicable ~~Housing Quality Standards~~ Housing Codes; or

(2) In the case of residential rental property that is newly constructed or substantially rehabilitated after the effective date of this chapter, upon the issuance of a Certificate of Occupancy by the city, provided that:

- (a) The city inspected and approved the construction or substantial rehabilitation pursuant to lawfully authorized building permits.
- (b) A legible photocopy of the Certificate of Occupancy is attached to the application for registration; or

(3) In the case of a Multiple-Family Rental Community, upon completion of an inspection in accordance with § 138-06(A) on random samples, of no less than 25% of the total dwelling unit(s), and certification by the Department that all dwelling unit(s) inspected, together with all common areas inspected, meet the ~~Housing Quality Standards~~ Housing Code. In this case a Certificate of Compliance may be issued for the entire Multiple-Family Rental Community; or

(4) Upon acceptance by the Department that a dwelling unit(s) has been inspected by an approved regulatory agency and the dwelling unit(s) meets or exceeds ~~Housing Quality Standards~~ the Housing Code; or

(5) Upon the refusal of a judge or magistrate to issue a search warrant for an inspection sought in accordance with § 138-06(A), in which a Waiver to the Certificate of Compliance shall be issued for the dwelling unit(s) for which a warrant was refused; provided, however, if a warrant is subsequently issued and the property inspected pursuant thereto, the Waiver to the Certificate of Compliance shall expire; or

(6) Upon receipt by the Department of written notice of a tenant's election to not have their dwelling unit inspected in accordance with § 138-06(F), in which case a Waiver to the Certificate of Compliance may be issued to the owner. The Waiver to the Certificate of Compliance shall expire in the event such tenant vacates the dwelling unit.

(C) The duration of the Certificate of Compliance or the Waiver to the Certificate of Compliance issued in accordance with § 138-04(B) shall be determined by the Director, but shall not exceed three years.

(D) The Department shall deny a Certificate of Compliance or Waiver to the Certificate of Compliance to any owner of residential rental property which fails to meet one of the criteria of § 138-04(B) within 60 days of registration of such property or such longer period as is approved by the Director, not to exceed 120 days from registration. In the case of a Correction Notice issued pursuant to § 138-06(C), the Director shall exercise discretion to permit reasonable time for correction and reinspection.

(Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

**§ 138-05 ~~Housing Quality Standards~~ Housing Code.**

The City of Yuma, ~~for the purposes of the Residential Rental Programs, does hereby adopt~~ utilizes the ~~Housing Quality Standards~~ standards of the International Property Maintenance Code or prevailing Code as adopted at § 150-090 as shown in the Appendix to this chapter. The ~~Housing Quality Standards~~ Housing Code shall not be construed as to relieve the owner from compliance with any other federal, state or other city requirements.

(Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

**§ 138-06 Inspections; Consent; Election of Non-Inspection.**

Subject to § 138-06(D), the Director or the Director's designated inspector may, with the consent of the tenant or the consent of the owner in the case of an unoccupied dwelling unit, or pursuant to a lawfully issued warrant, enter any dwelling unit(s), building, structure or premises to perform any duty imposed by this chapter. Unless a tenant elects not to have their dwelling unit inspected pursuant to § 138-06(F), upon obtaining a lawful right of entry, the Director shall seek to inspect all residential rental property in accordance with this section and § 138-08. The tenant or owner in the case of an unoccupied dwelling unit may contact the Department to schedule an inspection.

(B) The Director shall use reasonable efforts to accommodate the schedule of the owner or the tenant, as the case may be, in scheduling and conducting inspections. In no event, however, shall the city be required to conduct inspections on weekends, holidays, or outside of normal business hours. Once scheduled, for good cause, the Director may reschedule the inspection at the request of the owner, managing agent or tenant provided the rescheduled appointment can occur within 30 days.

(C) During an inspection, the inspector shall note any violations of the ~~Housing Quality Standards~~ Housing Code and, if any violations are found, serve a Correction Notice to the owner or managing agent. The Correction Notice shall direct the owner or managing agent to correct any violation(s) within a time set forth in the notice. A reasonable time for correcting violation(s) shall be determined by the inspector depending on the nature of the violation(s), but shall not exceed 60 days. Upon request by the owner or managing agent, the Director may extend the time for correcting violation(s) not to exceed an additional 60 days.

(D) When the Director or the Director's designated inspector seeks to enter any property through

consent, such consent shall be obtained from the appropriate person in accordance with the following:

(1) The Director shall seek the consent of any tenant residing within the particular dwelling unit(s) subject to this chapter prior to inspecting such dwelling unit(s).

(2) The Director shall seek the consent of the owner or managing agent of residential rental property to inspect that portion of the residential rental property which no tenant or other occupant residing within any dwelling unit(s) has access, including any vacant dwelling unit(s).

(3) The Director shall seek the consent of the owner or any tenant to inspect any common areas.

(E) It shall be unlawful for the owner or managing agent to threaten or coerce any tenant of any dwelling unit(s) to deny consent to the Director or the Director's designated inspector to conduct an inspection pursuant to this chapter.

(F) Any tenant may elect to not have their dwelling unit(s) inspected by notifying the Department in writing of such decision. Such notice shall identify the dwelling unit by street address, shall state that the party executing the notice is the tenant of the dwelling unit, the date on which the tenant shall vacate the premises (if known), shall state that the tenant does not want their premises inspected by the city pursuant to this chapter, and shall be signed by the tenant. The Director may designate a form for use of such tenant elections. The Director or the Director's designated inspector will not seek a warrant to inspect dwellings of tenants who, pursuant to this subsection, have elected not to have their dwelling unit(s) inspected unless there is probable cause to believe that a violation of the ~~Housing Quality Standards~~ Housing Code exists in the dwelling(s) sought to be inspected.

(Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

**§ 138-07 [Repealed].**

**§ 138-08 Notices.**

(A) *Notice of Violation/Correction Notice.* Whenever the city determines that there has been violation(s) of any provisions of this chapter, the inspector shall serve a notice of such violation(s) and orders for the abatement of such violation(s). Such notice and order shall:

- (1) Be in writing;
- (2) State the address and legal description sufficient for identification of the premises upon which the dwelling unit(s) is located;
- (3) Include a statement of the conditions that constitutes violation(s) of this chapter;
- (4) Include the name, business telephone number and signature of the inspector;
- (5) State that each violation is a separate, punishable offense;
- (6) State the date of the inspection, the name of the inspector, the address of the dwelling, and the date set for reinspection;
- (7) Specify a time limit for the performance of any act it requires;
- (8) Be served upon the owner or managing agent.

(B) *Service of Notice.* Notice shall be deemed properly served if a copy is:

- (1) Served personally, or
- (2) Sent by certified mail to last known address, or
- (3) Returned showing that the letter was not delivered, in which case, a copy thereof shall be posted in a conspicuous place in or about the structure affected by such notice.

(C) Only the Director may remove or order the removal of any notice, complaint or order posted in accordance with this chapter prior to issuance of a Certificate of Compliance by the Director.

(Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

#### **§ 138-09 Renewal of Certificate of Compliance.**

Certificates of Compliance shall be renewed in the same manner as the issuance of the original Certificate of Compliance, except that all time periods based on the date of registration shall run from the date of the expiration of the Certificate of Compliance.

(Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

**§ 138-10 Administrative review process.**

(A) An owner or managing agent may contest a Notice of Violation or Correction Notice issued pursuant to § 138-08, by filing a written request for an administrative review with the Department. A request for administrative review shall be made within five days of receipt of a notice, shall include a copy of the notice, and shall state, with particularity, the reasons why the party believes that any violation identified in the notice is not correct.

(B) The Director or the Director's ~~designee~~ designee will act as the reviewing officer and shall be responsible for reviewing and deciding all written requests for administrative review.

(C) Upon receipt of a written request, the reviewing officer shall conduct an administrative review and issue a written decision within 14 days. Unless there is a danger to the public's health or safety, the reviewing officer shall defer enforcement action until the decision is issued. The reviewing officer may use all available resources to obtain information necessary to determine whether appropriate orders of compliance were issued. The owner or managing agent shall promptly provide to the reviewing officer any additional information necessary to fully and completely review the issues.

(Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

**§ 138-11 Declaration of a residential rental property unfit for habitation.**

The inspector may declare a residential rental property to be unfit for human habitation if:

(A) A condition exists that constitutes an immediate threat to life or an immediate threat of serious injury to the person or any occupant as determined by the inspector.

(B) An emergency or hazardous condition has not been corrected as ordered.

(C) Any other hazardous or dangerous condition exists as defined in any other ordinance adopted by the city. (Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

**§ 138-12 Notice to vacate.**

Upon declaring a residential rental property to be unfit for human habitation, the city shall give notice

pursuant to § 138-08 and order the property owner or managing agent and tenant(s) to vacate any affected dwelling unit(s) no later than 72 hours after service of notice.

(Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

**§ 138-13 Posting of building unfit for human habitation.**

Upon giving notice to vacate any dwelling unit(s), the city shall post the notice upon or near the entryways to any dwelling unit(s) cited in the notice. The sign shall state the address number of the dwelling unit(s) and the name of the owner. The notice shall inform the public that the dwelling unit(s) have been declared unfit for human habitation and is a violation of this code to enter the dwelling unit(s) unless authorized in writing by the city.

(Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

**§ 138-14 Occupancy prohibited.**

No person shall occupy, permit or allow another person to occupy any residential rental property which has been declared to be unfit for human habitation or entry.

(Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

**§ 138-15 Reliance on Certificate of Compliance; Liability.**

(A) Issuance of a Certificate of Compliance shall not constitute a guarantee or warranty of the habitability or complete compliance of the building or housing code requirements. No occupant of any dwelling unit(s) shall rely on the Certificate of Compliance as such a guaranty or warranty. The Certificate of Compliance shall contain a notice to this effect.

(B) This chapter is not intended and shall not be construed to create or form the basis for any liability on the part of the city, or the city's officers, employees or agents, for any injury or damage resulting from the failure of an owner of property or land to comply with the provisions of this chapter, or by reason or in consequence of any inspection, notice, order, certificate, permission or approval authorized or issued or done in connection with the implementation or enforcement of this chapter, or by

reason of any action or inaction on the part of the city related in any manner to the enforcement of or failure to enforce this chapter by the city's officers, employees or agents.

(Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

**§ 138-98 Severability.**

Should any part, section, clause, or paragraph of this chapter be declared invalid by a court of competent jurisdiction such action shall not affect the validity of this chapter as a whole or any other part.

(Ord. O2003-06, passed 2-19-03)

**§ 138-99 Penalty.**

(A) Any person(s) cited for a violation of any provision of this chapter shall be subject to a civil sanction and shall be fined an amount not more than \$500 per day or, in the case of a violation of § 138-06(E), not more than \$500 per violation.

(B) Each day a violation continues shall constitute a separate offense.

(C) The imposition of a penalty under the provisions of this section shall not waive any other legal remedies available to the city.

(Ord. O2002-15, passed 3-6-02; Ord. O2003-06, passed 2-19-03)

~~**Appendix: Housing Quality Standards (HQS)**~~

~~**Section**~~

~~A. Performance and acceptability requirements~~

~~B. Sanitary facilities~~

~~C. Food preparation and refuse disposal~~

~~D. Space and security~~

~~E. Thermal environment~~

~~F. Illumination and electricity~~

- ~~G.—Structure and materials~~
- ~~H.—Interior air quality~~
- ~~I.—Water supply~~
- ~~J.—Lead-based paint performance requirement~~
- ~~K.—Access performance requirement~~
- ~~L.—Site~~
- ~~M.—Sanitary condition~~
- ~~N.—Smoke detectors performance requirement~~

~~**A.—Performance and acceptability requirements.**~~

~~(1) This section states the Housing Quality Standards (HQS) for rental housing covered in the program.~~

~~(2) (a) The HQS consist of:~~

- ~~1.—Performance requirements; and~~
- ~~2.—Acceptability criteria or city approved variations in the acceptability criteria.~~

~~(b) This section states performance and acceptability criteria for these key aspects of housing quality:~~

- ~~1.—Sanitary facilities;~~
- ~~2.—Food preparation and refuse disposal;~~
- ~~3.—Space and security;~~
- ~~4.—Thermal environment;~~
- ~~5.—Illumination and electricity;~~
- ~~6.—Structure and materials;~~
- ~~7.—Interior air quality;~~
- ~~8.—Water supply;~~
- ~~9.—Lead-based paint;~~
- ~~10.—Access;~~
- ~~11.—Site;~~
- ~~12.—Sanitary condition; and~~
- ~~13.—Smoke detectors.~~

~~(3) All rental housing must meet the HQS performance requirements.~~

~~(4) (a) In addition to meeting HQS performance requirements, the housing must meet the acceptability criteria stated in this section, unless variations are approved by the city.~~

~~(b) City may approve acceptability criteria variations for the following purposes:~~

~~1. Variations which apply standards in local housing codes or other codes adopted by the city; or~~

~~(c) Acceptability criteria variations may only be approved by the city pursuant to subparagraph (4)(b) of this section if such variations either:~~

~~1. Meet or exceed the performance requirements; or~~

~~(d) The city will not approve any acceptability criteria variation if the city believes that such variation is likely to adversely affect the health or safety of tenants, or severely restrict housing choice.~~

**~~B. Sanitary facilities.~~**

~~(1) Performance requirements. The dwelling unit must include sanitary facilities located in the unit. The sanitary facilities must be in proper operating condition, and adequate for personal cleanliness and the disposal of human waste. The sanitary facilities must be usable in privacy.~~

~~(2) Acceptability criteria.~~

~~(a) The bathroom must be located in a separate private room and have a flush toilet in proper operating condition.~~

~~(b) The dwelling unit must have a fixed basin in proper operating condition, with a sink trap and hot and cold running water.~~

~~(c) The dwelling unit must have a shower or a tub in proper operating condition with hot and cold running water.~~

~~(d) The facilities must utilize an approvable public or private disposal system (including a locally approvable septic system).~~

**~~C. Food preparation and refuse disposal.~~**

~~(1) Performance requirement.~~

~~(a) The dwelling unit must have suitable space and equipment to store, prepare, and serve foods in a sanitary manner.~~

~~(b) There must be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).~~

~~(2) Acceptability criteria:~~

~~(a) The dwelling unit must have an oven, and a stove or range, and a refrigerator of appropriate size for the family. All of the equipment must be in proper operating condition. The equipment may be supplied by either the owner or the family. A microwave oven may be substituted for a tenant-supplied oven and stove or range. A microwave oven may be substituted for an owner-supplied oven and stove or range if the tenant agrees.~~

~~(b) The dwelling unit must have a kitchen sink in proper operating condition, with a sink trap and hot and cold running water. The sink must drain into an approvable public or private system.~~

~~(c) The dwelling unit must have space for the storage, preparation, and serving of food.~~

~~(d) There must be facilities and services for the sanitary disposal of food waste and refuse, including temporary storage facilities where necessary (e.g., garbage cans).~~

#### **~~D. Space and security.~~**

~~(1) Performance requirement. The dwelling unit must provide adequate space and security for the family.~~

~~(2) Acceptability criteria:~~

~~(a) At a minimum, the dwelling unit must have a living room, a kitchen area, and a bathroom.~~

~~(b) The dwelling unit must have at least one bedroom or living/sleeping room for each two persons. Children of opposite sex, other than very young children, may not be required to occupy the same bedroom or living/sleeping room.~~

~~(c) Dwelling unit windows that are accessible from the outside, such as basement, first floor, and fire escape windows, must be lockable (such as window units with sash pins or sash locks, and combination windows with latches). Windows that are nailed shut are acceptable only if these windows are not needed for ventilation or as an alternate exit in case of fire.~~

~~(d) The exterior doors of the dwelling unit must be lockable. Exterior doors are doors by which someone can enter or exit the dwelling unit.~~

**~~E. Thermal environment.~~**

~~(1) Performance requirement. The dwelling unit must have and be capable of maintaining a thermal environment healthy for the human body.~~

~~(2) Acceptability criteria:~~

~~(a) There must be a safe system for heating the dwelling unit (and a safe cooling system, where present). The system must be in proper operating condition. The system must be able to provide adequate heat (and cooling, if applicable), either directly or indirectly, to each room, in order to assure a healthy living environment appropriate to the climate.~~

~~(b) The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Electric heaters are acceptable.~~

**~~F. Illumination and electricity.~~**

~~(1) Performance requirement. Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. The electrical fixtures and wiring must ensure safety from fire.~~

~~(2) Acceptability criteria:~~

~~(a) There must be at least one window in the living room and in each sleeping room.~~

~~(b) The kitchen area and the bathroom must have a permanent ceiling or wall light fixture in proper operating condition. The kitchen area must also have at least one electrical outlet in proper operating condition.~~

~~(c) The living room and each bedroom must have at least two electrical outlets in proper operating condition. Permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets.~~

**~~G. Structure and materials.~~**

~~(1) Performance requirement. The dwelling unit must be structurally sound. The structure must not present any threat to the health and safety of the occupants and must protect the occupants from the environment.~~

~~(2) Acceptability criteria.~~

~~(a) Ceilings, walls, and floors must not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling, missing parts, or other serious damage.~~

~~(b) The roof must be structurally sound and weathertight.~~

~~(c) The exterior wall structure and surface must not have any serious defects such as serious leaning, buckling, sagging, large holes, or defects that may result in air infiltration or vermin infestation.~~

~~(d) The condition and equipment of interior and exterior stairs, halls, porches, walkways, etc., must not present a danger of tripping and falling. For example, broken or missing steps or loose boards are unacceptable.~~

~~(e) Elevators must be working and safe.~~

**~~H. Interior air quality.~~**

~~(1) Performance requirement. The dwelling unit must be free of pollutants in the air at levels that threaten the health of the occupants.~~

~~(2) Acceptability criteria.~~

~~(a) The dwelling unit must be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful pollutants.~~

~~(b) There must be adequate air circulation in the dwelling unit.~~

~~(c) Bathroom areas must have one openable window or other adequate exhaust ventilation.~~

~~(d) Any room used for sleeping must have at least one window. If the window is designed to be openable, the window must work.~~

**~~I. Water supply.~~**

~~(1) Performance requirement. The water supply must be free from contamination.~~

~~(2) Acceptability criteria. The dwelling unit must be served by an approvable public or private water supply that is sanitary and free from contamination.~~

**~~J. Lead-based paint performance requirement.~~**

~~The Lead-Based Paint Poisoning Prevention Act (42 USC 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC 4851–4856), and implementing regulations at part 35, subparts A, B, M, and R of this title apply.~~

**~~K. Access performance requirement.~~**

~~The dwelling unit must be able to be used and maintained without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire (such as fire stairs or egress through windows).~~

**~~L. Site.~~**

~~(1) Performance requirement. The site must be reasonably free from disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants.~~

~~(2) Acceptability criteria. The site may not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks or steps; instability; flooding; poor drainage; septic-tank back ups or sewage hazards; mudslides; abnormal air pollution; excessive noise; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.~~

**~~M. Sanitary condition.~~**

~~(1) Performance requirement. The dwelling unit and its equipment must be in sanitary condition.~~

~~(2) Acceptability criteria. The dwelling unit and its equipment must be free of vermin and rodent infestation.~~

~~**N. Smoke detectors performance requirement.**~~

~~Each dwelling unit must have at least one battery-operated or hard-wired smoke detector, in proper operating condition, on each level of the dwelling unit, including basements but excepting crawl spaces and unfinished attics. Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any hearing-impaired person, smoke detectors must have an alarm system, designed for hearing-impaired persons as specified in NFPA 74 (or successor standards).~~

~~(Ord. O2002-15, Exhibit A, passed 3-6-02)~~



# REQUEST FOR CITY COUNCIL ACTION

<b>MEETING DATE:</b>	November 18, 2015	<input type="checkbox"/> Motion
<b>DEPARTMENT:</b>	Engineering	<input type="checkbox"/> Resolution
<b>DIVISION:</b>		<input type="checkbox"/> Ordinance - Introduction
		<input checked="" type="checkbox"/> Ordinance - Adoption
		<input type="checkbox"/> Public Hearing

**TITLE:**  
Real Property Acquisition: PMG Partnership, LLC

**SUMMARY RECOMMENDATION:**  
Authorize City acquisition of all or any portion of the real property owned by PMG Partnership, L.L.C., in the vicinity of the northeast corner of 16<sup>th</sup> Street and 4<sup>th</sup> Avenue (south of 15<sup>th</sup> Street) by purchase and exchange agreement or through the exercise of eminent domain.

