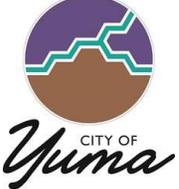


**Notice of Public Hearing of the  
Hearing Officer of The City of Yuma**

Pursuant to A.R.S. § 38-431.02, notice is hereby given to the members of the Hearing Officer of the City of Yuma and to the general public that the Hearing Officer will hold a hearing open to the public on November 14, 2019 at 9:30 a.m. in City Hall Room 190, One City Plaza, Yuma, AZ.

The Agenda for the hearing is as follows:

 <p><b>Yuma</b> CITY OF</p>	<p><b>Agenda</b> <b>Hearing Officer Public Hearing</b> <i>City Hall Room 190</i> <i>One City Plaza</i></p> <p><b>Thursday, November 14, 2019, 9:30 a.m.</b></p>
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**CALL TO ORDER**

**CONSENT CALENDAR** – All items listed under the consent calendar will be approved by one motion. There will be no separate discussion of these items unless the Hearing Officer or a member of the audience wishes to speak about an item.

**APPROVAL OF MINUTES – SEPTEMBER 26, 2019**

**WITHDRAWALS BY APPLICANT – NONE**

**APPLICATIONS TO BE CONSIDERED**

1. **CUP-28183-2019**: This is a request by Martin Guzman, on behalf of Francisco and Irene Guzman, for a Conditional Use Permit to allow multiple mobile food vendors on one commercial property in the General Commercial/Aesthetic Overlay (B-2/AO) District, for the property located at 1744 S. Pacific Avenue, Yuma, Arizona.

**ADJOURN**

A copy of the agenda for this meeting may be obtained at the office of the City Clerk at City Hall, One City Plaza, Yuma, Arizona, 85364, during business hours, Monday through Friday, 8:00 A.M. to 5:00 P.M. 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 Division, One City Plaza, PO Box 13012, Yuma, AZ 85366-3012; (928) 373-5125 or TTY (928) 373-5149.

**Hearing Officer Meeting Minutes  
September 26, 2019**

A meeting of the City of Yuma's Hearing Officer was held on Thursday, September 26, 2019, at City Hall Room 190, One City Plaza, Yuma, AZ.

**HEARING OFFICER** in attendance was Ray Urias.

**CITY OF YUMA STAFF MEMBERS** present included Scott McCoy, Assistant City Attorney; Agustin Cruz, Civil City Engineer, Alyssa Linville, Assistant Director/Zoning Administrator; and Amelia Griffin, Assistant Planner.

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**Urias** called the meeting to order at 9:30 a.m.

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**CONSENT CALENDAR**

**Urias** approved the minutes of June 27, 2019.

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**PUBLIC HEARINGS**

**VAR-27386-2019**: *This is a request by Chris Morris, on behalf of Roberta J. Stevenson McDermott, for a variance to allow the location of an accessory structure (detached garage) in line with the principal dwelling in the Low Density Residential (R-1-6) District, for the property is located at 1441 W. 16th Place, Yuma, AZ.*

**Alyssa Linville, Assistant Director DCD/Zoning Administrator**, summarized the staff report, recommending **APPROVAL**.

**QUESTIONS FOR STAFF**

**Urias** asked if the proposed structure would be located within the 7' side yard setback. **Linville** said yes and added that the property owner indicated they would potentially increase it to 9' or 10'. **Urias** asked if the proposed structure would be located within the front yard setback. **Linville** said the proposed structure would meet the 20' front yard setback requirement.

**Urias** said Attachment C of the staff report indicated where the proposed structure would be located.

**Urias** asked if the four criteria to grant the variance have been met with this request. **Linville** said yes.

**APPLICANT/APPLICANTS REPRESENTATIVE**

**Chris Morris, Calculated Designs/Morris Construction, 2615 E. 24<sup>th</sup> Street, Yuma, AZ**, reiterated that the pool on this property prohibited the location of the proposed structure. **Morris** explained that this property did not have alley access which prohibited the placement of the proposed structure. **Morris** said there were two other garages in the neighborhood and this proposal would match what the other neighbors were permitted to construct. **Morris** said this structure would be a secure and structurally sound. **Morris** added that this additional structure would increase property values.

**OPEN PUBLIC COMMENT**

**David Chapman, 1461 W. 16<sup>th</sup> Place, Yuma, AZ**, provided the Hearing Officer with a folder that included photos of the surrounding residences. **Chapman** said the garage located at 1400 W. 16<sup>th</sup> Place was identical to the residence and aesthetically pleasing. **Chapman** said he owned the residence adjacent to this property and expressed his concern with this request. **Chapman** explained that the existing home had a flat roof and stucco siding while the proposed structure had a pitched roof and siding other than stucco. **Chapman** said this proposal would negatively impact the property value of his home. **Chapman** said he was opposed to the aesthetics and appearance of the proposed structure.