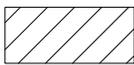
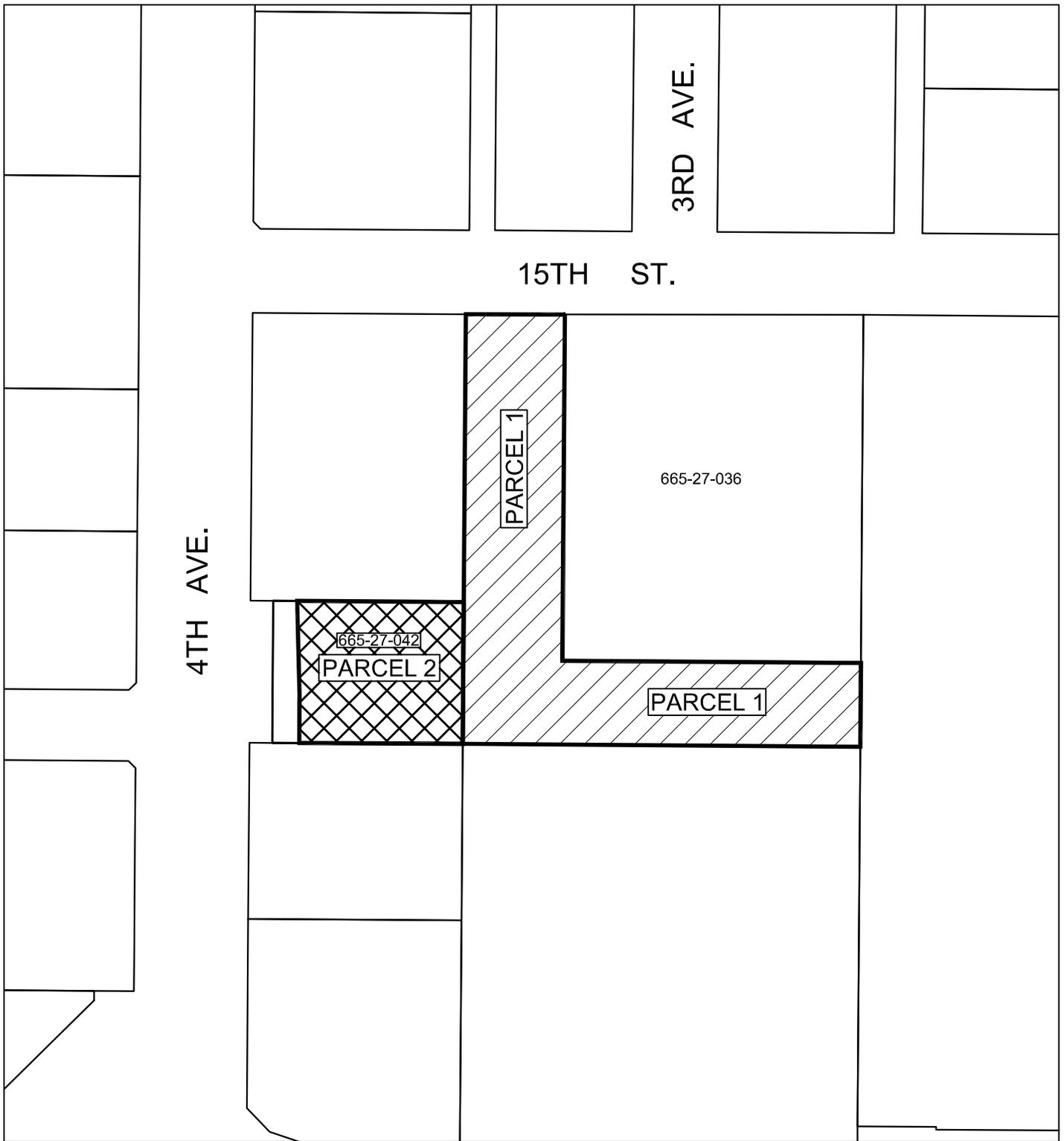
**Report:**  
In preparation for the 16<sup>th</sup> Street/4<sup>th</sup> Avenue intersection improvements, Ordinance No. O2015-011 (as amended by Ordinance No. **O2015-052** to correct a computer software translation error) authorized the City of Yuma (City) to acquire certain necessary real property owned by PMG Partnership, L.L.C (PMG) for the purposes of storm water retention and street improvements.

Discussions with PMG have indicated a possible need for additional flexibility in the acquisition process whether through condemnation or by exchange.

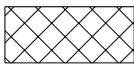
The parcels to be acquired include: (1) all or any part of the remaining PMG parcel surrounding the proposed retention basin (shown as Parcel 1 on the attached location map) and (2) all or any part of the remaining PMG parcel east of and adjacent to 4<sup>th</sup> Avenue (shown as Parcel 2 on the attached location map).

**CLERK NOTE:** A motion was approved at the November 4, 2015 Regular City Council Meeting to amend the 1<sup>st</sup> paragraph of the RFCCA to replace the reference of Ordinance O2015-052 with Ordinance O2015-056.

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="radio"/> Department <input type="radio"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	Gregory K. Wilkinson			10/28/2015
	REVIEWED BY CITY ATTORNEY:			DATE:
	Steven W. Moore			10/28/2015
	RECOMMENDED BY (DEPT/DIV HEAD):			DATE:
Ricky Rinehart			10/27/2015	
WRITTEN/SUBMITTED BY:			DATE:	

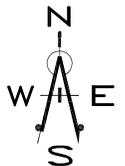


PARCEL 1



PARCEL 2

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



# LOCATION MAP

Prepared by: JOHN NYE

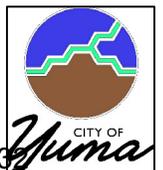
Checked by: CHRISTIAN WINTERS

CITY OF YUMA  
ENGINEERING  
DEPARTMENT

DATE: 10-27-2015

SCALE: 1"=100'

REVISED:



**ORDINANCE NO. O2015-059**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA, AUTHORIZING THE ACQUISITION OF ALL OR PART OF CERTAIN PARCELS OF REAL PROPERTY, HEREAFTER DESCRIBED, UNDER THE POWER OF EMINENT DOMAIN OR THROUGH A PURCHASE AND EXCHANGE FOR SURPLUS CITY-OWNED PARCELS, FOR THE REASON THAT THE PROPERTY TO BE ACQUIRED IS NECESSARY FOR PUBLIC ROADWAY AND UTILITY INFRASTRUCTURE AND OTHER PUBLIC PURPOSES AS MAY BE RELATED THERETO, AND AUTHORIZING PAYMENT OF COSTS**

WHEREAS, the City of Yuma (City) is authorized, pursuant to the City Charter, Article III, Section 2, to acquire and dispose of real property; and,

WHEREAS, the City has identified the acquisition of all or part of two parcels of real property owned by PMG Partnership, L.L.C. (PMG), located in the proximity of the northeast corner of 16<sup>th</sup> Street and 4<sup>th</sup> Avenue intersection (PMG Parcels), as necessary for the 16<sup>th</sup> Street/4<sup>th</sup> Avenue intersection public roadway, stormwater and utility improvements; and,

WHEREAS, the two PMG Parcels are described in Exhibit 1 and Exhibit 2 attached to this Ordinance as Parcel 1 and Parcel 2; and,

WHEREAS, the City seeks to acquire fee simple title to all or any part of the described PMG Parcels through the exercise of eminent domain, or in the alternative, exchange for City owned parcels previously approved by Ordinance No. O2015-011 (as amended) and City purchase,

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

SECTION 1: It is deemed necessary and essential, as a matter of public necessity and public welfare, that all or part of the PMG Parcels described in Exhibit 1 and Exhibit 2 attached and incorporated into this Ordinance by reference, be acquired by the City through purchase, exchange, gift or through the exercise of eminent domain.

SECTION 2: All or part of the described PMG Parcels are necessary to extend and improve public roadway, stormwater and utility infrastructure for the public interest of the City and will be of public benefit.

SECTION 3: City staff is authorized and directed to perform all authorized acts necessary for the acquisition of all or part of the described real property, including the filing of eminent domain for the acquisition, and the payment of costs attributable to such acquisition.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

APPROVED:

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

ATTESTED:

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

APPROVED AS TO FORM:

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

**EXHIBIT 1 - LEGAL DESCRIPTION  
REMAINDER OF 665-27-036  
NEW RETENTION BASIN FOR THE SOUTH SIDE OF 15TH STREET  
YUMA, ARIZONA**

That portion of the Southeast quarter (SE1/4) of Section 28, Township 8 South, Range 23 West, Gila and Salt River Base and Meridian, Yuma County, Arizona, more particularly described as follows:

Parcel B-1 as shown on the PMG Lot Tie and Lot Split No. 2 recorded in Book 18 of Plats, Page 51, Yuma County Records;

EXCEPT the following described parcel;

Beginning at the monumented Northwest corner (Found 1/2" Rebar with obliterated cap in asphalt) of the Southwest quarter of the Southwest quarter of the Southeast quarter (SW1/4SW1/4SE1/4) of said Section 28 with a Basis of Bearing to the Northeast corner (Found 1/2" Rebar in Hand hole) of the Southwest quarter of the Southwest quarter of the Southeast quarter of said Section 28 of South 89°35'26" East;

thence South 89°35'26" East along the North line of the Southwest quarter of the Southwest quarter of the Southeast quarter (SW1/4SW1/4SE1/4) of said Section 28 a distance of 259.48 feet;

thence South 00°24'34" West perpendicular to the North line of the Southwest quarter of the Southwest quarter of the Southeast quarter (SW1/4SW1/4SE1/4) of said Section 28 a distance of 30.00 feet to a point on the Northern line of said Parcel B-1 as shown on the PMG Lot Tie and Lot Split No. 2 recorded in Book 18 of Plats, Page 51, Yuma County Records, said point also being TRUE POINT OF BEGINNING;

thence South 00°24'41" West parallel to and 210.00 feet west of the Eastern line of said Parcel B-1 a distance of 245.00 feet;

thence South 89°35'26" East parallel to and 245.00 feet south of the Northern line of said Parcel B-1 a distance of 210.00 feet;

thence North 00°24'41" East along the Eastern line of said Parcel B-1 a distance of 245.00 feet to a point on the Northern line of said Parcel B-1;

thence North 89°35'26" West along the Northern line of said Parcel B-1 a distance of 210.00 feet to the TRUE POINT OF BEGINNING;

Contains a gross area of 32,436 square feet or 0.745 acres, more or less

**EXHIBIT 2 - LEGAL DESCRIPTION  
REMAINDER OF APN 665-27-042 AFTER  
NEW RIGHT-OF-WAY FOR THE EAST SIDE OF 4<sup>TH</sup> AVENUE  
YUMA, ARIZONA**

That portion of the Southeast quarter (SE1/4) of Section 28, Township 8 South, Range 23 West, Gila and Salt River Base and Meridian, Yuma County, Arizona, more particularly described as follows:

Beginning at the monumented Southwest corner (Found ½" stem in hand hole) of the Southeast quarter (SE1/4) of said Section 28 with a Basis of Bearing to the Northwest corner (Found 3" City of Yuma Brass Cap "LS 19329") of the Southeast quarter of said Section 28 of North 00°25'57" East;

thence North 00°25'57" East along the West line of the Southeast quarter (SE1/4) of said Section 28 a distance of 329.89 feet;

thence South 89°34'03" East perpendicular to the West line of the Southeast quarter (SE1/4) of said Section 28 a distance of 56.00 feet to a point at the Southwest corner of the property as described in Fee number 2010-07569, Yuma County Records and being a point on the Eastern right-of-way of 4<sup>th</sup> Avenue;

thence South 89° 35' 31" East along the South line of said property as described in Fee number 2010-07569 for a distance of 19.00 feet to a point for proposed New Eastern right-of-way of 4<sup>th</sup> Avenue and the True Point of Beginning;

thence continuing South 89° 35' 31" East along South line of said property as described in Fee number 2010-07569 for a distance of 115.00 feet to the Southeast corner of said property;

thence North 00° 25' 57" East along the East line of said property as described in Fee number 2010-07569 for a distance of 99.99 feet to the Northeast corner of said property;

thence North 89° 35' 31" West along the North line of said property as described in Fee number 2010-07569 for a distance of 117.22 feet to a point of proposed New Eastern right-of-way of 4<sup>th</sup> Avenue;

thence South 01° 31' 57" East along proposed New Eastern right-of-way of 4<sup>th</sup> Avenue for a distance of 64.70 feet;

thence South 00° 25' 48" West along proposed New Eastern right-of-way of 4<sup>th</sup> Avenue for a distance of 35.32 feet, to the True Point of Beginning,

Contains a gross area of 11570.296 square feet or 0.266 acres, more or less.



# REQUEST FOR CITY COUNCIL ACTION

<b>MEETING DATE:</b>	November 18, 2015	<input type="checkbox"/> Motion
<b>DEPARTMENT:</b>	City Administration	<input type="checkbox"/> Resolution
<b>DIVISION:</b>	Yuma Crossing National Heritage Area	<input type="checkbox"/> Ordinance - Introduction
		<input checked="" type="checkbox"/> Ordinance - Adoption
		<input type="checkbox"/> Public Hearing

**TITLE:**  
Development Agreement and Land and Improvements Lease: Hardknocks Limited Partnership

**SUMMARY RECOMMENDATION:**  
Enter into a development agreement authorizing the City to accept conveyance of title to land and improvements on real property located at 190 S. Madison Avenue and authorize an eight year government property land and improvements lease of the property to Hardknocks Limited Partnership as the statutory prime lessee. (This item must be adopted by a simple majority vote without the use of the consent calendar).

**REPORT:**  
Pursuant to Arizona Revised Statutes (A.R.S.) § 36-1471 *et seq.*, the Yuma City Council declared the Yuma North End a statutory redevelopment area and approved a redevelopment plan titled, *Yuma North End Redevelopment Plan*. Resolution R2004-01 designated the redevelopment area part of a single statutory Central Business District of the City of Yuma, Arizona, and includes the proposed project site.

Hardknocks Limited Partnership is redeveloping a building on the project site for office space. When complete, the building will consist of three office suites totaling 4990 square feet.

The proposed Ordinance permits the Developer to deed the land and improvements to the City of Yuma (City) and enter into a government property lease with the City as landlord and the Developer as the statutory prime lessee (tenant). Deeding the property to the City allows favorable tax treatment, particularly, assessment under the government property lease excise tax (GPLET) in lieu of property tax being paid. Additionally, because the project site is located within a redevelopment area and central business district, if all statutory requirements are complied with, A.R.S. § 42-6209 should permit abatement of the GPLET.

One of the requirements for GPLET abatement is that prior to entering into the Land and Improvements Lease, “the government lessor determines that, within the term of the lease or development agreement, the economic and fiscal benefit to this state and the county, city or town in which the government property improvement is located will exceed the benefits received by the prime lessee as a result of the development agreement or lease on the basis of an estimate of those benefits prepared by an independent third party in a manner and method acceptable to the governing body of the government lessor.” A.R.S. § 42-6209C(2).

Findings are incorporated into the proposed Ordinance Section 1 and Section 2 based on an Economic and Fiscal Benefit Analysis report prepared by D<sup>2</sup>Fackler Planning & Development titled, *Economic & Fiscal Benefit Analysis For Hardknocks Limited Partnership Redevelopment Project*. The report states that the “estimated 8-year direct economic and fiscal benefit of the proposed Project to the State, County and City is \$318,700” net present value. According to the report, the net present value of the statutory GPLET abatement incentive to the project is \$74,500.

City Staff has provided the required notice to all local taxing agencies and received no negative comments in regards to the GPLET request. The consultant’s report will remain on file with the City Clerk for the term of the development agreement and government property improvements lease.

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. Economic & Fiscal Benefit Analysis For Hardknocks Limited Partnership 2. Letter to taxing entities dated August 12, 2015 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="radio"/> Department <input checked="" type="radio"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:		DATE:	
	Gregory K. Wilkinson		10/28/2015	
	REVIEWED BY CITY ATTORNEY:		DATE:	
	Steven W. Moore		10/28/2015	
	RECOMMENDED BY (DEPT/DIV HEAD):		DATE:	
Charles Flynn		10/28/2015		
WRITTEN/SUBMITTED BY:		DATE:		
Noah Cullis		10/27/2015		

**WHEN RECORDED RETURN TO:**

Steven W. Moore, Esq.  
City Attorney's Office  
City of Yuma  
One City Plaza  
Yuma, AZ 85364



# City of Yuma Development Agreement

**By and Between:**

**CITY OF YUMA, ARIZONA**  
an Arizona municipal corporation

and

**HARDKNOCKS LIMITED PARTNERSHIP**  
an Arizona Limited Partnership

\_\_\_\_\_, 2015

# DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date"), by and between **HARDKNOCKS LIMITED PARTNERSHIP.**, an Arizona Limited Partnership ("Developer"), and the **CITY OF YUMA**, an Arizona municipal corporation ("City"). Collectively, Developer and the City are referred to herein as the "Parties" or individually as a "Party."

## RECITALS

**WHEREAS**, Developer is currently located at 2515 S. Avenue 2½ E in Yuma and is seeking to relocate its business within the Downtown Yuma in the Yuma North End Redevelopment Area previously created by the City; and

**WHEREAS**, Developer has purchased land, which is located at the northeast corner of the intersection of Second Street & Madison Avenue in Downtown Yuma and which is legally described in **Exhibit 1**, attached hereto and made part hereof, (the "Project Site"). The Project Site contains an existing building and surface parking area, which Developer will redevelop into an approximately five thousand one hundred seventy-six (5,176) square foot office building and other improvements, along with fixtures, furnishings and equipment therein (the "Improvements"), to which, when construction is complete, Developer will relocate its existing offices. The redeveloped building will also house two (2) additional rental offices suites; and

**WHEREAS**, pursuant to Arizona Revised Statutes ("A.R.S.") title 36, chapter 12, article 3, (A.R.S. § 36-1471 *et seq.*), the Yuma City Council has previously issued a finding of necessity, declaring the Yuma North End Redevelopment Area (the "Redevelopment Area"), and directing City staff to prepare a redevelopment plan for the area; and

**WHEREAS**, pursuant to A.R.S. § 36-1474 the Yuma City Council has previously approved the Yuma North End Redevelopment Plan ("Redevelopment Plan"); and

**WHEREAS**, the Yuma City Council through Resolution R2004-01, has designated the Redevelopment Area part of a single Central Business District of the City of Yuma, Arizona, which includes the Project Site and which is within a slum or blighted area established pursuant to A.R.S. title 36, chapter 12, article 3; and

**WHEREAS**, the City has determined that the redevelopment of the Project Site pursuant to this Agreement and the Redevelopment Plan will result in significant planning, economic, social and other public purpose benefits to the Redevelopment Area, the City and its residents by, among other things: (i) providing for the redevelopment of the Project Site consistent with the Yuma North End Redevelopment Plan; (ii) increasing tax revenues to the City arising from or relating to the Improvements to be developed on the Project Site; and (iii) retaining existing and creating new jobs within the Redevelopment Area and otherwise enhancing the economic and social welfare of the residents of the Redevelopment Area and the City pursuant to the goals of the Redevelopment Plan; and

**WHEREAS**, redevelopment of the Project Site is vital, in the best interests of the City, the health, safety, and welfare of City residents, and will be redeveloped in accordance with the public

purposes and provisions of all federal, state, and local laws, codes and regulations, the General Plan, the Redevelopment Plan, the zoning ordinance of the City of Yuma (collectively “**Applicable Laws**”), and the terms of this Agreement; and

**WHEREAS**, the Parties understand and acknowledge that this Agreement and the GPLET Lease authorized by this Agreement are entered into under and are subject to the statutory provisions of the Arizona government property lease excise tax, A.R.S. § 42-6201, *et seq.* (“**GPLET**”), and acknowledge and give notice of the tax liability under the GPLET statutes. During the Term of the GPLET Lease entered into by the Parties pursuant to this Agreement and subject to the GPLET Abatement provisions of Section 2.1 of this Agreement, the failure by the prime lessee under the GPLET Lease to pay the government property lease excise tax required by the statute, after notice and an opportunity to cure, is an event of default that could result in divesting such prime lessee of any interest in or right of occupancy of the government property improvement demised by the GPLET Lease. Further, the Parties acknowledge that any amendment of this Agreement or the GPLET Lease to change the use of the Project Site shall require adherence to the notification and other requirements of A.R.S. § 42-6209 (C) (3); and

**WHEREAS**, this Agreement is a development agreement within the meaning of A.R.S. § 9-500.05 and shall be construed as such.

**NOW, THEREFORE**, in consideration of the premises and covenants contained in this Agreement, the Parties agree as follows:

## **ARTICLE I DEVELOPMENT RIGHTS AND OBLIGATIONS**

1.1 Development of the Project. Developer shall redevelop the Project Site (the “**Project**”) in substantial accordance with the conceptual site plan attached hereto as Exhibit 2 (the “**Conceptual Site Plan**”). The Conceptual Site Plan may be amended only in writing signed by the City Administrator and Developer, with the original(s) delivered to the City Clerk’s Office. Developer shall design, plan, develop, construct and operate the Project in accordance with a City approved site plan (“**Site Plan**”), construction or building permits and other requirements, and all Applicable Laws.

1.2 Cost of Project. Unless specifically agreed to otherwise in writing, Developer shall pay all costs of the Project, including the cost of acquiring, preparing and developing the Project Site, the cost of constructing all Improvements on the Project Site and the cost of relocating Developer’s business to the Project Site.

1.3 Completion. The Project shall be completed no later than November 30, 2015.

1.4 Vacation of Certain Restrictive Easements. As a condition of approval of any Site Plan for any portion of the Project Site, the City may require, through the exercise of its reasonable discretion, that any easements or licenses on the Project Site be vacated to the extent that the easement or license would require a utility service provider, licensed cable operator, or other licensed or franchised communications system service provider (collectively, “**Utility Service Providers**”) to pay to

cross the easement or license to reach any structure within the Project Site or prevent the Utility Service Providers from providing service to any structure within the Project Site.

1.5 Encroachment and Right-of-Way Permits and Licenses Required. Developer 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. Developer further acknowledges and agrees that City approval of any Site Plan over all or any portion of the Project Site does not constitute authorization for work or improvements in the public right-of-way or any grant or waiver of any permitting requirements of the Permitting Agency. Developer 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 right-of-way.

## ARTICLE II

### CERTIFICATES OF OCCUPANCY, CONVEYANCE, GPLET LEASE, RECONVEYANCE

2.1 GPLET Abatement. The development of the Project (i) will enhance the economic health of the City; (ii) will result in a net increase or retention of jobs in the City; (iii) will add to the tax base; (iv) will otherwise improve or enhance the economic welfare of the residents or businesses of the City; and (v) demonstrates the potential to generate revenues and other benefits to the City, which outweigh or are not disproportionate to the cost associated with the GPLET abatement incentive. In recognition of these benefits to the City and as an inducement for Developer’s commitment to redevelop the Project Site, to relocate Developer’s business to the Project Site and in consideration of Developer’s obligations pursuant to this Agreement, the Parties intend for the Project Site and Improvements for which a Certificate of Occupancy has been issued to be eligible, pursuant to A.R.S. § 42-6209 for abatement of the government property lease excise tax (GPLET).

2.2 Transfer Notice, Certificate of Occupancy, Conveyance. Provided that (i) Developer has given the City at least ninety(90) days advance written notice of intent (“**Transfer Notice**”) to convey the Project Site and Improvements (the “**Transfer Property**”) to the City, (ii) a Certificate of Occupancy for the building Improvements constructed on the Project Site has been issued, and (iii) the construction results in an increase in property value of at least one hundred (100%) per cent, Developer may, in accordance with Applicable Laws, and at no cost to the City, convey fee simple title to the Transfer Property to the City. The Transfer Notice shall include a legal description of the Project Site and the date by which the closing of the GPLET Lease needs to occur. The Project Site and Improvements shall be conveyed by a special warranty deed executed and delivered by Developer to the City in the form attached hereto as **Exhibit 3**. The City may accept such conveyance as an administrative act pursuant to the authorizing ordinance approving this Agreement, but subject to the express covenant and pre-condition that the City shall not have, incur, make or accrue any financial, debt or monetary obligation or commitment to any Lender, and that any Lender shall have no recourse against the City other than foreclosure or a trustee’s sale of a deed of trust or other collateral securing the instrument or obligation to which the Lender is a party. The City shall look solely to Developer for the payment of rent and other sums due under this Agreement, the GPLET Lease, and for the performance of all covenants, conditions and obligations contained herein. The GPLET Lease shall be in the form attached as **Exhibit 4** (the “**GPLET Lease**”). Pursuant to A.R.S. § 42-6206.C, the GPLET Lease shall begin within ten years after approval of the Development Agreement by the City Council,

and the term of the GPLET Lease shall not exceed twenty-five years, including any abatement period authorized under A.R.S. § 42-4209, regardless of whether the GPLET Lease is transferred or conveyed to subsequent prime lessees during that period.

2.3 Notice; Independent Estimate of Benefits. The Parties agree and acknowledge, with the execution of this Agreement, that all notices required, pursuant to this Section 2.3, have been made and given by each Party as required and that no additional notices are required. At least sixty (60) days prior to the approval of the GPLET Lease by the City Council, the City shall notify the governing bodies of Yuma County, Yuma School District One, Arizona Western College and Yuma Union High School District, collectively (the “**Governing Bodies**”), including the name and address of the prime lessee (as defined by A.R.S. § 42-6201), the location and proposed use of the government property improvement, and the proposed eight (8) years term of the GPLET Lease. At the City’s sole cost and expense, the City shall provide an estimate of the economic and fiscal benefit to the State of Arizona, the County of Yuma, and the City that demonstrates that the economic and fiscal benefits of entering into the GPLET Lease exceeds the benefits received by the prime lessee as a result of the GPLET Lease. Such estimate shall be prepared by an independent third party of the City’s choosing in a manner and method acceptable to the City Council. The estimate shall be provided to the Governing Bodies, by the City, no later than thirty (30) days before the vote of the City Council on an ordinance adopting the GPLET Lease.

2.4 GPLET Lease. The City agrees to submit the GPLET Lease for approval by the City Council as part of this Agreement. The City Council shall approve or disapprove the GPLET Lease by ordinance, according to its terms, by majority vote without the use of a consent calendar. Rent shall be no more than one dollar (\$1) per year for the term of the GPLET Lease. Within thirty (30) days after entering into the GPLET Lease, the City shall record the GPLET Lease or a memorandum thereof in the office of the Yuma County Recorder and submit to the Yuma County Treasurer and the Arizona Department of Revenue an abstract or copy of the GPLET Lease.

2.5 Taxes and Assessments. Pursuant to A.R.S. § 42-6209.B, the prime lessee shall notify the Yuma County Treasurer and the City and apply for the abatement before the government property lease excise tax (GPLET) is due and payable in the first year after the Certificate of Occupancy is issued. The prime lessee, if subject to the GPLET or abatement pursuant to A.R.S. § 42-6209 shall submit a return to the Yuma county treasurer at least sixty (60) days before the taxes are due on a return form prescribed by the department of revenue and submit a copy of the return to the City. The return shall include the name and address of the prime lessee, and all of the information required pursuant to A.R.S. § 42-6204(B). If the GPLET abatement applies, the prime lessee shall include a certification under penalty of perjury that all elements necessary to qualify for the abatement are satisfied for the year covered by the return.

Subject to abatement of the GPLET, all real, personal, leasehold, rental and other taxes or assessments of any kind or nature, whether general or special, levied, assessed or imposed upon the Project Site or GPLET Lease or any portion thereof, shall be timely paid by Developer. This provision does not preclude Developer or any permitted sub-lessee of Developer from protesting the validity or amount of any tax or assessment.

2.6 Reconveyance. Upon the expiration or other termination, by either Party, of the GPLET Lease and pursuant to the authorizing ordinance approving this Agreement, as an administrative act the

City shall promptly, but in no case more than thirty (30) days, reconvey the Transfer Property by a special warranty deed executed and delivered by the City to Developer (or the designated prime lessee of Developer) in the form attached as **Exhibit 3**. Upon reconveyance the City makes no warranty as to the condition of the Project Site or Improvements thereon. The Project Site and Improvements conveyed by or leased from the City to Developer will be delivered in their then “As Is, Where Is” condition.

2.7 **Condition of Title.** Title to the Transfer Property shall be good and marketable and free and clear of all liens, restrictions, easements, and other encumbrances and title objections, other than (i) any continuing obligations encumbering the Project Site, (ii) taxes not yet due and payable upon the execution of the GPLET Lease, and (iii) the normal and customary patent and water rights endorsements appearing in policies of title insurance for properties located in the same area as the Project Site.

2.8 **Title Insurance and Closing Costs.** Developer shall pay all costs of providing a standard owner’s title insurance policy and leasehold insurance policy for the Transfer Property. If Developer requires an ALTA extended policy or additional title policy endorsements, Developer shall pay the additional cost thereof. Developer shall pay all closing, recording or escrow costs for the conveyance of the Transfer Property, the GPLET Lease, and the reconveyance of the Transfer Property. Each Party shall bear their own costs, including attorneys’ fees, associated with the negotiation, due diligence, investigation and conduct of these transactions.

2.9 **GPLET Release and Indemnity.** Notwithstanding anything to the contrary in Sections 9.1, 20.6 or elsewhere in this Agreement, Developer shall defend, indemnify, release and hold harmless the City and its City Council members, officers, employees and agents from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, liabilities and lawsuits or arbitration, mediation and other dispute resolution proceedings (including without limitation attorneys’ fees, experts’ fees and associated costs) which arise from or relate in any way to A.R.S. §§ 42-6201 through 42-6210 (the “GPLET”), regardless of any acts or omissions by the City or Developer, including without limitation (i) the repeal or amendment of the GPLET statutes as they exist on the Effective Date of this Agreement; (ii) the failure of the GPLET Abatement; or (iii) the Property not being located within the City’s central business district or within a slum or blighted area established pursuant to A.R.S. Title 36, Chapter 12, Article 3. The foregoing provisions of this Section 2.9 shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations.

### **ARTICLE III INSURANCE; INDEMNITIES**

3.1 **Indemnity by Developer.** Developer shall pay, defend, indemnify, release and hold the City and its City Council members, officers, employees and agents harmless from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorney’s fees, experts’ fees and court costs associated) which arise from or relate in any way to any act or omission by Developer, or Developer’s employees, contractors, subcontractors, agents or representatives, that the foregoing provisions shall not apply to loss or damages or claims which are attributable to acts or omissions of the City, its employees, contractors, subcontractors, agents or representatives, and Developer shall have no defense obligations in any instance in which a claim is asserted based, in whole or in part, upon an act or omissions of the City, its employees, contractors,

subcontractors, agents or representatives. The indemnity obligations of Developer shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

3.2 Indemnity by the City. The City shall pay, defend, indemnify, release and hold Developer and its partners, shareholders, officers, managers, members, agents and representatives harmless from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities and suits (including attorney's and experts' fees and court costs associated) which arise from or which relate in any way to any act or omission on the part of the City, its employees, contractors, subcontractors or representatives; provided however, that the foregoing provisions of this Section 3.2 shall not apply to loss or damages or claims which are attributable to acts or omissions of Developer, Developer's employees, contractors, subcontractors, agents or representatives, and the City shall have no defense obligations in any instance in which a claim is asserted based, in whole or in part, upon an act or omissions of Developer, Developer's employees, contractors, subcontractors, agents or representatives. The indemnity obligations of the City shall survive the expiration or termination of this Agreement for a period equal to the applicable statute of limitations period.

3.3 Risk of Loss. At all times Developer assumes the risk of any and all loss, damage or claims to or relating to the Project Site and Improvements.

3.4 Insurance. Developer shall provide the following insurance naming the City and its employees as additional insured with an endorsement:

3.4.1 Comprehensive General Liability Insurance. During the course of any construction activities on the Project Site, Developer, at Developer's sole expense, shall maintain comprehensive general liability insurance against claims for personal injury, death or property damage occurring in, upon or about the Project Site and Improvements. The limitation of liability of such insurance shall not be less than \$1,000,000 per occurrence, \$2000,000 in the aggregate, subject to increase from time to time as the City may reasonably require in an amount customarily provided for such construction activities.

3.4.2 Standard Fire and Extended Coverage. During the term of this Agreement and the GPLET Lease, Developer, at Developer's sole expense, shall maintain a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of 90% of full replacement value of the buildings and other insurable improvements on the Project Site and Improvements. In the case of an insurable loss, an independent third-party trustee shall be appointed to receive and distribute insurance proceeds to assure that replacement or reconstruction is completed according to the plans approved by both Developer and the City.

3.4.3 Special Items. Each insurance policy shall provide the following: (i) the policies cannot be cancelled, or substantially modified until and unless thirty (30) days written notice is received by the City (included on the certificate of insurance); (ii) the insurance company shall have no recourse against the City for payment of any premium or for assessments under any form of policy; and (iii) the policies are intended as primary coverage for the City (included on the certificate of insurance) and that any insurance or self-insurance maintained by the City shall apply in excess of the insurance provided by these policies.

3.4.4 Certificates of Insurance. Developer shall deliver an ACORD 25 Certificate(s) of Insurance (or its successor form of certificate of liability) with appropriate endorsements, for the policies of insurance required hereunder, to City. Developer shall continually maintain evidence of such insurance for City, and provide such evidence upon City's request.

3.4.5 Waiver of Subrogation. Developer waives all rights of subrogation of claims against the City under the required insurance policies. Developer shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers of the waiver of subrogation set forth in this Agreement and shall obtain, at Developer's expense, an appropriate waiver of subrogation endorsement from the insurer.

3.4.6 No Limitation on Indemnity. The procuring of any policy of insurance shall not be construed to be a limitation upon Developer's liability or as a full performance on its part of the indemnification provisions of this Agreement; Developer's indemnity obligation shall be, notwithstanding any policy of insurance, for the full and total amount of any damage, injury, or loss caused by the negligence or neglect connected with the Project Site under this Agreement. Notwithstanding the foregoing, it is not intended for Developer to indemnify City for damage, injury or loss for which City has been compensated by Developer's insurance carrier, but such limitation shall only extend up to the amount of said compensation.

3.4.7 Failure to Maintain Insurance. Failure to maintain the minimum insurance as stated in this Section 3.4 shall constitute default of this Agreement. Without waiving any remedies available to City for such default, City may at its option purchase the required insurance and charge the actual insurance expense thereof to Developer, which expense Developer shall assume and pay as additional rent under the GPLET Lease.

## ARTICLE IV DEFAULT

4.1 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 prescribed in Section 6.2 below 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:

4.1.1 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

4.1.2 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

4.1.3 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.

4.2 Events of Default by Developer. "**Default**" or an "**Event of Default**" by Developer under this Agreement shall mean one or more of the following:

4.2.1 Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or shall prove to be materially inaccurate during the Term of this Agreement;

4.2.2 Foreclosure (or deed in lieu of foreclosure) upon any mechanic's, materialmen's or other lien upon any of the Improvements or the Project Site, excluding liens imposed in connection with Developer's financing or refinancing by Lenders which have entered into nondisturbance agreements with the City, but such lien shall not constitute a Default if Developer deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens pursuant to A.R.S. § 33-1003;

4.2.3 Developer fails to maintain the insurance required in Section 3.4;

4.2.4 Developer fails to observe or perform any other material covenant, obligation or agreement required of the Developer under this Agreement.

4.3 Events of Default by the City. "Default" or an "Event of Default" by the City under this Agreement shall mean one or more of the following:

4.3.1 Any representation or warranty made in this Agreement by the City was materially inaccurate when made or shall prove to be materially inaccurate during the Term of this Agreement, or

4.3.2 The City fails to observe or perform any other material covenant, obligation or agreement required of the City under this Agreement.

4.4 Remedies. If the Default is not corrected within the time periods described in Section 4.1 above, the Non-defaulting Party shall have all remedies available to it at law or in equity, subject to the limitations set forth herein. Either Party 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. If the Default is not cured within 180 days after written notice thereof is delivered in accordance with Section 4.1, either party may terminate this Agreement and the City may suspend any of its non-monetary obligations.