**Urias** stated the Hearing Officer was required to maintain evidence provided during a hearing for thirty days.

**Morris** explained that he has been in the construction industry for many years and was also a member of the Residential Advisory Board. **Morris** explained a pitched roof was superior to a flat roof in regards to water protection. **Morris** said the property owner should not be limited to flat roof because of the roof on the existing residence. **Morris** explained that a pitch roof was a better construction method.

**Urias** said he agreed with staff and determined that the four criteria had been met.

**Urias** said anyone opposed had the right to appeal the Hearing Officer's decision. **Urias** added that the Notification of Appeal must be filed within (10) business days of the decision made by the Hearing Officer.

**DECISION:**

**Urias** granted the variance subject to the Conditions of Approval in Attachment A, finding that the four criteria had been met.

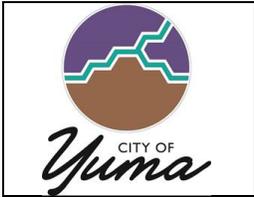
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**Urias** adjourned the meeting at 9:52 a.m.

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Minutes approved and signed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
Ray Urias, Hearing Officer



**STAFF REPORT TO THE HEARING OFFICER  
DEPARTMENT OF COMMUNITY DEVELOPMENT  
COMMUNITY PLANNING  
CASE TYPE – CONDITIONAL USE PERMIT  
CASE PLANNER: ALYSSA LINVILLE**

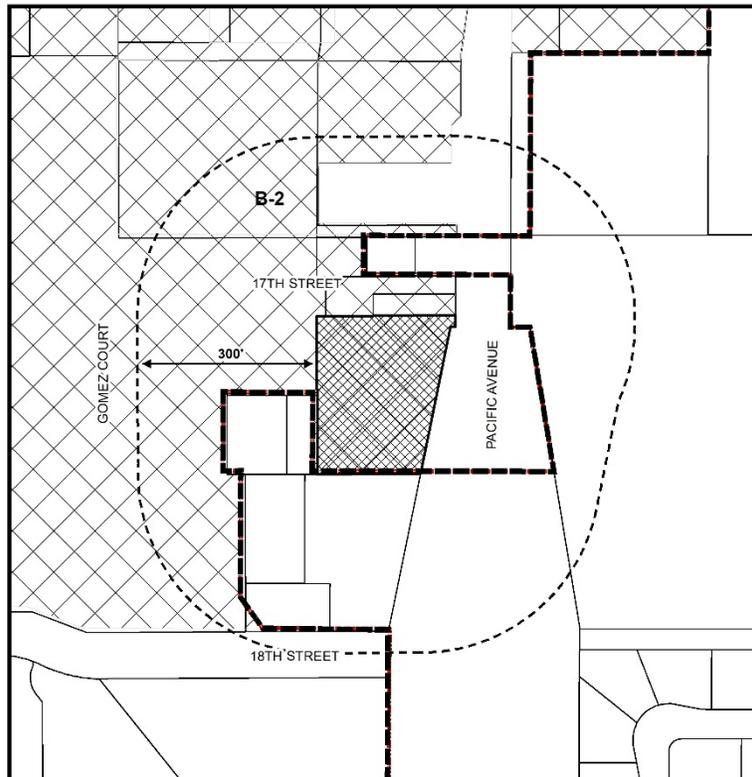
**Hearing Date:** November 14, 2019

**Case Number:** CUP-28183-2019

**Project Description/Location:** This is a request by Martin Guzman, on behalf of Francisco and Irene Guzman, for a Conditional Use Permit to allow multiple mobile food vendors on one commercial property in the General Commercial/Aesthetic Overlay (B-2/AO) District, for the property located at 1744 S. Pacific Avenue, Yuma, Arizona.

	Existing Zoning	Use(s) on-site	General Plan Designation
<b>Site</b>	General Commercial/Aesthetic Overlay (B-2/AO)	Mobile Food Vending Court	Commercial
<b>North</b>	General Commercial/Aesthetic Overlay (B-2/AO); Yuma County (Light Industrial)	Undeveloped; Residential	Commercial
<b>South</b>	Yuma County (Light Industrial)	Residential	Commercial
<b>East</b>	Yuma County (Light Industrial)	Vacant	Industrial
<b>West</b>	General Commercial/Aesthetic Overlay (B-2/AO); Yuma County (Light Industrial)	Undeveloped; Residential	Commercial

**Location Map:**



**Prior site actions:** Annexation: Ord. O2015-051 (October 2, 2015); Rezone: Ord. O2015-51 (October 2, 2015; zoned upon annexation)

**Staff Recommendation:** Staff recommends **APPROVAL** of the Conditional Use Permit to allow multiple mobile food vendors on one commercial property in the General Commercial/Aesthetic Overlay (B-2/AO) District, subject to the conditions outlined in Attachment A.