4.5 Enforced Delay. Developer shall not be considered in Default of any of its obligations under this Agreement directly affected (an "Affected Obligation") by delay due to causes beyond its control, without its fault, without its failure to comply with Applicable Laws, and without its negligence, (an "Enforced Delay") for (1) acts of God, and acts of third parties, including Developer's contractors, subcontractors, suppliers, and persons or entities with whom or which Developer has a contractual relationship, if the act or omission of such third party resulting in the delay was beyond the reasonable control of Developer; (2) litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, epidemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather (or the delays of subcontractors or materialmen due to such causes); (3) bankruptcy, insolvency or similar action (if initiated by a third party), or any foreclosure or other exercise of remedies of any Lenders. In the event of the occurrence of any Enforced Delay, the time or

times for Developer's performance of the Affected Obligation shall be extended for the period of the Enforced Delay, provided that if Developer seeks the benefit of the provisions of this Section, Developer shall, within thirty (30) days after Developer knows or reasonably could have known of any such Enforced Delay, first notifies the City of the specific delay in writing and claims the right to an extension for the period of the Enforced Delay, and provided further that no such extension, whether one or more, shall be claimed for or exceed a cumulative total of one hundred and eighty (180) days for any particular Affected Obligation. Notwithstanding the foregoing, the City shall have no obligation to issue any permits or grant any approvals, unless all requirements under Applicable Laws for the issuance of such permits or the grant of such approvals have been met, including without limitation the payment of all applicable fees, such as planning fees, permit fees, utility fees, and City of Yuma Development Fees. Additionally, nothing set forth in this Section modifies the rates of any fees applicable to the Project Site.

4.6 Delays; Waiver. Either of the Parties shall have the right to waive performance by the other Party of any obligation under this Agreement, but no such waiver shall be valid unless in writing signed by the Party so waiving. No waiver by either Party of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

4.7 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.

## **ARTICLE V REPRESENTATIONS OF THE PARTIES**

5.1 Developer Representations. Developer represents and warrants that:

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

5.1.2 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.

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

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

5.1.5 This Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable obligation of Developer 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.

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

5.1.7 Developer 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.

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

5.2 City Representations. City represents and warrants to Developer that:

5.2.1 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.

5.2.2 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.

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

5.2.4 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 Developer.

5.2.5 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, referendum, and other laws of general application affecting creditor's rights and by equitable principles, whether considered at law or in equity.

5.2.6 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.

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

## **ARTICLE VI GENERAL PROVISIONS**

6.1 Rights of Lenders. Financing (whether existing or future) or refinancing for acquisition, development and/or construction of the Project and/or Project 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**”). In the event of Default by Developer, City shall provide notice of such Event of Default, at the same time notice is provided to Developer, to not more than two (2) of such Lenders as previously designated by Developer to receive such notice (the “**Designated Lenders**”) whose names and addresses are provided by written notice to City in accordance with Section 6.2 below. City shall give Developer copies of any such notice provided to such Designated Lenders and, unless Developer notifies City that the Designated Lenders names or addresses are incorrect (and provides City with the correct information) within three (3) business days after Developer receives its copies of such notice from City, City will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Developer may provide notices to other 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 Developer’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 Developer under this Agreement.

6.2 Notices. All notices, consents, requests, instructions, approvals, or other communications required or permitted to be given hereunder, shall be in writing, and shall become effective upon receipt if delivered in person, or 72 hours after such are deposited in the United States mail, postage prepaid, addressed as shown below, or to such other address as any party hereto may, from time to time, designate in writing.

**DEVELOPER:**

Attn: L. Scott Spencer  
The Spencer Companies  
242 S. 1<sup>st</sup> Avenue  
Yuma, AZ 85364

**City of Yuma:**

Attn: City Administrator  
One City Plaza  
Yuma, AZ 85364  
Telephone (928) 373-5011

**With a copy to:** City Attorney  
One City Plaza  
Yuma, AZ 85364

6.3 Construction. Captions or sections of the paragraphs are for convenience only and shall not govern the interpretation of the terms and provisions hereof. This Agreement represents the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement shall be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement shall be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

6.4 Severability. If any term, covenant, condition or 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 Developer 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.

6.5 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement. 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.

6.6 No Partnership, Third Person. 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, firm, corporation or other entity not a Party hereto (including, without limitation, any broker), and no such other person, firm, corporation or entity shall have any right or cause of action hereunder, except for permitted transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement.

6.7 Date of Performance. Time is of the essence. If the date of performance of any obligation hereunder or the last day of any time period provided for herein should fall on a Saturday, Sunday, or legal holiday, then said obligation shall be due and owing, and said time period shall expire, on the first day thereafter which is not a Saturday, Sunday, or legal holiday.

6.8 Counterparts. For the convenience of the Parties, this Agreement may be executed in two or more counterparts and each executed counterpart shall for all purposes be deemed an original and shall have the same force and effect as an original, but all of which together shall constitute in the aggregate but 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. Neither Party shall have any right, duty or obligation under this Agreement unless, nor until this Agreement or counterparts hereof has been executed by both Parties.

6.9 Exhibits; Recitals; Sections. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. The Recitals at the beginning of this Agreement are deemed a material part of this Agreement. References to Sections are to Sections of this Agreement unless stated otherwise.

6.10 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.

6.11 Successors and Assigns. All of the provisions hereof 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 this Agreement or such longer period where the covenant expressly survives the termination of this Agreement. Wherever the term “Party” or the name of any particular Party is used in this Agreement such term shall include any such Party's permitted successors and assigns.

6.12 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 and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 6.12.

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

6.14 Recordation. 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.

6.15 Estoppel Certificate. The Parties agree that, upon not less than twenty one (21) business days prior written request, 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.

6.16 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.

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

6.18 Individual Nonliability. 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 Developer shall be limited solely to the Project Site and the assets of Developer.

6.19 Proposition 207 Waivers. Developer waives and releases the City from any and all claims under A.R.S. § 12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of the Project Site or Improvements or any portion thereof, as a result of City's approval or failure to approve this Agreement or the GPLET Lease. 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.

6.20 Term. This Agreement will commence upon the Effective Date and will terminate when all of the obligations of the Parties are fully completed, or ten (10) years from the Effective Date, whichever occurs first.

6.21 Developer's Rights and Obligations: Developer's rights and obligations under this Agreement shall be non-assignable, without the prior express written consent of City, which consent may be given or withheld in the City's sole and unfettered discretion.

6.22 City Rights and Obligations. City's rights and obligations under this Agreement shall be non-assignable, without the prior express written consent of Developer, which consent may be given or withheld in Developer's sole and unfettered discretion.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date first written above.

**City of Yuma**

**HARDKNOCKS LIMITED PARTNERSHIP,**  
an Arizona limited partnership

By: AllSpn, Inc., an Arizona corporation,  
its general partner

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

By: \_\_\_\_\_  
L. Scott Spencer  
President

ATTEST

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

APPROVED AS TO FORM

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

**EXHIBIT 1**

**(Legal Depiction of Relocation Site)**

Lots 7, 8, 9, and the East 37 feet of Lot 10 as measured along the South line, of Block 12, CITY OF YUMA, according to White's Official Survey files dated 4/4/1894 records of Yuma County, State of Arizona;

EXCEPT the South 51 feet of the East 37 feet of Lot 10;

TOGETHER WITH an easement for ingress and egress and public utilities over the North 4 feet of the South 51 feet of East 37 feet of Lot 10, as measured along the South line of Lot 10.

Above described parcel contains 17267 square feet or 0.397 acres more or less

**EXHIBIT 2**  
**(Conceptual Site Plan)**



**EXHIBIT 3**

When Recorded Return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**SPECIAL WARRANTY DEED**

FOR THE CONSIDERATION of Ten Dollars (\$10.00), and other valuable consideration, \_\_\_\_\_ (“Grantor”), hereby conveys to \_\_\_\_\_ (“Grantee”), the real property (“Property”) situated in Yuma County, Arizona, and more particularly described on Exhibit ”A” attached hereto and made a part hereof, together with the building(s) and other improvements thereon, the fixtures, furnishings and equipment therein, and all rights and privileges appurtenant thereto.

SUBJECT to current taxes and assessments, reservations in patents, all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record and to all matters which an accurate survey or inspection of the Property would disclose.

PROVIDED, that water rights, if any, appurtenant to the Property are excluded from the coverage of the warranties contained herein, and Grantor hereby quitclaims to Grantee all of Grantor’s right, title and interest in and to such water rights, if any, appurtenant to the Property.

And Grantor hereby binds itself and its successors to warrant and defend the title, as against all acts of Grantor herein and none other, subject to the matters above set forth.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_

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

Its: \_\_\_\_\_

“Grantor”

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who acknowledges himself to be the \_\_\_\_\_ of \_\_\_\_\_, (a)n \_\_\_\_\_, and that he as such \_\_\_\_\_, being authorized so to do, executed the forgoing instrument for the purposes therein contained by signing the name of the \_\_\_\_\_ by himself as such \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT 4**  
**(GPLET Lease)**

**WHEN RECORDED RETURN TO:**

Steven W. Moore, Esq.  
City Attorney's Office  
City of Yuma  
One City Plaza  
Yuma, AZ 85364

**HARDKNOCKS DEVELOPMENT  
LAND AND IMPROVEMENTS LEASE**

between

CITY OF YUMA, ARIZONA,  
an Arizona municipal corporation,

and

HARDKNOCKS LIMITED PARTNERSHIP  
an Arizona Limited Partnership

\_\_\_\_\_, 2015

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- A. Legal Description of Land**
- B. Insurance Requirements**
- C. Memorandum of Lease**
- D. Special Warranty Deed**

## HARDKNOCKS DEVELOPMENT LAND AND IMPROVEMENTS LEASE

**THIS LAND AND IMPROVEMENTS LEASE (“Lease”)** is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2015 (“**Execution Date**”) by and between the **CITY OF YUMA**, a municipal corporation (“**Landlord**”), and **HARDKNOCKS LIMITED PARTNERSHIP**, an Arizona Limited Partnership, (“**Tenant**”). The Landlord and Tenant are sometimes referred to herein collectively as the “**Parties**” or individually as a “**Party**”.

### RECITALS

- A. The Parties previously entered into that certain Development Agreement, with an Effective Date of \_\_\_\_\_, 2015, recorded as Document No. 2015-\_\_\_\_\_ in the Official Records of Yuma County, Arizona (the “**Development Agreement**”). The Development Agreement, in part, authorizes the Parties to enter into this Lease. Capitalized terms in this Lease which are not defined herein shall have the same meanings as set forth in the Development Agreement; capitalized terms in this Lease which are defined herein shall prevail over any conflicting definitions in the Development Agreement.
- B. Tenant previously held fee title to the land described in **Exhibit A** hereto (the “**Project Site**”) on which the Tenant has constructed or caused to be constructed certain building(s) and other improvements, along with fixtures, furnishings and equipment therein, (the “**Improvements**”) which, together with all rights and privileges appurtenant thereto and all future additions thereto or alterations and replacements thereof, are collectively referred to herein as the “**Premises**”).
- C. Tenant has conveyed the Premises to the Landlord, and Landlord has agreed to lease the Premises to the Tenant pursuant to this Lease.
- D. The Premises are located in a single central business district in a redevelopment area established pursuant to Title 36, Chapter 12, Article 3, of the Arizona Revised Statutes (“**A.R.S.**”). The construction of the Improvements will result in an increase the property value of at least one hundred percent (100%).
- E. Pursuant to A.R.S. § 42-6206, notice is hereby given that the Premises will be subject to the government property lease excise tax under A.R.S. § 42-6201 through § 42-6209 (the “**GPLET**”). Landlord has or will abate the GPLET for the period beginning upon the issuance of the Certificate of Occupancy on those Improvements defined by A.R.S. § 42-6201 as a government property improvement and ending eight (8) years thereafter, as provided in A.R.S. §42-6209.

## AGREEMENT

IN CONSIDERATION of the mutual promises and covenants contained herein, and of other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

### ARTICLE 1 LEASE OF PREMISES

**1.1 Lease.** In consideration of the covenants of Tenant contained in this Lease, Landlord leases the Premises to Tenant, and Tenant leases the Premises from Landlord, effective as of the Commencement Date set forth in Section 2.1, in an “AS IS” “WHERE IS” condition and subject to: (a) current taxes and assessments, reservations in patents all rights-of-way, easements, liens, encumbrances, covenants, conditions, restrictions, obligations, and liabilities of record; (b) all matters which an accurate survey or physical inspection of the Premises would disclose; and (c) all federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, development fees (in accordance with A.R.S. § 9-463.05), and other requirements and official policies of the City, now or hereafter in effect (“Applicable Laws”).

**1.2 Premises.** The Premises include the Project Site described on **Exhibit A**, attached hereto and made part hereof and the Improvements constructed thereon.

**1.3 Tenant’s Inspection of the Premises.** Tenant has inspected and investigated the Premises to Tenant’s complete satisfaction, observed its physical characteristics and existing conditions, the operations thereon and on adjacent areas, and Tenant hereby waives any and all objections to, complaints about, or claims regarding the Premises and its physical characteristics and existing conditions, including, without limitation, subsurface soil and water conditions and solid and hazardous waste and any Hazardous Substance on, under or adjacent to the Premises. Tenant further hereby assumes the risk of changes in Applicable Laws and regulations relating to past, present and future environmental conditions on the Premises and the risk that adverse physical characteristics and conditions, including, without limitation, the presence of any Hazardous Substance or other contaminants that may not have been revealed by its investigation. Landlord is hereby released from all responsibility and liability regarding the operation, condition (including the presence in the soil, air, structures, and surface and subsurface waters, of materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled and/or removed from the Premises under current or future federal, state and local laws and regulations), valuation or utility of the Premises, or its suitability for any purpose whatsoever. Tenant expressly acknowledges that Tenant has not relied on any warranties, promises, understandings or representations, express or implied, oral or written, of Landlord or of any agent of Landlord, relating to the Premises, except as specifically set forth in this Lease.

**1.4 Quiet Enjoyment.** Landlord covenants that so long as Tenant shall perform the obligations of Tenant contained in this Lease and shall not be in default in the performance of any of such obligations, Landlord shall take no act or fail to take any action that would deny Tenant and its permitted subtenants, licensees, successors and assigns the right to freely,

peaceably, and quietly have, hold and enjoy full and exclusive use and enjoyment of the Premises.

## **ARTICLE 2 TERM**

**2.1 Commencement Date and Term.** The term of this Lease (the “**Term**” or “**Lease Term**”) shall be for a period of eight (8) years, commencing on the date on which, (i) the Certificate of Occupancy for those Improvements referenced in Recital E above was issued by the City; and (ii) fee title to the Transfer Property is conveyed from Tenant to Landlord (the “**Commencement Date**”), and ending at midnight on the eighth (8<sup>th</sup>) anniversary of the Commencement Date, subject to the terms and conditions set forth in this Lease which may permit or provide for an earlier termination. However, and notwithstanding anything to the contrary herein, Tenant shall not be obligated to pay any Rent or perform any of its other obligations under this Lease until the Commencement Date of this Lease.

**2.2 Termination and Reconveyance.** Upon the end of the Lease Term or earlier termination by either Party, this Lease shall terminate, and fee title to the Premises shall be promptly reconveyed (the “**Reconveyance**”) by the City, but in no case within more than thirty (30) days, to the prime lessee of this Lease at the time of termination, pursuant to a special warranty deed executed and delivered by the City in the form of **Exhibit D** hereto.

## **ARTICLE 3 RENT**

The consideration for this Lease includes, without limitation, the following payments by Tenant to Landlord (collectively, the “**Rent**”):

**3.1 Annual Rental.** Tenant shall pay to Landlord as annual rental for the Premises the sum of one dollar (\$1) (the “**Annual Rent**”) on the Commencement Date and on each consecutive anniversary thereof. The Landlord accepts and acknowledges the receipt of prepayment of the Rent for the Term of this Lease.

**3.2 Additional Rent.** Upon ten (10) days prior written notice to Tenant, Landlord may pay any sum or do any act which Tenant has failed to do (however, Landlord shall have no obligation to do so), and Tenant agrees to pay Landlord, upon demand, all sums so expended by Landlord, together with interest at a rate (the “**Default Rate**”) equal to four (4) percentage points added to the prime lending rate of JP Morgan Chase Bank, N.A. or its successor bank, as it varies from time to time. In addition to Annual Rent, such sums expended by Landlord, interest thereon and all other payments to be made by Tenant under this Lease shall be deemed “**Additional Rent**” and shall be due and payable within ten (10) days after notice thereof to Tenant if no other time for payment is specified.

## **ARTICLE 4 UTILITIES**

In addition to the Rent and other payments herein provided, Tenant during the Term of this Lease shall pay, prior to delinquency, for all water, gas, light, power, telephone,

telecommunications, cabling, sewage, refrigeration, air conditioning, heat and ventilation, janitorial and all other materials and utilities used in connection with or supplied to the Premises. To the extent not already installed, Tenant at its cost and expense shall be solely obligated for all utility connect, disconnect and security deposit charges applicable to the Premises. Landlord shall not be liable for, and Tenant shall not be entitled to any other relief, by reason of the unavailability, limited availability, or interruption of any utilities and services.

## **ARTICLE 5 TAXES AND ASSESSMENTS**

**5.1 Payment of Taxes and Assessments.** Subject to the GPLET Abatement provisions of this Lease, Tenant shall pay, prior to delinquency: (a) all real property taxes, personal property taxes, GPLET and other taxes, assessments, levies, fees, fines, penalties and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which now or hereafter under existing or future Applicable Laws are imposed or levied upon, measured by or assessed during the Lease Term against (i) the Premises, (ii) any Annual Rent, or any Additional Rent or other sum payable by Tenant hereunder or (iii) this Lease, the leasehold estate hereby created or which arises in respect of the operation, possession or use of the Premises; and (b) all sales, transaction privilege, gross receipts or similar taxes imposed or levied upon, assessed against or measured by any Annual Rent, or other amounts payable to Landlord hereunder, but not income taxes (collectively, the “**Taxes**”). If Tenant fails to pay any Taxes before they become delinquent, Landlord, after notice to Tenant, may pay such delinquent Taxes, and all expenditures and costs incurred thereby shall be payable as Additional Rent hereunder within ten (10) days after such notice to Tenant. Tenant will furnish to Landlord, promptly after demand therefor, proof of payment of all Taxes payable by Tenant. Tenant may pay such Taxes in installments if legally permitted to do so.

**5.2 GPLET.** Pursuant to A.R.S. § 42-6206, and in addition to the notice of the GPLET given in Recital E above, any failure by Tenant to pay the GPLET after notice and an opportunity to cure as set forth in Section 15.1 of this Lease is an Event of Default that could result in divesting Tenant of any interest in or right of occupancy of the government property improvement which includes the whole of the Premises being leased hereunder.

**5.3 Prorations.** All Taxes due and payable in the first and last years of the Term hereof shall be prorated so that Tenant is obligated only for those Taxes accruing or due during the Lease Term.

**5.4 Privilege of Contesting.** Upon at least ten (10) days prior written notice to Landlord and Tenant furnishing to Landlord such bonds or other security in such form and by such issuers as reasonably approved by Landlord in an amount equal to one hundred fifty percent (150%) of the amount of Taxes being contested, Tenant shall have the right to protest, contest, object to or oppose the legality or amount of any such Taxes to be paid by Tenant hereunder. In the event of any such contest, Tenant may defer payment of any such Taxes so long as the legality or the amount thereof is being so contested, diligently and in good faith; provided, however, that if at any time payment of the whole or any part thereof shall become necessary in order to prevent the termination by sale or otherwise of the right of redemption of any property affected thereby or to prevent physical eviction of either Landlord or Tenant because of

nonpayment thereof, Tenant shall pay the same in order to prevent such termination of the right of redemption or such eviction. Any such contest shall be at the sole cost and expense of Tenant and Tenant shall pay any costs or expenses incurred by Landlord as a result of any such contest. Each refund of any Taxes so contested shall be paid to Tenant, and Landlord shall not, without prior approval of Tenant, make or enter into or finally agree to any settlement, compromise or any deposition of any contest or discontinue or withdraw any contest or accept any refund, other adjustment or credit of or from any such Taxes as a result of any contest. If there are any refunds of the Taxes at the beginning or end of the Lease Term, the amounts will be prorated between Landlord and Tenant on the basis set forth in Section 5.3. Any and all penalties and interest that become due as a result of any such contest shall be paid by Tenant.

## **ARTICLE 6 USES; LEGAL AND ENVIRONMENTAL COMPLIANCE**

**6.1 Permitted Uses.** Tenant shall use and occupy the Premises only for the following uses and purposes and no other without the prior written consent of Landlord in its sole and absolute discretion:

(a) for the construction, installation, furnishing, maintenance, repair, reconstruction, replacement, alteration and office use operation, in strict conformity with this Lease, the Development Agreement and Applicable Laws, of Improvements which include an approximate 5,176 square foot office building, together with appurtenant asphalt or concrete paving, landscaping, sidewalks and all necessary and appurtenant structures, machinery and equipment, all as more particularly described in the Site Plan approved by Landlord; and

(b) for construction, erection, maintenance, repair, reconstruction, replacement, alteration and operation of parking spaces in sufficient numbers to provide adequate parking, as may be approved by Landlord, for the uses on the Premises.

**6.2 Continuous Operation.** After the issuance of a Certificate of Occupancy for the Improvements or any portion thereof, Tenant shall continuously occupy, operate, and use the Premises and all Improvements for which the Certificate of Occupancy was issued for the operational purposes specified above, during all usual business hours and on all such days as similar office buildings are operated in the same market area in which the Premises are located, except to the extent that Tenant is unable to occupy, operate, or use the Premises for reasons beyond the reasonable control of Tenant, such as during periods of damage or destruction.

**6.3 Legal Compliance; Nuisance; Waste.** Tenant shall fully comply with all Applicable Laws of all governmental authorities having jurisdiction over Premises, or any part thereof. Tenant shall pay all costs, expenses, liabilities, losses, fines, penalties, claims and demands including, without limitation, attorneys' fees that may in any way arise out of or be imposed because of the failure of Tenant to comply with such Applicable Laws. Tenant shall not conduct or permit to be conducted any public or private nuisance on or from the Premises. Tenant shall not permit or commit any waste of the Premises.

#### 6.4 Hazardous Substances.

(a) **Definitions.** As used herein, the term “**Hazardous Substance**” means any hazardous or toxic substance, material, or waste which is or becomes regulated by any federal, state or local governmental authority, including, without limitation, (i) any substance, chemical or waste that is or shall be listed or defined as hazardous, toxic or dangerous under Applicable Environmental Law, (ii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any federal, state or local governmental authority pursuant to any environmental, health and safety or similar law, code, ordinance, rule, regulation, order or decree and which may or could pose a hazard to the health and safety of occupants or users of the Premises or any part thereof, any adjoining property or cause damage to the environment, (iii) any petroleum products, (iv) PCB’s, i.e. polychlorinated biphenyl (v) leaded paint, and (vi) asbestos. As used in this Lease, the term “**Applicable Environmental Law**” shall mean the Comprehensive Environmental Response, compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, the Resources Conservation Recovery Act, 42 U.S.C. §§ 6901 *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.*, the Clean Air Act, 42 U.S.C. §§ 7401 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.*, and the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j-26, as such Acts have been or are hereafter amended from time to time; any so called Superfund or superlien law; and any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning hazardous, toxic or dangerous waste, substance or material as now or any time hereafter in effect.

(b) **Restrictions on Hazardous Substances; Remedial Work.** Tenant shall not cause or permit any Hazardous Substance to be brought, kept or used in or about the Premises by Tenant, its members, managers, officers, directors, owners, agents, employees, subtenants, assignees, vendors, suppliers, contractors, subcontractors, invitees or concessionaires (“**Tenant’s Personnel**”) except in commercial quantities not in violation of Applicable Environmental Law and similar to those quantities usually kept on similar premises by others in the same businesses. Tenant shall store, use and dispose (and shall cause Tenant’s Personnel to store, use and dispose) of any Hazardous Substance in compliance with all Applicable Laws, including, without limitation, Applicable Environmental Law. If the presence of any Hazardous Substance on, in or under the Premises caused or permitted by Tenant or Tenant’s Personnel results in any contamination of the Premises, Tenant shall promptly take all actions, at its sole expense, as are necessary to return the affected area to the condition existing prior to the introduction of any such Hazardous Substance, including, without limitation, any investigation or monitoring of site conditions or any clean up, remediation, response, removal, encapsulation, containment or restoration work required because of the presence of any such Hazardous Substance on, in or under the Premises or any release or suspected release or threat of release of any such Hazardous Substance in the air, soil, surface water or ground water (collectively, “**Tenant’s Remedial Work**”). Tenant shall obtain all necessary licenses, manifests, permits and approvals to perform Tenant’s Remedial Work. Tenant shall promptly perform all of Tenant’s Remedial Work and the disposal of

all waste generated by Tenant's Remedial Work in accordance with all Applicable Environmental Law.

(c) **Compliance with Applicable Environmental Law.** Without limiting the generality of the foregoing or any other provision of this Lease, Tenant shall be solely and completely responsible for insuring that the Premises and all activities thereon (including activities of Tenant and Tenant's Personnel) comply fully with Applicable Environmental Law and for responding to, defending against and/or complying with any administrative order, request or demand relating to potential or actual contamination on the Premises, or third party claims (including the claims of current or future subtenants in the Premises, or other tenants or subtenants in parcels adjoining or near the Premises) for Tenant's Remedial Work or for the costs of any such remedial work or for the costs of any such Tenant's Remedial Work which any third-party claimant has undertaken, whether such order, request, demand or claim names Landlord, Tenant or both, or refers to the Premises in any way. Tenant's responsibility under this Section includes but is not limited to promptly responding to such order, requests, demands and claims on behalf of Landlord and defending against any assertion of Landlord's financial responsibility or duty to perform thereunder.

(d) **Indemnification of Landlord.** Tenant shall indemnify, save harmless and defend Landlord, its council members, officers, officials, employees, agents, successors and assigns (collectively with Landlord, the "**Landlord Indemnitees**") for, from and against any and all claims (including, without limitation, third party claims for personal injury or real or personal property damage), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities, interest or losses (including, without limitation, diminution in value of the Premises and the Improvements to the Premises, damages for the loss or restriction on use of rentable space or of any amenity in the Improvements to the Premises, damages arising from any adverse impact on marketing of space in the Improvements to the Premises, and sums paid in settlement of claims, attorney's fees, consultant fees, expert fees and any fees and expenses incurred in enforcing this indemnity) incurred by, sought from or asserted directly or indirectly against any Landlord Indemnitees during or after the Term of this Lease as a result of the presence of any Hazardous Substance on, in or under the Premises or any release of any Hazardous Substance into the air, soil, surface water or ground water, which Hazardous Substance was brought, kept or used in or about the Premises by Tenant or Tenant's Personnel, or as a result of a breach by Tenant of its obligations under this Section 6.4. Tenant shall promptly provide Landlord copies of all communications, filings or other writings, photographs or materials given to or received from any person, entity or agency in connection with any cleanup or Tenant's Remedial Work conducted by Tenant, and shall notify Landlord of, and permit Landlord's representative to attend, any meetings or oral communications relating thereto.

(e) **Survival.** The forgoing obligations and indemnities set forth in this Section 6.4 shall survive the termination or expiration of this Lease.

**ARTICLE 7**  
**DEVELOPMENT OF THE PREMISES AND**  
**CONSTRUCTION OF IMPROVEMENTS; TRADE FIXTURES**

**7.1 Development.** The planning and development of the Premises and Improvements has been achieved pursuant to the applicable provisions of the Development Agreement and Landlord's normal review and construction inspection process.

**7.2 Alterations.** In addition to the initial Improvements pursuant to Section 7.1 above, Tenant at its sole cost and expense may make additions and alterations to the Improvements now or hereafter located on the Premises, provided that (a) all such additions and alterations shall be constructed of new, high quality materials in a workmanlike manner, and shall not weaken or impair the structural strength or materially decrease the value of any existing Improvements; (b) all such additions and alterations shall comply with Applicable Laws, including without limitation obtaining all required permits and approvals of such construction from the governmental authorities and utilities having jurisdiction thereof; and (c) Tenant has complied with the provisions of Section 7.3 with respect thereto.

**7.3 Plans and Specifications; Contractors.** All construction work on the Premises, and all alterations and additions thereto, shall be done in compliance with and pursuant to detailed plans, drawings and specifications and by duly licensed and reputable contractors, first approved in writing by Landlord, such approval not to be unreasonably withheld or delayed and to be presumed given if written notice of disapproval is not given within fifteen (15) Business Days of Landlord's receipt of a request for approval ("**Business Days**" hereby defined to mean calendar days other than Fridays, Saturdays, Sundays and legal holidays observed by the City of Yuma). Any modifications to any such plans, drawings and specifications shall also require the prior written approval of Landlord, such approval not to be unreasonably withheld or delayed and to be presumed given if written notice of disapproval is not given within fifteen (15) Business Days of Landlord's receipt of a request for approval.

**7.4 Ownership of Improvements.** In addition to the Landlord's ownership of the Premises, all Improvements, and all alterations and additions thereto, constructed by or on behalf of Tenant are hereby conveyed to and shall remain the property of Landlord during the Term of this Lease. Upon the expiration of this Lease, all such Improvements, and all alterations and additions thereto, shall be reconveyed and become the property of Tenant. This Section excludes Trade Fixtures and Personal Property (as defined in Section 18.1).

**7.5 Mechanics' Liens.**

(a) **Tenant Not Agent of Landlord.** Notice is hereby given that Tenant is not the agent of Landlord for the construction, alteration or repair of any Improvements, the same being done at the sole direction and expense of Tenant. All contractors, materialmen, mechanics, and laborers are hereby charged with notice that they must look only to Tenant for the payment of any charge for work done or material furnished on the Premises during the Lease Term. Tenant shall have no right, authority or power to bind Landlord or any interest of Landlord for the payment of any claim for labor or material, or for any charge or expense, incurred by Tenant as to Improvements, additions,

alterations or repairs on or to the Premises, and Tenant shall post notices on the Premises during all construction work of any nature whatsoever that Landlord is not responsible for any material and labor used on the Premises.

(b) **Landlord's Protection.** Tenant shall not suffer or permit to be enforced against the Premises, or any part thereof, and shall indemnify, defend and hold Landlord and the Premises harmless for, from, and against (i) any mechanics', materialman's, contractor's or subcontractor's liens arising from, and (ii) any claim for damage arising from the work or any construction, repair, restoration, replacement, or improvement done by or on behalf of Tenant. Tenant shall pay or cause to be paid all of such liens, claims, or demands before any action is brought to enforce the same against the Premises. If Tenant shall in good faith contest the validity of any such lien, claim, or demand, then Tenant shall, at its expense, defend itself and Landlord against the same and shall pay and satisfy any adverse judgment that may be rendered thereon prior to execution thereof and in the event of any such contest Tenant shall at the request of Landlord provide such security and take such steps as required by A.R.S. §33-1003 or other Applicable Laws to release the Premises from the effect of such lien.

**7.6 Easements; Restrictive Covenants.** In connection with the further development of the Premises, Landlord agrees to:

(a) **Easements.** Join with Tenant in granting to public utilities or public service corporations, for the purpose of serving only the Premises, reasonable easements on, under, or over the Premises for telephone, electricity, water, cable, sanitary or storm sewers or both, drainage facilities, and for other utilities; and

(b) **CC&Rs.** Consent to or join with Tenant in granting or otherwise subjecting portions of the Premises to such covenants, conditions, restrictions and reciprocal easements as are reasonably necessary or appropriate in connection with the further development of the Premises.

## **ARTICLE 8 REPAIRS AND MAINTENANCE**

**8.1 Obligations of Tenant.** During the Lease Term, Tenant, at its sole cost and expense, shall keep and maintain all of the Improvements now or hereafter located on the Premises, together with all additions and alterations thereto, and all fixtures and equipment therein, in good, attractive and safe condition and repair and shall make all necessary repairs, replacements and renewals, whether structural or non-structural, foreseen or unforeseen, ordinary or extraordinary, in order to maintain such state of repair and condition, it being understood and agreed that Landlord shall have no liability for any of the foregoing. Tenant's maintenance and repair obligations shall apply, without limitation, to the maintenance, repair and replacement of all buildings, heating, ventilation and air conditioning equipment, windows and plate glass, wiring, plumbing, roadways, driveways, parking areas, landscaping, sidewalks, fencing, lighting, retention ponds, drainage and utility facilities and other Improvements located on, in, or under the Premises. Tenant, at Tenant's expense, shall be responsible for all improvements, additions, alterations, maintenance, and repairs necessary or appropriate such that the Premises and all

Improvements thereon are in substantial compliance with Applicable Laws. In addition, but notwithstanding anything contained in this Section 8.1 to the contrary (and subject to causes beyond Tenant's reasonable control which are described in Articles 10 and 11 hereof), Tenant shall cause the office building to be maintained in good repair and condition and in conformity with Applicable Laws. Tenant shall make or cause to be made such routine maintenance, repairs and minor alterations to the Premises as Tenant, from time to time, reasonably deems necessary. Tenant waives any provisions of Applicable Laws that may require any duty of repair by Landlord or permit Tenant to make repairs at the expense of Landlord.

## **ARTICLE 9 INDEMNITY AND INSURANCE**

**9.1.1 Indemnity.** Tenant shall pay, defend, indemnify, release and hold harmless each and all Landlord Indemnitees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys fees, experts' fees and court costs associated therewith) arising out of (a) any accident or other occurrence causing injury to or death of persons or damage to property by reason of construction or maintenance of any Improvements, of any additions, alterations or renovations thereto, or due to the condition of the Premises or any Improvements thereon, or the use or neglect thereof by Tenant, Tenant's Personnel, or any other person, or otherwise occurring upon the Premises or any Improvements thereon, or (b) arising out of any failure of Tenant to comply with any of Tenant's obligations under this Lease; provided however, that the foregoing provisions of clauses (a) and (b) of this Section 9.1 shall not apply to loss or damages or claims therefore which are attributable to acts or omissions of Landlord, its employees, contractors, subcontractors, agents or representatives, and Tenant shall have no defense obligations in any instance in which a claim is asserted based, in whole or in part, upon an act or omissions of Landlord, its employees, contractors, subcontractors, agents or representatives.

**9.1.2 GPLET Release and Indemnity.** Notwithstanding anything to the contrary in Sections 9.1, 20.6 or elsewhere in this Agreement, Developer shall defend, indemnify, release and hold harmless the City and its City Council members, officers, employees and agents from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, liabilities and lawsuits or arbitration, mediation and other dispute resolution proceedings (including without limitation attorneys' fees, experts' fees and associated costs) which arise from or relate in any way to A.R.S. §§ 42-6201 through 42-6210 (the "**GPLET**"), regardless of any acts or omissions by the City or Developer, including without limitation (i) the repeal or amendment of the GPLET statutes as they exist on the Effective Date of this Agreement; (ii) the failure of the GPLET Abatement; or (iii) the Property not being located within the City's central business district or within a slum or blighted area established pursuant to A.R.S. Title 36, Chapter 12, Article 3.

**9.1.3 Survival.** The foregoing provisions of this Section 9.1 shall survive the expiration or termination of this Lease for a period equal to the applicable statute of limitations period.

**9.2 Liability, Etc. Insurance.** Tenant shall, at all times during the Lease Term and at the sole cost and expense of Tenant, procure and maintain liability and other insurance in accordance with and in amounts and coverages set forth in Section 9.3 and on Exhibit B hereto.

**9.3 Casualty Insurance.** Tenant, at its sole cost and expense, shall obtain and continuously maintain in full force and effect during the Lease Term, policies of insurance covering the Improvements now or hereafter constructed, installed or located on the Premises naming the Landlord, as an additional insured, against (a) loss or damage by fire; (b) loss or damage from such other risks or hazards now or hereafter covered by a current ISO form "special causes of loss" (also known as "all-risk") policy (or similar policy providing comparable coverage), including, but not limited to, windstorm, hail, explosion, vandalism, riot and civil commotion, damage from vehicles, smoke damage, water damage and debris removal; (c) loss for flood, if required by Lender, if the Premises are in a designated flood or flood insurance area; (d) loss for damage by earthquake, if required by Lender, if the Premises are located in an earthquake-prone area; (e) loss from so-called explosion, collapse and underground hazards; (f) loss or damage covered by a customary policy of boiler and machinery insurance to the extent applicable to the Improvements; and (g) loss or damage from such other risks or hazards of a similar or dissimilar nature which are now or may hereafter be customarily insured against with respect to improvements similar in construction, design, general location, use and occupancy to the Improvements. Such insurance coverage at all times shall be in an amount equal to ninety percent (90%) of the then Full Replacement Cost of the Improvements. "**Full Replacement Cost**" means the cost of replacing the Improvements without deduction for depreciation or wear and tear, and shall include a reasonable sum for architectural, engineering, legal, administrative and supervisory fees connected with the restoration or replacement of the Improvements in the event of damage thereto or destruction thereof. If a sprinkler system shall be located in any of the Improvements, sprinkler leakage insurance consistent with the foregoing general requirements shall be procured and continuously maintained by Tenant at Tenant's sole cost and expense. All such policies shall comply with the insurance requirements in Paragraphs D, E and F of Exhibit B hereto and shall provide that loss, if any, payable thereunder shall be payable to Tenant (or to the Leasehold Mortgagee, if required by the terms of any Leasehold Mortgage) to be held in trust and disbursed for the restoration and repair of the Premises pursuant to Section 10.3 or allocated between Landlord and Tenant after a termination of the Lease pursuant to Section 10.2, whichever is applicable.