**Suggested Motion:** Move to **APPROVE** Conditional Use Permit CUP-25030-2019 as presented, subject to the staff report, information provided during this hearing, and the conditions in Attachment A.

**Staff Analysis:** On March 17, 2014, while under the jurisdiction of Yuma County, the subject property was granted a County Special Use Permit (SUP) for the development of a seven unit, mobile food vending court.

During the County SUP, Applicant's access was across two unimproved dirt lots owned by the City. For many years, the unimproved dirt lots were identified as a potential street. Prior to 1997, the subject property had direct access to Pacific Avenue (Avenue 2E). In December 1996, Applicant's predecessor in interest sold the portion of the subject parcel giving direct access to Pacific Avenue to Yuma County. The warranty deed conveying fee simple title to an approximate 22' by 59' parcel to Yuma County by warranty deed is recorded as Yuma County Recorder's Fee #1997-02523. After this conveyance to Yuma County, Applicant's predecessor in interest began using the unimproved dirt lot for access to the subject property.

Pacific Avenue was reconstructed and widened in 2004 over the parcel conveyed to the County. The project included curb, gutter and sidewalk aligned to the two unimproved dirt parcels, which was planned to align to a future 17th Street. Access to the property was continued over the unimproved dirt lots. In 2015, the City conveyed the unimproved dirt lots to the Gomez Plaza/Fortuna de Oro development. The City, Gomez Plaza and Applicant entered into a Memorandum of Understanding (MOU) which granted a perfected titled easement for access to the subject property. (Attachment D). Under the MOU, Gomez Plaza granted a perfected titled easement for access to the subject property. Gomez Plaza would also construct a private street on the 17th Street alignment with a curb, gutter and five-foot sidewalk on the south side of the street in front of the subject property and Gomez Plaza would construct water and sewer cutouts for the benefit of the subject property. Attorneys for Gomez Plaza and Applicant negotiated Applicant's contribution for these improvements (approximately 15% of the costs).

The MOU also provided for the City to recognize subject property's use as a mobile food vendor site under the County SUP for the duration of the County SUP. Prior to the expiration of the County issued SUP, the Applicant must apply for a City CUP and meet all City requirements under a City CUP in order to continue using the

subject property as a mobile food vendor site. In return, the Applicant agreed to annex into the City of Yuma.

Applicant's County SUP for the subject property expired on March 17, 2019. Applicant now seeks a City CUP to continue the use as set forth in the MOU.

The subject property, now located within the City of Yuma, is a non-conforming use. In order to continue operating the mobile food vending court, the property owner is required to apply for and receive approval for a Conditional Use Permit. With the Conditional Use Permit, certain development standards will need to be addressed and rectified; such standards include landscaping, parking lot lighting, and paved access. In addition to the required development standards, operational standards will need to be met. These operational standards include:

1. Each mobile food vendor must maintain a minimum of three paved parking spaces on the site designated for their customers' vehicles.
2. Mobile food vendors shall not operate between the hours of midnight and 5:00 a.m.
3. Any accessory structure(s) used and/or associated with the food vending operation shall also be removed from the mobile vending site during hours of non-operation. This means that all accessory food vending structures shall be removed from the mobile vending site no later than midnight.
4. The site upon which a food vending unit is operating shall at all times be kept clean and free from litter, garbage, rubble and debris. The mobile food vendor is required to provide their own trash can and to dispose of their own trash at appropriate places. This means that the food vendor(s) have the responsibility of maintaining a clean site, even if their customer(s) are not making the mess.
5. Mobile food vendors shall not use bells, chimes, microphones, generators louder than 70 decibels at 10 feet, loudspeakers, amplified music, strobe lights, spot lights or any other audible or visual disturbance as a part of its mobile vending operation.

In addition to the requested use of the site as a mobile food vending court, the property owner would like to maintain a water kiosk and a park-n-sell lot on-site. Staff is in agreement with allowing the water kiosk to remain on-site, as that is classified as an ancillary use, however, the mobile food vending court and park-n-sell are both considered primary uses. Two primary uses would not be permitted on-site, and therefore, the park-n-sell lot will not be permitted to operate in conjunction with the mobile food vending court.