**9.4 Waiver of Subrogation and Release of Claims.** Tenant, on behalf of Tenant and its insurers, waives, releases and discharges Landlord from all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, attorneys' fees and the costs and expenses of enforcing any indemnification, defense or hold harmless obligation under this Lease (collectively, "**Claims**"), arising out of personal injury or damage to or destruction of the Premises or Tenant's trade fixtures, other personal property or business, and any loss of use or business interruption, occasioned by any fire or other casualty or occurrence whatsoever (whether similar or dissimilar), regardless whether any of such Claims results from the negligence or fault of Landlord or otherwise, and Tenant will look only to Tenant's insurance coverage (regardless whether Tenant maintains any such coverage, regardless whether any such insurance covers such Claims and regardless of any self-insured retention maintained by Tenant) in the event of any such Claims. Tenant's Trade Fixtures and Personal

Property and all other property in Tenant's care, custody or control, is located within the Premises at Tenant's sole risk, and Landlord is not liable for any damage to or for any theft, misappropriation or loss of such Trade Fixtures and Personal Property. Tenant is solely responsible for providing such insurance as may be required to protect Tenant and Tenant's Personnel against any injury, loss, or damage to persons or property occurring within the Premises, including, without limitation, any loss of business or profits from any casualty or other occurrence within the Premises.

**9.5 Conflict.** If any of the foregoing provisions of this Article 9 conflict with any of Section 3.4 (captioned "Insurance") of the Development Agreement, the provisions of this Article 9 shall prevail.

## **ARTICLE 10 DAMAGE AND DESTRUCTION**

**10.1 Damage or Destruction.** Subject to the provisions of Sections 10.2 and 10.3, if any Improvements are damaged or destroyed during the Lease Term by fire, earthquake, flood or any other casualty covered or required to be covered by a policy of insurance to be maintained pursuant to Article 9, Tenant shall repair and/or rebuild the same (a "**Restoration**") so that the repaired or rebuilt Improvements shall have at least the same values as such Improvements immediately prior to such damage or destruction, such construction to be undertaken and completed in accordance with the requirements of Article 7. In no event whatsoever shall Landlord be required to repair, replace, or restore any Improvements as a result of any such damage or destruction. No damage to or destruction of Improvements shall effect an abatement or reduction in Rent or, except as provided in Section 10.2, a termination of this Lease, and Tenant waives any provisions of Applicable Laws that may be to the contrary.

**10.2 Lease Termination by Tenant.** If the Improvements are damaged or destroyed (a) at any time during the Term of this Lease by fire or other casualty covered or required to be covered by a policy of insurance to be maintained pursuant to Article 9 and the cost of repairing or rebuilding such Improvements exceeds twenty-five percent (25%) of the full replacement value thereof; or (b) at any time during the Term of this Lease by casualties not covered or required to be covered by a policy of insurance to be maintained pursuant to Article 9 and the cost of repairing or rebuilding such Improvements exceeds fifty percent (50%) of the full replacement value thereof, Tenant, by giving written notice to Landlord within sixty (60) days after the occurrence of such damage or destruction and by removing, if requested by Landlord and approved by any permitted Leasehold Mortgagee, any damaged or destroyed Improvements and leveling and grading that portion of the Premises underlying such removed Improvements, may elect to terminate this Lease. Also, if a Restoration of any damaged or destroyed Improvements shall not occur by reason of any Leasehold Mortgagee applying the insurance monies to the repayment of any amounts due under its Leasehold Mortgage as permitted by Section 10.3 below, Landlord, by giving written notice to Tenant, may elect to terminate this Lease with respect to that portion of the Premises underlying such damaged or destroyed Improvements, as well as the parking or common area therefor. Notwithstanding anything contained in this Lease to the contrary, in the event of a termination of the Lease pursuant to this Section 10.2, the balance of any insurance monies payable by reason of any damage or destruction shall be paid for the full cost to remove the damaged or destroyed Improvements and to level and grade that portion of the Premises underlying such removed Improvements, with the

balance thereof to be disbursed to the permitted Leasehold Mortgagee(s) and applied to the repayment of its or their Leasehold Mortgage(s).

**10.3 Application of Insurance Proceeds.** All insurance monies on account of such damage or destruction, less the costs, if any, of such recovery, shall be disbursed to the permitted Leasehold Mortgagee(s) and, in the sole and absolute discretion of any permitted Leasehold Mortgagee(s), applied either to the cost of Restoration or to the repayment of any amounts due under the Leasehold Mortgage(s); provided, however, that if any Leasehold Mortgagee applies such insurance monies to the repayment of its Leasehold Mortgage, that portion of such insurance monies required to pay the full cost to remove the damaged or destroyed Improvements and to level and grade the portion of the Premises underlying such removed Improvements shall be excluded from the repayment of amounts due under the Leasehold Mortgage(s) and, instead, shall be paid for the full cost of removing the damaged or destroyed Improvements and leveling and grading the portion of the Premises underlying such removed Improvements. To the extent that a Leasehold Mortgagee elects to allow the insurance monies to be utilized for the Restoration, such insurance monies shall be applied to the payment of the costs of the Restoration and shall be paid out from time to time as the Restoration progresses upon the written request of Tenant (such written request to be made to Landlord and the insurer or, if the Leasehold Mortgagee requires such insurance proceeds to be held by the Leasehold Mortgagee, to Landlord, the Leasehold Mortgagee, and the insurer), accompanied by a certificate of the architect or a qualified professional engineer in charge of the Restoration stating that as of the date of such certificate (a) the sum requested is justly due to the contractors, subcontractors, materialmen, laborers, engineers, architects or persons, firms or corporations furnishing or supplying work, labor, services or materials for such Restoration, or is justly required to reimburse Tenant for any expenditures made by Tenant in connection with such Restoration, and when added to all sums previously paid out by Landlord does not exceed the value of the Restoration performed to the date of such certificate by all of said parties; (b) except for the amount, if any, stated in such certificate to be due for work, labor, services or materials, there is no outstanding indebtedness known to the person signing such certificate, after due inquiry, which is then due for work, labor, services or materials in connection with such Restoration, which, if unpaid, might become the basis of a mechanic's lien or similar lien with respect to the Restoration or a lien upon the Premises, or any portion thereof; and (c) the costs, as estimated by the person signing such certificate, of the completion of the Restoration required to be done subsequent to the date of such certificate in order to complete the Restoration do not exceed the sum of the remaining insurance monies, plus the amount deposited by Tenant, if any, remaining in the hands of Landlord after payment of the sum requested in such certificate. Tenant shall furnish Landlord, at the time of any such payment, evidence reasonably satisfactory to Landlord that there are no unpaid bills in respect to any work, labor, services or materials performed, furnished or supplied in connection with such Restoration. Landlord (or the Leasehold Mortgagee, if applicable) and Tenant shall not be required to pay out any insurance monies where Tenant fails to supply satisfactory evidence of the payment of work, labor, services or materials performed, furnished or supplied, as aforesaid. Upon completion of the Restoration and payment in full thereof by Tenant, Tenant shall be entitled to receive any insurance monies or other monies then remaining upon submission of proof reasonably satisfactory to Landlord that the Restoration has been paid for in full and the damaged or destroyed Improvements repaired, restored or rebuilt as nearly as possible to the condition there were in immediately prior

to such damage or destruction, or with such additions or alterations as may be made in accordance with Section 7.2 above.

## **ARTICLE 11 CONDEMNATION**

**11.1 Entire or Substantial Condemnation.** If all or Substantially All of the Premises shall be lawfully taken by condemnation or other eminent domain proceedings pursuant to any Applicable Laws, general or special, this Lease shall terminate on the date of such taking. All Rent required to be paid by Tenant under this Lease shall be paid up to the date of such termination and upon such termination this Lease shall be of no further force and effect, except that any obligation or liability of either Party, actual or contingent, under this Lease which has accrued on or prior to such termination date shall survive and any prepayment of Rent shall be prorated between the Parties. For purposes of this Section “**Substantially All of the Premises**” shall mean such portion of the Premises as, when so taken, would leave remaining a balance of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not under economic conditions, applicable zoning laws and building regulations then existing or prevailing, reasonably accommodate Tenant’s business as conducted at the date of such taking. Tenant, in cooperation with Landlord, shall have the right to participate in any condemnation proceedings and be represented by legal counsel for the purpose of protecting its interests hereunder.

**11.2 Continuation of Lease.** In the event of a taking of less than all or Substantially All of the Premises, this Lease shall continue in effect with respect to the portion of the Premises not so taken, and Tenant at its expense, to the extent Tenant has received the award for the taking, shall proceed with reasonable diligence with restoring the remaining parts of the Premises, subject to Section 7.2, to substantially the condition existing immediately prior to the date of taking to the extent that the same may be feasible to constitute a complete and tenantable Premises.

**11.3 Award.** Except for a partial taking that does not result in a termination of this Lease, the Tenant shall receive the entire award. In the case of a partial taking which does not result in a termination of this Lease, and, provided no Default shall have occurred and be continuing, such award shall be paid in the same manner as insurance proceeds are paid pursuant to Section 10.3 for the cost of restoring the Premises pursuant to Section 11.2 hereof. Nothing herein contained shall prohibit Tenant from making a separate claim, to the extent permitted by Applicable Laws, for the value of Tenant’s relocation expenses, Trade Fixtures and Personal Property.

**11.4 Notice of Condemnation.** In the event any action is filed to condemn the Premises or any part thereof by any public or quasi-public authority under the power of eminent domain, or in the event that action is threatened or any public or quasi-public authority communicates to Landlord or Tenant its desire to acquire the Premises or any part thereof by a voluntary conveyance or transfer in lieu of condemnation, either Landlord or Tenant shall give prompt notice thereof to the other Party and each shall have the right, at its own cost and expense, to represent its respective interest in each proceeding, negotiation or settlement with respect to any taking or threatened taking. No agreement, settlement, conveyance or transfer to

or with the condemning authority affecting the Premises shall be made without the prior written approval of both Landlord and Tenant.

## **ARTICLE 12 NET LEASE**

This Lease shall be interpreted and construed as an absolute net lease, and it is the express intent and agreement of Landlord and Tenant that (a) the obligations of Landlord and Tenant hereunder shall be separate and independent covenants and agreements and the Rent and all other charges payable by Tenant hereunder shall be payable in all events without abatement, deduction, diminution, deferment, suspension, reduction or setoff whatsoever, unless this Lease shall be terminated pursuant to Articles 10 or 11 hereof; (b) all costs or expenses of whatever character or kind, general or special, ordinary or extraordinary, foreseen or unforeseen, and of every kind and nature whatsoever that may be necessary, appropriate or required in and about the Premises or any part thereof, or in connection with Tenant's possession or authorized use thereof during the Term of this Lease, shall be paid by Tenant; (c) the Rent shall be absolutely net to Landlord; (d) all Taxes, insurance premiums, utility expenses, repair and maintenance expense, and all other costs, fees, interest, charges, expenses, reimbursement and obligations of every kind and nature whatsoever relating to the Premises, or any portion thereof, which may arise or become due during the Term of this Lease, or any extension or renewal thereof, shall be paid or discharged by Tenant as Additional Rent; and (e) Tenant shall indemnify, defend and save Landlord harmless from and against such costs, fees, charges, expenses, reimbursements and obligations, and any interest thereon. Except as otherwise expressly provided in Articles 10 and 11 hereof, this Lease and the rights of Landlord and the obligations of Tenant hereunder shall not be affected by any event or for any reason, including without limitation: (i) any damage to or theft, loss or destruction of any of the Premises by fire, flood, earthquake or other casualty, (ii) any condemnation, (iii) any default on the part of Landlord hereunder, (iv) any latent or other defect in any of the Premises, (v) any violation of any provision of this Lease by Landlord, (vi) the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution or winding-up of, or other proceeding, affecting either of the Parties, (vii) the exercise of any remedy, including without limitation foreclosure, under any Leasehold Mortgage, collateral assignment or other encumbrance, (viii) any action with respect to this Lease (including the disaffirmance hereof) which may be taken by any trustee, receiver or liquidator of either of the Parties or any court under the Federal bankruptcy laws or otherwise, (ix) any interference with Tenant's use of the Premises, (x) market or economic changes or (xi) any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. Landlord shall have no responsibility, obligation or liability under this Lease whatsoever with respect to disruption or unavailability of gas, heat, water, light, power, telephone, telecommunications, cabling, sewage, and any other utilities or services for or to the Premises; maintenance, repair or Restoration of the Premises; or any other cost, expense, duty, obligation, service or function whatsoever related to the Premises.

## **ARTICLE 13 ASSIGNMENT; SUBLETTING**

**13.1 Restrictions on Transfer.** Except as permitted in Sections 13.3 or 13.4 below, or in Article 14 hereof, Tenant shall not sublet the Premises, or any portion thereof, nor assign,

mortgage, pledge, transfer or otherwise encumber or dispose of this Lease, or any interest therein, or in any manner assign, mortgage, pledge, transfer or otherwise encumber or dispose of its interest or estate in the Premises, or any portion thereof (each of which are herein referred to sometimes as a “**Transfer**”), without obtaining Landlord’s prior written consent in each and every instance, such consent not to be unreasonably withheld. Tenant’s request for Landlord’s consent to a Transfer must describe in detail the parties, terms, portion of the Premises, and other circumstances involved in the proposed Transfer. If Landlord consents to a Transfer, the following terms and conditions shall apply:

(a) Any assignment of this Lease shall transfer to the assignee all of Tenant’s right, title and interest in this Lease and all of Tenant’s estate or interest in the Premises.

(b) Any such assignee shall assume, by written, recordable instrument, in form and content reasonably satisfactory to Landlord, the due performance of all of Tenant’s obligations under this Lease, including any accrued obligations at the time of the effective date of the assignment, and such assumption agreement shall state that the same is made by the assignee for the express benefit of Landlord as a third party beneficiary thereof. A copy of the assignment and assumption agreement, both in form and content reasonably satisfactory to Landlord, fully executed and acknowledged by the assignee, together with a certified copy of a properly executed corporate resolution (if assignee or its signator is a corporation) authorizing the execution and delivery of such assumption agreement, shall be sent to Landlord within a reasonable time following the effective date of such assignment.

(c) No Event of Default under this Lease shall exist at any time of any assignment or subletting, nor when Tenant requests Landlord’s written consent thereto.

(d) A complete copy of each fully executed sublease shall be given to Landlord by Tenant promptly following the effective date of such subletting. For subleases permitted under Section 13.4 below, Tenant shall provide Landlord with one copy of its initial standard office suite sublease for Landlord’s review and approval and thereafter will not be required to provide individual office suite subleases to Landlord on an ongoing basis. Any significant changes made to this initial standard office suite sublease shall be submitted to Landlord for its review and approval.

(e) Any assignment or sublease shall be subject to all the provisions, terms, covenants and conditions of this Lease. Tenant shall continue to be and remain liable under this Lease, as it may be amended from time to time with or without notice to Tenant.

(f) Each sublease shall contain provisions to the effect that (i) such sublease is subject and subordinate to all of the terms, covenants and conditions of this Lease and to all of the rights of Landlord thereunder; and (ii) in the event this Lease terminates before the expiration of such sublease, the sublessee thereunder will, at Landlord’s option, attorn to Landlord and waive any rights the sublessee may have to terminate the sublease or to surrender possession thereunder, as a result of the termination of this Lease.

(g) No assignee or sublessee shall further assign its interest in this Lease or in the Premises, or any portion thereof, nor sublease the Premises, or any portion thereof, without Landlord's prior written consent in each and every instance, which consent shall not be unreasonably withheld or unduly delayed. No such assignment or subletting shall relieve Tenant from any of Tenant's obligations in this Lease.

(h) Tenant shall pay or reimburse Landlord as Additional Rent any and all costs of Landlord, including reasonable attorney's fees paid or payable to outside counsel, occasioned by such Transfer.

(i) Tenant's failure to comply with all of the foregoing provisions and conditions of this Section 13.1 shall (whether or not Landlord's consent is required under this Section 13), at Landlord's option, render any purported Transfer null and void and of no force and effect.

**13.2 Landlord's Consent Standard.** For purposes of Section 13.1 and in addition to any other reasonable grounds for denial, Landlord's consent to any requested Transfer described in Section 13.1 will be deemed reasonably withheld if, in Landlord's good faith judgment, any one or more of the following apply: (i) a proposed assignee or sublessee of the entire Premises does not have the financial strength to perform the Tenant's obligations under this Lease; (ii) the business and operations of the proposed assignee or sublessee are not of comparable quality to the business and operations being conducted by Tenant in the Premises; (iii) the proposed assignee or sublessee does not have a good business reputation; (iv) the use of the Premises by the proposed assignee or sublessee would, in Landlord's reasonable judgment, impact the Premises in a negative manner; (v) the proposed assignee or sublessee is a government entity (or agency or instrumentally thereof); or (vi) an Event of Default exists under this Lease at the time Tenant requests consent to the proposed transaction.

**13.3 Transfer to Affiliate.** Provided that no Event of Default exists under this Lease, Tenant may, without Landlord's consent, assign or sublet all or a portion of this Lease or the Premises to an Affiliate (as herein defined) if (a) Tenant notifies Landlord at least twenty (20) days prior to such assignment or subletting; (b) in the case of an assignment, Tenant delivers to Landlord, at the time of Tenant's notice, current financial statements of Tenant and the proposed assignee that are reasonably acceptable to Landlord; (c) Tenant delivers to Landlord, not later than the effective date of the assignment or subletting, a written agreement reasonably acceptable to Landlord under which the assignee or sublessee (to the extent applicable under the terms of the sublease) assumes and agrees to perform Tenant's obligations under this Lease and to observe all terms and conditions of this Lease. Tenant will also promptly provide Landlord with copies of any documents reasonably requested by Landlord to document the status and relationship between Tenant and its Affiliate. A Transfer to an Affiliate shall not release Tenant from any liability or obligation under this Lease. "**Affiliate**" means (i) any person or entity that, directly or indirectly, controls, is controlled by or is under common control with Tenant or any of its controlling principals; (ii) any trust or entity created by any of Tenant's controlling principals for estate planning purposes; (iii) any entity into which Tenant is consolidated or merged; and (iv) any entity to which substantially all of the assets of Tenant are transferred. For purposes of this definition, "**control**" means possessing the power to direct or cause the direction of management and policies of the entity by the ownership of a majority of the voting securities of

the entity. In the event of consolidation of Tenant with one or more other entities or the sale or other disposition of all or substantially all of the assets of Tenant to one or more entities, the surviving entity or transferee of assets, as the case may be, shall deliver to Landlord, and any assignee of any interest of Landlord, an acknowledged instrument assuming all obligations, covenants and responsibilities of Tenant hereunder.

**13.4 Permitted Office Suite Subleases.** Provided that no Event of Default exists under this Lease, Tenant may, without Landlord's consent, sublet individual office suites for professional office uses; provided, that (i) the term of each sublease, including all renewals and extensions thereof, will not exceed five (5) years; (ii) the rents payable under each sublease will not be less than five percent (5%) below then current market rents for comparable office suites in the Yuma, Arizona market; (iii) the combined size of all subleased spaces (other than to Tenant's Affiliates) will not exceed seventy-five percent (75%) of the rentable square feet; and (iv) Tenant otherwise complies with the provisions of Section 13.1(c) through (h) above.

## **ARTICLE 14 LEASEHOLD MORTGAGE OF PREMISES**

**14.1 Permitted Encumbrances.** Tenant, from time to time during the Lease Term, may encumber Tenant's leasehold interest in the Premises under this Lease, or any part thereof, or any of the Improvements, by one or more Leasehold Mortgages (as defined below), and assign Tenant's interest in this Lease, or any part or parts thereof, as collateral security therefor; subject to the following:

(a) For the purposes of this Lease, the term "**Leasehold Mortgage**" shall mean an encumbrance on Tenant's leasehold interest in the Premises under this Lease, which shall be deemed to include a deed of trust and such other types of security instruments as are commonly given to secure loans or advances for the construction and permanent financing and refinancing of improvements similar to the Improvements, and the term "**Leasehold Mortgagee**" shall mean a bank, insurance company, pension fund or other financial institution which is the holder of record of a Leasehold Mortgage (including a beneficiary or trustee under or deed of trust).

(b) Tenant or the Leasehold Mortgagee shall promptly deliver to Landlord in the manner provided in this Lease for the giving of notice to Landlord a true and complete copy of the Leasehold Mortgage and of any assignment thereof, and shall notify Landlord of the address to which notices to the Leasehold Mortgagee may be sent.

(c) The Leasehold Mortgage shall secure financing to be utilized only for the development and construction of the Improvements in such amount not exceeding the cost to Tenant of such Improvements.

(d) The Leasehold Mortgage shall include provisions to the effect that any notice of default under the Leasehold Mortgage shall be delivered to Landlord, as well as to Tenant; that Landlord shall have the same time period as is available to Tenant within which to cure a default, with Landlord's time period for curing a default to commence upon the expiration of the time period available for Tenant's cure of such defaults; and

that neither Landlord's right to cure a default nor Landlord's exercise of such right shall be deemed to be an assumption by Landlord of liability under the Leasehold Mortgage.

(e) In the event of an Event of Default by Tenant, Landlord shall provide notice of such Event of Default, at the same time notice is provided to Tenant, to not more than two (2) of such Leasehold Mortgagees, as previously designated by Tenant to receive such notice (the "**Designated Lenders**") whose names and addresses were provided by written notice to Landlord in accordance with Article 16. Landlord shall give Tenant copies of any such notice provided to such Designated Lenders and, unless Tenant notifies Landlord that the Designated Lenders names or addresses are incorrect (and provides Landlord with the correct information) within three (3) business days after Tenant receives its copies of such notice from Landlord, Landlord will be deemed to have given such notice to the Designated Lenders even if their names or addresses are incorrect. Tenant may provide notices to other Leasehold Mortgagees.

(f) It may be necessary for the Leasehold Mortgagees to enter into an agreement among themselves, Tenant and/or its permitted assignees, acknowledging the various rights of the Leasehold Mortgagees (the "**Triparty Agreement**"). Landlord agrees that it shall execute such Triparty Agreement only for the purpose of acknowledging the rights of such Leasehold Mortgagees in this Lease, provided that such Triparty Agreement imposes no additional obligations upon nor diminishes any rights of Landlord other than those contained within this Lease. If a Leasehold Mortgagee is permitted, under the terms of its nondisturbance agreement with Landlord, or under a Triparty Agreement executed by Landlord, to cure the Event of Default and/or to assume Tenant's position with respect to this Lease, Landlord agrees to recognize such rights of the Leasehold Mortgagee or Leasehold Mortgagees under the Triparty Agreement, and to otherwise permit each such Leasehold Mortgagee to assume all of its respective rights and obligations of Tenant under this Lease. Landlord shall, at any time upon reasonable request by Tenant, provide to any Leasehold Mortgagee an estoppel certificate or other document evidencing that this Lease is in full force and effect and that no Event of Default by Tenant exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default). Upon request by a Leasehold Mortgagee, Landlord will enter into a separate nondisturbance agreement with each such Leasehold Mortgagee, consistent with the provisions of this Article 14.

(g) From and after receiving notice of the existence of a Designated Lender's Leasehold Mortgage, Landlord and Tenant shall not cancel, surrender, modify or amend this Lease in any respect without the prior written consent of the Designated Lender.

(h) Any Leasehold Mortgagee may be added as a named insured or to the "loss payable endorsement" of any and all insurance policies required to be carried by Tenant under this Lease on the condition that the insurance proceeds are to be applied in the manner specified in this Lease. The proceeds of any insurance policies or proceeds arising from a condemnation shall be held by any Leasehold Mortgagee and distributed pursuant to the provisions of this Lease, but the Leasehold Mortgagee may reserve its right to apply to the Leasehold Mortgage debt all, or any part of Tenant's share of such proceeds pursuant to such Leasehold Mortgage.

(i) Landlord consents to a provision in any Leasehold Mortgage for an assignment of rents due to Tenant from sublessees to the holder thereof, effective upon any default under Leasehold Mortgage, and to a provision in the Leasehold Mortgage that the holder thereof in any action to foreclose the same shall be entitled to the appointment of a receiver.

(j) Landlord shall have no obligation to deliver physical possession of the Premises to any Leasehold Mortgagee, or to its nominee. However, Landlord will, at the sole cost and expense of such Leasehold Mortgagee cooperate in the prosecution of summary proceedings to evict the Tenant then in Default.

#### **14.2 Leasehold Mortgagee's Rights on Tenant's Default.**

(a) If Tenant shall Default under any of the provisions of this Lease, each Leasehold Mortgagee shall have the right and period of time as Tenant to cure such Default, whether the same consists of the failure to pay Rent or the failure to perform any other obligation which Tenant is required to do or perform, and Landlord shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by Tenant; provided, that any of the Designated Lenders after receiving notice in accordance with Section 14.1 will have forty-five (45) days more than is given Tenant after notice to such Designated Lender, to remedy such default by Tenant.

(b) Any Leasehold Mortgagee may become an owner of Tenant's interest under this Lease by foreclosure of its Leasehold Mortgage or as a result of the assignment of this Lease in lieu of foreclosure. No Leasehold Mortgagee, however, shall become liable under the provisions of this Lease unless and until such time as it becomes, and then only for as long as it remains, an owner of Tenant's interest under this Lease. Any purchaser at a foreclosure sale, other than a Leasehold Mortgagee, shall assume all of Tenant's obligations under this Lease and such purchaser shall have no right with respect to the Premises unless it so assumes and delivers a duplicate of the assumption agreement (to be executed in due form for recording) within ten (10) days after such purchaser acquires Tenant's interest under this Lease.

**14.3 Right to New Lease.** In the event of termination of this Lease for any reason (including but not limited to any Default by Tenant), Landlord, if requested by any Leasehold Mortgagee, will enter into a new lease of the Premises with the most senior Leasehold Mortgagee requesting a new lease, which new lease shall commence as of the date of termination of this Lease and shall run for the remainder of the original Term of this Lease, at the same Rent and upon the same terms, covenants and conditions herein contained; provided that

(a) Such Leasehold Mortgagee shall make written request upon Landlord for the new lease within thirty (30) days after the date such Leasehold Mortgagee receives written notice from Landlord that the Lease is to be terminated;

(b) Such Leasehold Mortgagee shall pay to Landlord, at the time of the execution and delivery of said new lease, any and all sums which would at the time of the

execution and delivery thereof be due under this Lease but for such termination, and in addition pays to Landlord any and all expenses, including reasonable attorneys' fees, court costs and disbursements incurred by Landlord in connection with any such Default and termination, as well as in connection with the execution and delivery of such new lease;

(c) Each sublessee of the Premises whose sublease was in force and effect immediately prior to termination of this Lease, and which did not expire of its own terms prior to the delivery of said new lease, shall attorn to the tenant under said new lease; and

(d) Any new lease made in accordance with the provisions of this Section 14.3 and the leasehold estate thereby created shall, subject to the same conditions contained in this Lease, continue to maintain the same priority as this Lease with regard to any then existing Leasehold Mortgage.

**14.4 Leasehold Mortgage; Further Assurances.** Landlord and Tenant shall cooperate in including in this Lease, by suitable amendment from time to time, any provision that may be reasonably requested by any proposed Leasehold Mortgagee which is a Designated Lender for the purpose of implementing the mortgagee protection provisions contained in this Lease by (i) allowing such Leasehold Mortgagee reasonable means to protect or preserve the lien of its Leasehold Mortgage upon the occurrence of a default under the terms of this Lease, and (ii) confirming the elimination of the ability of Tenant to modify, terminate, or waive this Lease or any of its provisions without the prior written approval of such Leasehold Mortgagee. Landlord and Tenant each agree to execute and deliver (and to acknowledge, if necessary, for recording purposes) any such amendment; provided, however, that any such amendment shall not in any way affect the Term or Rent under this Lease nor otherwise in any material respect adversely affect any rights or obligations of Landlord under this Lease; and, provided further, that any such amendment shall be subject to approval by Landlord's City Council. Neither disapproval by Landlord's City Council of such an amendment for any reason whatsoever, nor any delay by Landlord's City Council in deciding to approve or disapprove such an amendment, shall result in any liability to Landlord or affect any time periods set forth in this Lease.

## **ARTICLE 15 EVENTS OF DEFAULT; REMEDIES**

**15.1 Events of Default.** The occurrence of any of the following events shall be a default or breach of this Lease by Tenant (each a "**Default**" or "**Event of Default**"):

(a) if Tenant fails to pay any Rent for more than five (5) days after the same becomes due and payable; or

(b) if Tenant fails to pay, when the same becomes due and payable, any Taxes or charges other than Rent which Tenant is required to pay under this Lease, and such failure continues for more than ten (10) days after written notice of such non-payment has been given by Landlord to Tenant; or

(c) if Tenant fails to perform or comply with any other obligation of Tenant under this Lease, including without limitation the timely commencement or completion of the construction of the Improvements, and such failure shall continue for more than

thirty (30) days after notice thereof has been given by Landlord to Tenant, and Tenant shall not, cure the same within such period; provided, that such period of thirty (30) days shall be extended by the number of additional days, if any, that the curing of such failure is delayed by reasons beyond the reasonable control of Tenant, financial inability and economic market conditions excepted; or

(d) if Tenant shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation due to its bankrupt or insolvent financial status; or

(e) if, as a result of any proceeding against Tenant, a decree or order of a court or agency or supervisory authority having jurisdiction in the premises for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceedings of or relating to the Tenant or of or relating to all or substantially all of its property, or for the winding-up or liquidation of its affairs or for the supervision of the business or affairs of Tenant, shall have been entered, and such decree or order shall remain in force for a period of more than sixty (60) days; or

(f) if Tenant is in Default under the Development Agreement.

**15.2 Remedies.** Upon the occurrence of any Default, and after the expiration of any applicable cure periods, Landlord at Landlord's option, without notice or demand, may do any one or more of the following, in any order, successively or concurrently:

**15.2.1 Continuation of Lease without Reentry.** Landlord may continue the Lease in full force and effect, without reentry, and may recover from Tenant, in one or more actions, all Rent and other sums due or coming due from Tenant, plus any added costs, expenses or damages caused by or arising out of Tenant's Default, and without any obligation of Landlord to reenter, relet, terminate or take other action.

**15.2.2 Continuation of Lease With Reentry.** Landlord may continue this Lease in full force and effect and reenter and take possession of the Premises, ejecting all persons from the Premises. Upon Landlord's reentry or demand to reenter, Tenant immediately shall surrender possession of the Premises to Landlord. Upon obtaining possession, Landlord shall attempt to relet the Premises using reasonable efforts to do so (but in no case being required to relet the Premises until all other available space has been leased or to spend any amount or undertake any effort more than is customary). On Landlord's reentry or demand to reenter, Tenant shall pay to Landlord all accrued Rent and other sums then due under this Lease. Thereafter, until termination or expiration of this Lease, Tenant shall be liable to Landlord for, and shall pay to Landlord, all Rent and other sums due under this Lease, offset by the amount, if any, of Landlord's net rental income from the reletting of the Premises, after deduction of all expenses of recovery of possession, of reletting, and of other amounts chargeable to Tenant under this Lease. The

amounts so owed by Tenant shall be paid by Tenant to Landlord as billed or demanded from time to time, either prior to or after the termination or expiration of this Lease. If the net rental income to Landlord from reletting exceeds the amount of Tenant's Rent during any portion of the remaining Lease Term, Landlord may retain the surplus, without interest, until the expiration or termination of this Lease for application against any subsequent deficiency. On termination or expiration of this Lease, Tenant shall remain liable for, and shall pay to Landlord on demand, any remaining deficiency by which the Rent and other sums for which Tenant is or becomes liable to Landlord under this Lease exceeds payments received by Landlord from Tenant and from any net rental income from reletting the Premises.

**15.2.3 Termination of Lease.** Landlord may terminate this Lease by written notice to Tenant of Landlord's election to do so, whether or not Landlord has previously elected to continue the Lease in effect without reentry. Upon Landlord's notice of termination, Tenant immediately shall pay to Landlord the amount of all Rent and other sums due under this Lease to the date of termination.

**15.2.4 Receiver.** Landlord may have a receiver appointed to take possession of the Premises or to collect any rents or profits derived from the Premises, or both. The receiver may, if necessary or convenient, conduct the business of Tenant then being carried on in the Premises. Neither the application for the appointment of a receiver nor the appointment of a receiver shall be construed as an election by Landlord to terminate this Lease unless notice of such termination is given by Landlord to Tenant.

**15.2.5 Other Rights and Remedies.** Landlord may exercise any other rights Landlord may have under statute, regulation, common law, or generally in law or equity. Landlord may exercise any remedy without court action, or by one or more court actions, and in exercising any remedy may obtain partial relief without waiving its right to further relief. The exercise of any remedy by Landlord shall not waive Landlord's right to exercise any other remedy.

**15.2.6 Landlord's Expenses and Damages.** Landlord, in every case, shall be entitled to recover from Tenant all of Landlord's expenses, costs and damages arising out of any Event of Default, including, but not limited to, advertising, brokerage fees, clean-up, repair, alterations, refurnishing, refurbishing, custodial and security expenses, bookkeeping and accounting costs, attorneys' fees (whether or not suit is brought), and costs and expenses of litigation.

## **ARTICLE 16 NOTICES**

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or if mailed by United States certified or registered mail, return receipt requested, postage prepaid, as follows:

**If to Landlord:**

City Administrator  
City of Yuma  
One City Plaza  
Yuma, AZ 85364

**With a copy to:**

City Attorney  
City of Yuma  
One City Plaza  
Yuma, AZ 85364

**If to Tenant:**

HARDKNOCKS LIMITED PARTNERSHIP  
The Spencer Companies  
242 S. 1<sup>st</sup> Avenue  
YUMA, AZ 85364

**With a copy to:**

Attorney

or at such other place or to such other persons as any Party shall from time to time notify the other in writing as provided herein. The date of service of any communication hereunder shall be the date of personal delivery or seventy-two (72) hours after the postmark on the certified or registered mail, as the case may be.

**ARTICLE 17  
NO MERGER**

In no event shall the leasehold interest, estate or rights of Tenant hereunder, or of any Leasehold Mortgagee, merge with any interest, estate or rights of Landlord in or to the premises. Such leasehold interest, estate and rights of Tenant hereunder, and of any Leasehold Mortgagee, shall be deemed to be separate and distinct from Landlord's interest, estate and rights in or to the Premises, notwithstanding that any such interests, estates or rights shall at any time be held by or vested in the same person, corporation or other entity.

**ARTICLE 18  
TRADE FIXTURES AND PERSONAL PROPERTY**

**18.1 Tenant's Property.** All trade fixtures and personal property, including, without limitation, all furniture, furnishings and inventories now or hereafter maintained, installed or used in or about the Premises by Tenant (the "**Trade Fixtures and Personal Property**") shall remain the property of Tenant after the expiration or earlier termination of this Lease.

**18.2 Landlord's Lien Waiver.** Upon request of Tenant or Tenant's permitted assignees or subtenants, Landlord shall execute and deliver any commercially reasonable consent or waiver form submitted by any vendors, landlords, chattel mortgagees or holders or owners of any Trade Fixtures and Personal Property (each a "**Third Party Claimant**") located or installed in the Premises by Tenant or any such permitted assignee or subtenant, provided that such consent or waiver form shall be limited to (i) Landlord's waiver in favor of such Third Party Claimant of any lien, claim, interest or other right superior to that of such Third Party Claimant in such Trade Fixtures and Personal Property; (ii) Landlord's acknowledgement that the Trade Fixtures and Personal Property covered by such consent or waiver form is personal property and is not to become part of the realty no matter how affixed thereto; and (iii) Landlord's acknowledgment that such personal property may be removed from the Premises by the applicable Third Party Claimant at any time, upon default by Tenant or the assignee or subtenant in accordance with the terms of such chattel mortgage or other similar documents, free and clear of any claim or lien of Landlord, subject to the Third Party Claimant at its cost repairing any

damage and restoring the damaged Improvements to substantially the same condition as existed prior to the removal of such Trade Fixtures and Personal Property.

## **ARTICLE 19 ESTOPPEL CERTIFICATES**

**19.1 By Landlord.** Landlord will execute, acknowledge and deliver to Tenant or any permitted Leasehold Mortgagee, within thirty (30) days of Tenant's written request, a certificate stating that:

(a) this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications);

(b) the dates, if any, to which Rent and other sums payable hereunder have been paid; and

(c) whether of not, to the knowledge of Landlord, there then exists any Default under this Lease (and if so, specifying the same).

Any such certificate may be relied upon by Tenant and any permitted prospective Leasehold Mortgagee or permitted prospective assignee of Tenant's interest under this Lease.

## **ARTICLE 20 GENERAL PROVISIONS**

**20.1 Time of Essence.** Time is of the essence of each and every provision of this Lease.

**20.2 Landlord's Access to Premises.** Landlord and its agents, at all reasonable times and upon notice to Tenant, shall have free and full access to the Premises for the purposes of examining or inspecting the condition thereof, determining if Tenant is performing the covenants and agreements of this Lease, and posting such notices as Landlord may desire to protect the rights of Landlord, provided the exercise of such rights does not materially interfere with Tenant's use and enjoyment of the Premises.

**20.3 Governing Law; Choice of Forum.** This Lease 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 Lease 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 20.3.

**20.4 Successors and Assigns.** This Lease and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto.

**20.5 Waiver.** No waiver by either Party of any breach of any of the terms, covenants or conditions of this Lease shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

**20.6 Limited Severability.** Landlord and Tenant each believes that the execution, delivery and performance of this Lease is in compliance with all Applicable Laws. However, in the unlikely event that any phrase, clause, sentence, paragraph, section, article or other portion of this Lease is declared void or unenforceable (or is construed as requiring Landlord to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, Yuma City Code or Yuma City Charter), such provision shall be deemed severed from this Lease and this Lease shall otherwise remain in full force and effect; provide that this Lease shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed lease (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic or otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Lease, as reformed.