**1. What are the impacts of the proposed conditional use on neighboring properties and what conditions are being proposed to resolve those impacts?**

SPECIFIC IMPACT AREA		ISSUE	CONDITION #
A.	Traffic	None	

B.	Parking	Any area being parked or driven upon shall be paved accordingly; this includes the parking area and the access to such parking.	#1
C.	Lighting	Adequate site lighting shall be provided within the parking lot and shall be in accordance with the Dark Sky provisions.	#1
D.	Hours of Operation	The City of Yuma's zoning code limits the hours of operation for mobile food vending operations between the hours of 5 a.m. and midnight.	#1
E.	Indoor/Outdoor Activities	Mobile vending spaces shall be cleared of all non-permanent seating/tables/shade structures and the close of business each day. If property owner were to install permanent seating/tables/shade structures, they could remain on-site even when the facility is not in operation.	#1
F.	Noise	Mobile food vendors shall not use bells, chimes, microphones, generators louder than 70 decibels at 10 feet, loudspeakers, amplified music, strobe lights, spot lights or any other audible or visual disturbance as a part of its mobile vending operation.	#1
G.	Air Quality	None	
H.	Hazardous Materials	None	
I.	Crime Prevention (CPTED)	Site needs to provide adequate landscaping along all property lines which are adjacent to any public or private street right-of-way.	#1
J.	Other	One primary use is permitted on the subject property. The continued use of the site as a park-n-sell in conjunction with the mobile food vending court will not be permitted to continue with the approval of this conditional use permit.	#6

**2. Does the site plan comply with the requirements of the zoning code?**

Yes. The recently approved development agreement (R2019-045) identifies the future installation of landscaping, lighting and paved parking/access.

**3. Does the proposed use and site plan comply with Transportation Element requirements?**

Yes.

TRANSPORTATION ELEMENT	PLANNED	EXISTING	DIFFERENCE	REQUESTED
Pacific Avenue – 4-Lane Minor Arterial	50 FT H/W ROW	148 FT H/W ROW	+98 FT	0 FT

**4. Does the proposed conditional use conform to all prior City Council actions for this site?**

Yes. The recently approved development agreement (R2019-045) identifies the future installation of landscaping, lighting and paved parking/access.

**5. Can the Hearing Officer answer the following questions affirmatively?**

**(1) Is the Hearing Officer, or the City Council, authorized under the zoning code to grant the conditional use permit described in the application?**

Yes. The Hearing Officer has the authority to review and approve this request per Section 154-15.13 (A)(1)(h), in which a Conditional Use Permit is required for multiple food vendors on one property.

**(2) Will the establishment, maintenance, and/or operation of the requested conditional use, under the circumstances of the particular case, not be detrimental to the health, safety; peace, morals, comfort, or general welfare of persons residing, or working, in the vicinity or such proposed use, or be detrimental, or injurious, to the value of property in the vicinity, or to the general welfare of the city?**

Yes. The proposed use of the property should not be detrimental to the health, safety, peace, morals, comfort, or general welfare of persons residing, or working, in the vicinity, so long as the conditions outlined in Attachment A are satisfied.

**(3) Are the provisions for ingress, egress, and traffic circulation, and adjacent public streets adequate to meet the needs of the requested conditional use?**

Yes. The recently approved development agreement (R2019-045) requires the installation of paved access which will provide adequate access and site circulation.

**(4) Are the provisions for building(s) and parking facility setbacks adequate to provide a transition from, and protection to, existing and contemplated residential development?**

Yes. The provisions for building(s) and parking facility setbacks are adequate in providing a transition from, and protection to, the existing residential development located within the area.

**(5) Are the height and bulk of the proposed buildings, and structures, compatible with the general character of development in the vicinity of the requested conditional use?**

Yes. The property owner does not intend on constructing structures that would be any taller or bulkier than what is currently in place. However, any new construction should be in keeping with the character of the surrounding area.

**(6) Have provisions been made to attenuate noise levels and provide for adequate site, and security lighting?**

Yes. The recently approved development agreement (R2019-045) will require the installation of adequate parking lot and site lighting.

**(7) Has the site plan for the proposed conditional use, including, but not limited to landscaping, fencing, and screen walls and/or planting, CPTED strategies (Crime Prevention Through Environmental Design), and anti-graffiti strategies been adequately provided to achieve compatibility with adjoining areas?**

Yes. The recently approved development agreement (R2019-045) will require the installation of landscaping and parking lot and site lighting to meet the CPTED strategies.

**Public Comments Received:** One Received.

Name:	Karen Estrada			Contact Information:						
Method of Contact:	Phone		FAX		Email	X	Letter		Other	
<p>Our biggest is the music we want no music cause he has one vendor that doesn't care about the noise. He plays loud music between 12am -3:30 am . Mr Guzman is well aware as he had been there twice due to me waking him up and has heard it as he was approaching property. He told me they were not allowed any music anymore that worked for awhile but recently it started again not as loud but we still can hear it so we can't even open our windows. They serve food and are not a bar this continues to be a serious problem. My son has ADHD and has sleeping problems and him being woken up is not cool also me and my husband have full time jobs and have to wake up everyday at 6 am and it's not fair for us to be woken up all hours of the night. Mr Guzman has been very nice calling them to turn it off they do for about 20minutes then it's right back on. It's just been a really big problem so no music would be great. The trash is another problem we feel the dumpster needs to be enclosed due to lids never being shut trash overfilled so if you go infront of his property you will see trash on the outside in the bushes it flies out all over and looks ugly me and my family have walked our road and picked up trash. We also would like to know if the city could put up no parking and tow away signs on his fence that faces Pacific Ave. due to diesel parking right there that is our only entrance into our property and sometimes we are left with very little room to turn in plus there tearing up our entrance there. I would still like to attend this hearing to make sure my concerns are addressed so if you could please keep me informed this is very important to me thank you. Could you please send me the date time and place for his next hearing.</p>										

**External Agency Comments:** None Received.

**Neighborhood Meeting Comments:** See Attachment F.

**Discussions with Applicant/Agent:** March 6, 2019, March 25, 2019, March 28, 2019

**Proposed conditions delivered to applicant on:** October 15, 2019

**Final staff report delivered to applicant on:** November 7, 2019

- Applicant agreed with all of the conditions of approval on: October 15, 2019
- Applicant did not agree with the following conditions of approval: (list #'s)
- If the Planner is unable to make contact with the applicant – describe the situation and attempts to contact.

**ATTACHMENTS:**

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>	<b>G</b>	<b>H</b>	<b>I</b>
Conditions of Approval	Site Plan	Elevation Photos	Memorandum of Understanding	Easement Agreement	Development Agreement (R2019-045)	Neighborhood Meeting Comments	Aerial Photo	Staff Research

**Prepared By:**   
Alyssa Linville,  
Assistant Director  
Community Development

**Date:** 11.05.19  
(928)373-5000, ext. 3037

**Approved By:**   
Laurie L. Lineberry, AICP,  
Community Development Director

**Date:** 11-6-2019

**ATTACHMENT A**  
**CONDITIONS OF APPROVAL**

The following conditions of approval are roughly proportionate to the impacts associated with the conditional use and expected development on the property.

**Community Development Comments: Laurie Lineberry, Community Development Director (928) 373-5175:**

1. The conditions listed below are in addition to City codes, rules, fees and regulations that are applicable to this action, including:
  - Paved Access;
  - Paved Parking;
  - Landscaping;
  - Parking Lot and Site Lighting;
  - Storm Drain Run-Off Containment; and
  - Provisions for Mobile Food Vending
2. The Owner shall submit to the City of Yuma, for recordation, a signed and notarized "Waiver of Claims under the Private Property Rights Protection Act." The Waiver shall be submitted prior to the issuance of any Building Permit, Certificate of Occupancy, or City of Yuma Business License for this property.
3. The Owner shall submit to the City of Yuma, for recordation, a signed and notarized Avigation Easement on the property acknowledging potential noise and overflight of aircraft from both daily and special operations of the Marine Corps Air Station and the Yuma International Airport.

**Fire Department: Kayla Franklin, Fire Marshal, (928) 373-4865:**

4. It is the applicant's responsibility to ensure that all food vendors meet, and continue to meet, fire code requirements – including but not limited to:
  - all cooking equipment capable of producing a grease laden vapor that is under any tent, canopy, overhang, roofed enclosure, etc., must be protected with a Type I hood system with fire suppression, serviced and cleaned as the code requires
  - Class K portable fire extinguisher is required within 30' of cooking equipment
  - 2A:10B:C rated portable fire extinguisher must be provided per code
  - Any new buildings or structures will have additional requirements.

**Community Planning: Alyssa Linville, Assistant Director of DCD, (928) 373-5000, ext. 3037:**

5. Any substantial modification to the overall site design as represented on the site plan will require a public hearing and be subject to the approval of the Planning and Zoning Commission. A substantial modification to the site plan would include, but not necessarily be limited to, the relocation of vehicular access, the modification of storm water retention or the relocation of a building or structure.

6. One primary use is permitted on the subject property. The continued use of the site as a park-n-sell in conjunction with the mobile food vending court will not be permitted to continue with the approval of this conditional use permit.
7. The conditions listed above shall be completed within one (1) year of the effective date of the approval of the Conditional Use Permit or in accordance with the City Council approved Development Agreement (R2019-045) or prior to the issuance of any Building Permit, Certificate of Occupancy or City of Yuma Business License for this property. In the event that the conditions are not completed within this time frame, the Conditional Use Permit shall be null and void.
8. Conditional Use Permit is subject to Development Agreement adopted and authorized by Mayor and City Council, which included timelines to meet conditions of this Conditional Use Permit. A failure to meet those material terms shall deem the Conditional Use Permit null and void in the manner set forth in that Development Agreement.