**20.7 Exhibits; Recitals.** All Exhibits referred to herein or attached hereto are incorporated herein by this reference as though fully set forth herein. The Recitals at the beginning of this Lease are hereby incorporated herein as covenants.

**20.8 Entire Agreement; Amendments.** This Lease and the Development Agreement constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and all other prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. No amendment or modification of this Lease shall be effective unless in writing executed and delivered by the Parties hereto. Any amendment of this Lease to change the use of the GPLET Improvements during the period of the GPLET abatement shall require adherence to the notification and other requirements of A.R.S. § 42-6209(C)(3).

**20.9 Successor Laws.** Each reference in this Agreement to a particular City Ordinance, Arizona statute or other Applicable Laws shall include any successor City ordinance, successor Arizona statute or successor Applicable Laws.

**20.10 Memorandum of Land and Improvements Lease.** The Parties shall, concurrently with the execution of this Lease, complete, execute, acknowledge and record (at Tenant's expense) a Memorandum of Lease in substantially the form attached hereto as Exhibit C.

**20.11 Negation of Partnership.** The relationship of the Parties is solely that of landlord and tenant, and under no circumstances shall the Parties become or be deemed partners or joint venturers.

**20.12 Time Periods.** If the time for the performance of any obligation under this Lease expires on a Friday, Saturday, Sunday or legal holiday, the time for performance shall be extended to the next succeeding day which is not a Friday, Saturday, Sunday or legal holiday.

**20.13 Conflict of Interest.** Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official or employee participate in any decision relating to this Lease which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Lease is subject to cancellation pursuant to A.R.S. § 38-511.

[Signatures of Parties on next page]

**IN WITNESS WHEREOF**, the Parties hereto have executed this Lease on the date and year first written above.

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

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

**LANDLORD:**

**CITY OF YUMA**, a municipal corporation

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

**TENANT:**

**HARDKNOCKS LIMITED  
PARTNERSHIP**, an Arizona Limited  
Partnership

By: AllSpn, Inc., an Arizona corporation,  
its general partner

By: \_\_\_\_\_  
L. Scott Spencer  
President

## **Exhibit A**

### Legal Description of Land

Lots 7, 8, 9, and the East 37 feet of Lot 10 as measured along the South line, of Block 12, CITY OF YUMA, according to White's Official Survey files dated 4/4/1894 records of Yuma County, State of Arizona;

EXCEPT the South 51 feet of the East 37 feet of Lot 10;

TOGETHER WITH an easement for ingress and egress and public utilities over the North 4 feet of the South 51 feet of East 37 feet of Lot 10, as measured along the South line of Lot 10.

Above described parcel contains 17267 square feet or 0.397 acres more or less

## Exhibit B

### **Insurance Requirements**

Tenant (the term “Tenant” as used in this Insurance Exhibit shall include Tenant’s sub-tenants or sub-lessees) shall procure and maintain for the Term of the Lease insurance against claims for injury to persons or damage to property which may arise from or in connection with this Lease by Tenant and Tenant’s agents, representatives, employees, contractors.

The insurance requirements herein are minimum requirements for this Lease and in no way limit the indemnity covenants contained in this Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect Tenant from liabilities that might arise out of this Lease and Tenant is free to purchase such additional insurance as may be determined necessary. The limits set forth below shall be adjusted every five (5) years by the percentage of change in the Consumer Price Index (the “CPI”) determined in accordance with this paragraph. In determining the percentage of change in the CPI for the adjustment of the insurance limits for any year, the CPI for the month October in the preceding year, as shown in the column for “All Items” in the table entitled “All Urban Consumers” under the “United States City Averages” as published by the Bureau of Labor Statistics of the United States Department of Labor, shall be compared with the corresponding index number for the month of October one (1) year earlier.

**A. Minimum Scope and Limits of Insurance:** Tenant shall provide coverage at least as broad with limits of liability not less than those listed below.

#### **Commercial General Liability – Occurrence Form**

General Aggregate	\$5,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000
Fire Damage (Any one fire)	\$100,000
Medical Expenses (Any one person)	Optional

#### **Automobile Liability – Any Auto or Owned, Hired and Non-Owned Vehicles**

Combined Single Limit per Accident for Bodily Injury	\$1,000,000
--	-------------

#### **Workers’ Compensation and Employer’s Liability**

Workers’ Compensation	Statutory
Employer’s Liability: Each Accident	\$500,000
Disease – Each Employee	\$500,000
Disease – Policy Limit	\$500,000

**B. Self-Insured Retentions/Deductibles:** Any self-insured retentions and deductibles greater than \$10,000 must be declared to and approved by Landlord.

**C. Other Insurance Requirements:** The policies are to contain, or be endorsed to contain, the following provisions:

**Commercial General Liability and Automobile Liability Coverages:**

Landlord, its officers, officials, agents, and employees are additional insureds with respect to liability arising out of the use and/or occupancy of the Premises subject to this Lease.

Tenant's insurance shall contain broad form contractual liability coverage.

Landlord, its officers, officials, agents, and employees shall be additional insureds to the full limits of liability purchased by Tenant even if those limits of liability are in excess of those required by this Lease. The commercial general liability additional insured endorsement will be at least as broad as the Insurance Services Office, Inc. (ISO) additional insured form B CG 20 10 1185.

Tenant's insurance coverage shall be primary insurance with respect to Landlord, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by Landlord, its officers, officials, agents, and employees shall be in excess of the coverage provided by Tenant and shall not contribute to it.

Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Coverage provided by Tenant shall not be limited to the liability assumed under the indemnification provisions of this Lease.

The policies shall contain a waiver of subrogation against Landlord, its officers, officials, agents, and employees for losses arising from Tenant's operations, occupancy and use of the Premises that are subject of this Lease.

**Workers' Compensation and Employer's Liability Coverage:** The insurer shall agree to waive all rights of subrogation against Landlord, its officers, officials, agents, and employees for losses arising from Tenant's operations, occupancy, and use of the Premises that are the subject of this Lease. Note: All members of Hardknocks Limited Partnership as owner/partners and the Partnership has no employees and is not subject to Workers' Compensation Insurance.

**D. Notice of Cancellation:** Each insurance policy required by the insurance provisions of this Lease shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to Landlord. Such notice shall be sent directly to Landlord's City Administrator, City of Yuma, One City Plaza, P. O. Box 13014, Yuma, AZ 85366-3014 and shall be sent by certified mail, return receipt requested.

**E. Acceptability of Insurers:** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect Tenant from potential insurer insolvency.

**F. Verification of Coverage:** Tenant shall furnish Landlord with original certificates of insurance (Association for Cooperative Operation, Research and Development (ACCORD) form or equivalent approved by Landlord) as required by this Lease. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance.

All certificates are to be received and approved by Landlord before the Lease Term commences. Each insurance policy required by this Lease must be in effect at or prior to the commencement

of the Lease Term and must remain in effect for the duration of the Lease Term. Failure to maintain the insurance policies as required by this Lease or to provide timely evidence of renewal will be considered a material breach of the Lease.

All certificates required by this Insurance Exhibit shall be sent directly to Landlord's City Administrator, City of Yuma, One City Plaza, Yuma, AZ 85364. Landlord's City Department and the lease agreement number, and location description are to be noted on the certificate of insurance. Landlord reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Insurance Exhibit at any time.

**G. Approval:** Any modification or variation from the insurance requirements in Insurance Exhibit must have prior approval from Landlord's City Administrator's Office whose decision shall be final. Such action will not require formal contract amendment, but may be made by administrative action.

**EXHIBIT C**

**MEMORANDUM OF LEASE**

**DATE:** \_\_\_\_\_, 2015 (“Execution Date”)

**PARTIES:** CITY OF YUMA, ARIZONA, an Arizona municipal corporation  
 (“Landlord”)

HARDKNOCKS LIMITED PARTNERSHIP, an Arizona Limited Partnership  
 (“Tenant”)

**RECITALS:**

A. Landlord and Tenant are parties to that certain Hardknocks Development Land and Improvements Lease (“**Lease**”), dated as of \_\_\_\_\_, 2015, for the lease of certain land described in **Exhibit A** attached hereto and made a part hereof, together with all building(s) and other improvements now or hereafter constructed thereon, along with fixtures, furnishings and equipment therein, together with all rights and privileges appurtenant thereto and all future additions thereto or alterations and replacements thereof (collectively, the “**Premises**”).

B. This Memorandum of Lease is now executed and entered into for the purpose of recording the same and thereby giving notice of the Lease and this Memorandum of Lease.

**COVENANTS:**

For valuable consideration, receipt of which is hereby acknowledged, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises, upon all of the terms, covenants and provisions contained in the Lease and in this Memorandum of Lease, including without limitation the following:

**1. Term.** The term of the Lease and this Memorandum of Lease (the “**Term**” or “**Lease Term**”) shall be for a period of eight (8) years, commencing on the date on which, (i) the Certificate of Occupancy is issued by the City for Improvements which are subject to the government property lease excise tax under A.R.S. § 42-6201 through § 42-6209; and (ii) fee title to the Premises is conveyed from Tenant to Landlord (the “**Commencement Date**”), and ending at midnight on eighth (8<sup>th</sup>) anniversary of the Commencement Date, subject to the terms and conditions set forth in this Lease which may permit or provide for an earlier termination.

**2. Rent.** Tenant shall pay to Landlord the Rent and other amounts as set forth in the Lease.

3. **Lease.** All of the covenants, conditions, defined terms and provisions of the Lease are, by this reference to the Lease, incorporated herein and made a part hereof, the same as though expressly set forth herein. If a conflict arises between the provisions of this Memorandum of Lease and the provisions of the Lease, the provisions of the Lease shall prevail.

**IN WITNESS WHEREOF,** Landlord and Tenant have executed this instrument to be effective as of the day and year first written above.

ATTEST:

LANDLORD:

By: \_\_\_\_\_  
City Clerk

**CITY OF YUMA**, a municipal corporation

APPROVED AS TO FORM:

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

By: \_\_\_\_\_  
City Attorney

STATE OF ARIZONA        )  
  ) ss.  
County of Yuma            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by \_\_\_\_\_, City Administrator of the City of Yuma, who acknowledged that he/she signed the foregoing instrument on behalf of the City.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

TENANT:

**HARDKNOCKS LIMITED  
PARTNERSHIP**, an Arizona Limited  
Partnership

By: AllSpen, Inc., an Arizona corporation,  
its general partner

By: \_\_\_\_\_  
L. Scott Spencer  
President

STATE OF ARIZONA        )  
  ) ss.  
County of Yuma            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2015, by L. Scott Spencer \_\_\_\_\_, President of AllSpen, Inc., an Arizona corporation, as general partner of HARDKNOCKS LIMITED PARTNERSHIP, an Arizona Limited Partnership, who acknowledged that he signed the foregoing instrument on behalf of the limited partnership.

\_\_\_\_\_  
Notary Public

My commission expires:  
\_\_\_\_\_

**EXHIBIT D**

When Recorded Return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**SPECIAL WARRANTY DEED**

FOR THE CONSIDERATION of Ten Dollars (\$10.00), and other valuable consideration,  
\_\_\_\_\_  
\_\_\_\_\_ (“Grantor”), hereby conveys to  
\_\_\_\_\_ (“Grantee”), the real property  
 (“Property”) situated in Yuma County, Arizona, and more particularly described on Exhibit ”A”  
 attached hereto and made a part hereof, together with the building(s) and other improvements  
 thereon, the fixtures, furnishings and equipment therein, and all rights and privileges appurtenant  
 thereto.

SUBJECT to current taxes and assessments, reservations in patents, all easements, rights-  
of-way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as  
 may appear of record and to all matters which an accurate survey or inspection of the Property  
 would disclose.

PROVIDED, that water rights, if any, appurtenant to the Property are excluded from the  
 coverage of the warranties contained herein, and Grantor hereby quitclaims to Grantee all of  
 Grantor’s right, title and interest in and to such water rights, if any, appurtenant to the Property.

And Grantor hereby binds itself and its successors to warrant and defend the title, as  
 against all acts of Grantor herein and none other, subject to the matters above set forth.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

\_\_\_\_\_

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

Its: \_\_\_\_\_

“Grantor”

STATE OF \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_, who acknowledges himself to be the \_\_\_\_\_ of \_\_\_\_\_, (a)n \_\_\_\_\_, and that he as such \_\_\_\_\_, being authorized so to do, executed the forgoing instrument for the purposes therein contained by signing the name of the \_\_\_\_\_ by himself as such \_\_\_\_\_.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**ORDINANCE NO. O2015-060**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF YUMA, ARIZONA, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT, APPROVING THE ACCEPTANCE OF TITLE TO REAL PROPERTY AND IMPROVEMENTS LOCATED AT 190 MADISON AVENUE, AND AUTHORIZING A GOVERNMENT PROPERTY LAND AND IMPROVEMENTS LEASE FOR A TERM OF EIGHT YEARS WITH HARDKNOCKS LIMITED PARTNERSHIP AS THE PRIME LESSEE**

WHEREAS, pursuant to the Yuma City Charter, Article II, Section 2, the City of Yuma (City) is authorized to acquire and dispose of real property and to enter into development agreements pursuant to Arizona Revised Statutes (A.R.S.) § 9-500.05; and,

WHEREAS, the Yuma City Council has declared the Yuma North End a statutory redevelopment area and approved a redevelopment plan titled, *Yuma North End Redevelopment Plan*; and,

WHEREAS, Resolution R2004-01 designated the Yuma North End redevelopment area part of a single Central Business District which permits favorable tax treatment under the government property lease excise tax, A.R.S. § 42-6201 *et seq.*, provided that certain statutory requirements are met; and,

WHEREAS, Hardknocks Limited Partnership is redeveloping their building and improvements located at 190 S. Madison Avenue within the statutory redevelopment area and Central Business District and may qualify for the favorable tax treatment, including abatement of the government property lease excise tax (GPLET) after deeding title to the property and improvements to the City of Yuma and entering into a government property lease with the City as lessor and Hardknocks Limited Partnership as prime lessee; and,

WHEREAS, an analysis of the economic and fiscal benefits to the State of Arizona, Yuma County and the City of Yuma and the benefits to be received by Hardknocks Limited Partnership was prepared by D<sup>2</sup>Fackler Planning & Development in a report titled, *Economic & Fiscal Benefit Analysis for Hardknocks Limited Partnership Redevelopment Project* and shall remain on file with the City Clerk through the term of the government property lease,

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

SECTION 1: The City Council finds that in accordance with the *Economic & Fiscal Benefit Analysis for Hardknocks Limited Partnership Redevelopment Project*, the net present value of the direct economic and fiscal benefit of the 190 South Madison Avenue redevelopment project to the State of Arizona, County of Yuma and the City of Yuma is estimated to be \$318,700 over the eight year term of the government property lease and the abatement of the GPLET on the redeveloped project site will total approximately \$74,500 over that same period.

SECTION 2: The City Council finds that the report titled, *Economic & Fiscal Benefit Analysis for Hardknocks Limited Partnership Redevelopment Project* was prepared using methods and in a manner acceptable to the City Council, and that the economic and fiscal benefits to the State of Arizona, Yuma County and the City of Yuma will exceed the benefits to Hardknocks Limited Partnership as prime lessee.

SECTION 3: The City Council further finds that in accordance with a letter dated August 12, 2015 (on file with the City Clerk), each of the appropriate taxing entities was notified at least 60 days prior to the adoption of this Ordinance of the City's intent to enter into the described government property lease and each of the taxing entities was provided a copy of the *Economic & Fiscal Benefit Analysis for Hardknocks Limited Partnership Redevelopment Project* as required by statute.

SECTION 4: The City Administrator is authorized and directed to execute on behalf of the City of Yuma, a development agreement and land and improvements lease between Hardknocks Limited Partnership and the City of Yuma, an original executed copy of which shall remain on file with the City Clerk.

SECTION 5: The City Administrator is authorized and directed to acquire title to the redevelopment project at 190 South Madison in the name of the City of Yuma and to lease the property and improvements to Hardknocks Limited Partnership as prime lessee for a term of eight years.

SECTION 6: Title to the described land and improvements shall be reconveyed by the City to the prime lessee at the termination or conclusion of the land and improvements lease.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

APPROVED:

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

ATTESTED:

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

APPROVED AS TO FORM:

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



# REQUEST FOR CITY COUNCIL ACTION

**MEETING DATE:**

November 18, 2015

**DEPARTMENT:**

Community Development

**DIVISION:**

Neighborhood Services

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

**TITLE:**

Amendment: 2011-2015 Community Development Block Grant (CDBG) Consolidated Plan

**SUMMARY RECOMMENDATION:**

Approve an amendment to the City of Yuma 2011-2015 CDBG Consolidated Plan to incorporate the Mesa Heights Neighborhood Revitalization Strategy Area Plan.

**REPORT:**

The City of Yuma 2011-2015 CDBG Consolidated Plan is a planning document for the use of CDBG funds that was approved by City Council and the Department of Housing and Urban Development (HUD). Any substantial change, including changes to allocation priorities requires a formal amendment to the Consolidated Plan. The Neighborhood Services Division is requesting City Council's approval to: 1) add the Mesa Heights Revitalization Strategy Area (NRSA) Plan as a priority in the City's 2011-2015 Consolidated Plan and 2) submit the Mesa Heights NRSA Plan to HUD for final review and designation as a HUD-approved Neighborhood Revitalization Strategy Area (NRSA) Plan.

A draft of the Mesa Heights NRSA Plan was presented to City Council on May 6, 2015. It was then submitted to HUD for a courtesy review to ensure compliance with federal regulations. HUD returned the Draft without modification.

The following public meetings were held to present the NRSA Plan and to get input from neighborhood residents and stakeholders:

- October 1, 2015 to Harvard Street Residents at Immanuel Southern Baptist Church
- October 5, 2015 to all interested citizens at McGraw Elementary School
- October 15, 2015 to all interested citizens and stakeholders at City Hall

All comments were considered and if appropriate incorporated into the final draft.

The proposed amendment was published in English in the Yuma Sun and in Spanish in the Bajo el Sol on September 18, 2015. The public comment period ends with this November 18th public hearing.

The approved plan will be sent to HUD for final review and official designation.

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. 2011-2015 City of Yuma Consolidated Plan 2. Amendment 2011-2015 City of Yuma Consolidated Plan 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="radio"/> Department <input type="radio"/> City Clerk's Office <input type="checkbox"/> Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:		DATE:	
	Gregory K. Wilkinson		11/9/2015	
	REVIEWED BY CITY ATTORNEY:		DATE:	
	Steven W. Moore		11/9/2015	
	RECOMMENDED BY (DEPT/DIV HEAD):		DATE:	
Laurie Lineberry		11/3/2015		
WRITTEN/SUBMITTED BY:		DATE:		
Rhonda Lee-James		10/28/2015		