**Any questions or comments regarding the Conditions of Approval as stated above should be directed to the staff member who provided the comment. Name and phone numbers are provided.**

ATTACHMENT B  
SITE PLAN



ATTACHMENT C  
PHOTOS





**ATTACHMENT D**  
**MEMORANDUM OF UNDERSTANDING**

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into this \_\_\_ day of August, 2015 by and between Martin Guzman, as authorized agent for Francisco and Irene Guzman Trust (hereafter "Guzman") and Fortuna de Oro, LLC and Jesse G. Gomez, individually (hereafter "Oro/Gomez") and the City of Yuma, an Arizona municipal corporation (hereafter "City"); Guzman, Oro/Gomez and City are also hereafter referred to as the "Parties".

### RECITALS

WHEREAS, on March 17, 2014 the Yuma County Board of Supervisors approved Guzman's request for the special use permit No. 13-08 per Section 613.03(A) of the Yuma County Zoning Ordinance to allow mobile food vendors on a parcel 1.26 gross acres in size zoned Light Industrial, Assessor's Parcel Number 665-40-011, located at 1628 South Pacific Avenue, Yuma, Arizona;

WHEREAS, paragraph three of the Performance Conditions required by the Yuma County Board of Supervisors provides, in pertinent part, that "the owner/applicant shall obtain permission from the City to use the parcel to the north as legal access";

WHEREAS, on May 28, 2015 Oro/Gomez and the City entered into that certain Real Property Exchange and Pre-annexation Development Agreement (RPEPDA) which, in pertinent part, states that the City is the owner of two parcels (APN 665-40-008 and 665-40-010) described therein as "the City Exchange Property" which the City has agreed to transfer to Oro/Gomez to provide an approved "connection [from the development property owned by Oro/Gomez] to Pacific Avenue via the City Exchange Property";

WHEREAS, the City has agreed to honor the special use permit No. 13-08 of Guzman following the annexation of the referenced property of Oro/Gomez upon the condition of the completion of an agreement between Guzman and Oro/Gomez establishing a mutual non-exclusive right of access across the Exchange Property to Pacific Avenue and the completion within 18 months of the date of effective date of annexation (October 2, 2015), of paved access, a 5-foot sidewalk, vertical curb and gutter along the south side of the new private road from the Pacific Avenue turnout to the east side of Guzman's proposed driveway on the north side of Guzman's property, such that pedestrian customers do not have to walk in the drive aisle;

WHEREAS, Guzman has agreed, in such event, to fully support the referenced annexation of Oro/Gomez into the City and, therefore, has signed and delivered to the City on August 10, 2015 the Annexation Petition Annex-5538-2014 Gomez Annexation;

WHEREAS, Oro/Gomez has advised Guzman that establishment of the mutual non-exclusive access easement across referenced property depends, in part, upon continuing negotiations with the County of Yuma which are not expected to be completed until after the referenced annexation and transfer by the City of the Exchange Property;

NOW, THEREFORE, the Parties above named have decided to set forth the following statements of mutual understandings, as follows:

1. The Parties agree that the purpose of this memorandum of understanding is to set forth certain non-binding understandings and certain non-binding commitments as agreed preconditions to performance by the Parties of their mutual statements of intent set forth in the above referenced Recitals and that the Yuma City Council has not approved this memorandum of understanding, so this is an expression of the intent of City staff to make recommendations to the City Council in accordance with this memorandum of understanding;
2. Guzman and Oro/Gomez agree that upon the acquisition, whether through annexation with the City and/or negotiation with the County of Yuma of the real property required to establish access from Oro/Gomez's affected real property across the referenced Exchange Property to Pacific Avenue, Yuma, Arizona that they shall negotiate in good faith an appropriate agreement for a non-exclusive access easement for the mutual benefit of Oro/Gomez and Guzman parcels;
3. If necessary Guzman agrees to permit Oro/Gomez an easement in perpetuity upon Guzman's referenced real property as may be reasonably required for the purposes of establishing an offsite monument sign subject to the RPEPDA and/or any City Code requirements;
4. Depending upon actual costs and Guzman's financial ability to pay such costs, Guzman agrees to contract with Oro/Gomez to pay an agreed upon share of the costs necessary to improve the access to the Oro/Gomez and Guzman parcels and to pay the actual costs necessary to establish cut-outs from the anticipated water and sewer lines which Oro/Gomez intends to establish within the referenced Exchange Property;
5. The City agrees that prior to the completion of the acquisition by Oro/Gomez of all real property required to establish access across the Exchange Property to Pacific Avenue, Yuma, Arizona and the execution and delivery to the City of an appropriate agreement establishing a non-exclusive access easement for the mutual benefit of Oro/Gomez and Guzman to and from Pacific Avenue, Yuma, Arizona the City shall defer any contest of the continuing use of said property by Guzman for such access and that upon completion of the required access to the referenced real property by Oro/Gomez and delivery to the City of an appropriate agreement establishing a non-exclusive access easement for the mutual benefit of Oro/Gomez and Guzman the City shall accept as valid for all purposes the above referenced special use permit No. 13-08 for the duration of SUP No. 13-08. Prior to expiration of the SUP, Guzman will need to apply for a City of Yuma Conditional Use Permit and meet all City

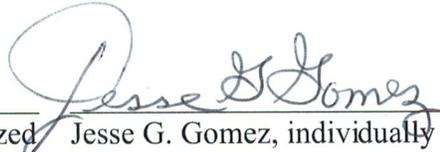
requirements under the City Conditional Use Permit in order to continue use of the Guzman property as a mobile food vendor site.

\_\_\_\_\_  
Martin Guzman as authorized agent for Francisco and Irene Guzman Trust

\_\_\_\_\_  
Jesse G. Gomez, individually as authorized agent for Fortuna de Oro, LLC

  
\_\_\_\_\_  
as authorized agent for the City of Yuma

requirements under the City Conditional Use Permit in order to continue use of the Guzman property as a mobile food vendor site.



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Martin Guzman as authorized agent for Francisco and Irene Guzman Trust

Jesse G. Gomez, individually as authorized agent for Fortuna de Oro, LLC

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as authorized agent for the City of Yuma

requirements under the City Conditional Use Permit in order to continue use of the Guzman property as a mobile food vendor site.



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Martin Guzman as authorized agent for Francisco and Irene Guzman Trust

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Jesse G. Gomez, individually as authorized agent for Fortuna de Oro, LLC

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as authorized agent for the City of Yuma

**ATTACHMENT E  
EASEMENT AGREEMENT**

When Recorded Mail To:



Barry L. Olsen  
Law Offices of Larry W. Suci, PLC  
101 East Second Street  
Yuma, Arizona 85364

### EASEMENT AGREEMENT

This Easement Agreement ("Agreement") is made and entered into by and between Fortuna de Oro, LLC, an Arizona limited liability company ("Grantor"), and the Francisco Guzman and Irene Guzman Family Wealth Trust dated December 2, 2008 ("Grantee").

#### RECITALS:

Whereas, Grantor is the owner of the following described real property, consisting of an access road to the Gomez Plaza Subdivision in Yuma, Arizona from Pacific Avenue as legally described on Exhibit "A" attached hereto, and as depicted on Exhibit "B" attached hereto ("Grantor's Property");

Whereas, Grantee is the owner of the following described real property:

The East half of the South 264 feet of the North 396 feet of the Southeast quarter of the Northeast quarter of the Northeast quarter of Section 34, Township 8 South, Range 23 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona;

EXCEPT the East 33 feet of the North 22.16 feet thereof; and

EXCEPT that portion of the above parcel, described as follows:

BEGINNING at a point on the East line of Section 34, which point is North  $0^{\circ}10'30''$  West, a distance of 1824.76 feet from the East quarter corner thereof;

Thence South  $89^{\circ}49'30''$  West a distance of 100.00 feet;

Thence South  $11^{\circ}08'06''$  West, a distance of 246.63 feet to the South line of said East half of the South 264 feet of the North 396 feet of the Southeast quarter of the Northeast quarter of the Northeast quarter of Section 34;

Thence North  $89^{\circ}48'09''$  East along said South line, a distance of 148.37 feet to the aforesaid East line of Section 34;

Thence North  $10^{\circ}10'30''$  West along said East Section line, a distance of 241.84 feet to the Point of Beginning; and

FURTHER EXCEPT that portion conveyed to Yuma County in instrument recorded in Fee No. 1997-2523, Official Records of Yuma County, Arizona.

("Grantee's Property")

Whereas, Grantee requests an easement from Grantor for ingress and egress over Grantor's Property; and

Whereas, Grantor is willing to provide Grantee with the requested easement upon the terms and conditions set forth in this Agreement.

Now, therefore in consideration of the terms and conditions set forth herein, the parties agree as follows.

1. **Incorporation of Recitals.** The parties agree the Recitals as set forth above are true and accurate and are hereby incorporated by reference as part of this Agreement.

2. **Easement.** Grantor hereby conveys and grants to Grantee and its respective successors, transferees and assigns an irrevocable easement for ingress and egress over the Grantor's Property ("Easement").

3. **Use of Easement.** Grantee agrees to only use the Easement for ingress and egress to both Grantor's Property and for no other purpose. Grantee agrees not to use the Easement for parking storage or in any manner, which interferes with, or impedes, either Grantor's use or the enjoyment of Grantor's Property or in any manner which interferes with the use or enjoyment of either Grantor's Property.

4. **Regular Maintenance or Repair of Easement.** Grantee agrees to contribute 15% of any sums reasonably expended by Grantor for the regular maintenance and repair of the Easement. Upon Grantor's determination the Easement is in need of repair or maintenance, Grantor shall procure an estimate of the costs for such repair or maintenance. Grantor shall provide Grantee with written notice to the necessary repairs with a copy of the estimate for the costs of such repairs or maintenance and Grantor's calculation of Grantee's 15% share of such expense. Grantee shall remit to Grantor its 15% share of such expense no later than 30 days from receipt of the written notice to Grantee as set forth herein.

5. **Damage to Easement by Grantee.** Grantee agrees in the event the Easement is damaged due solely as the result of Grantee's use of the Easement, or the use of Grantee's employees, representatives, agents, lessee's, licenses, customers or invitees Grantee at its sole cost and expense shall immediately repair such damage at Grantee's sole cost and expense so as not to unreasonably interfere or impede access to the Gomez Plaza Subdivision.

6. **Compensation for Easement.** Grantee agrees upon execution of this Easement by Grantor, Grantee shall remit the sum of \$15,000 to Grantor as consideration for this Easement.

7. **Covenant to Run with the Land.** Grantor and Grantee agree this Easement shall be binding upon and inure to the benefit and obligation of the successors, assigns and/or grantees of Grantor and Grantee as to the Grantor's Property and Grantee's Property and shall be a covenant to run with the ownership of both the Grantor's Property and Grantee's Property.

8. **Successors and Assigns.** This Agreement shall not impair the right of any party to hereafter convey any interest in any or all of the property burdened or benefited hereby, provided that any such conveyance is subject hereto. The Easement shall not be conveyed or assigned separately from the benefited property to which it is appurtenant. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective legal representatives, heirs, successors, and assigns, from time to time.

9. **Default; Remedies.** In the event of any default in the obligations set forth in this Agreement by the party required to perform such obligations (the "Defaulting Owner"), which default is not cured within thirty (30) days after receipt of written notice therefor, any non-defaulting Owner (the "Non-Defaulting Owner") shall have the right to prosecute any proceedings at law or in equity against the Defaulting Owner and to recover damages for any such violation or default. The remedies available hereunder shall also include, by way of illustration but not limitation, *ex parte* applications for temporary restraining orders, preliminary injunctions, and permanent injunctions enjoining any violation or attempted violation or default, and actions for specific performance of the obligations and covenants of this Agreement.

10. **Amendment.** This Agreement may be modified or amended, in whole or in part, or terminated, by the written consent of both Grantor and Grantee evidenced by a document that has been fully executed and acknowledged by all of the parties and recorded in the official records of the County Recorder of Yuma County, Arizona.

11. **Notices.** Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested; or by a reputable national courier company (e.g. FedEx or UPS); or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. Each party may change from time to time its respective address for notice hereunder by like notice to the other party. If, upon taking title, a new party does not provide a notice address to the other party, its notice address shall be the address used by Yuma County for the delivery of real property tax notices for the parcel. The notice addresses of the parties are as follows:

If to Grantor:

Fortuna de Oro, LLC  
c/o Jesse Gomez  
11262 S. Avenue 14E  
Yuma, AZ 85367

If to Grantee: Francisco & Irene Guzman  
1149 S. 14<sup>th</sup> Avenue  
Yuma, AZ 85364

**12. Attorneys' Fees and Costs.** In the event it is necessary for either party to institute legal proceedings to enforce or interpret any of the terms and conditions of this Agreement, the prevailing party in any such action shall be entitled to recover a reasonable additional sum as and for attorneys' fees and costs.

**13. Entire Agreement.** This document constitutes the entire agreement between the parties as to the Easement and may not be amended or otherwise modified except by the express written agreement of the parties.

Dated this 26 day of Oct, 2017.

**GRANTOR:**

Fortuna de Oro, LLC

**GRANTEE:**

Francisco Guzman and Irene Guzman  
Family Wealth Trust dated December 2,  
2008

By: Jesse G. Gomez  
Jesse G. Gomez, Manager

By: \_\_\_\_\_  
Francisco S. Guzman, Trustee

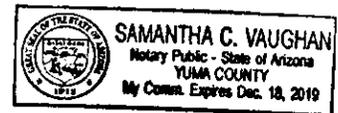
By: \_\_\_\_\_  
Irene G. Guzman, Trustee

State of Arizona }  
                                  }ss  
County of Yuma }

Subscribed and sworn to before me this 26 day of October, 2017 by Jesse G. Gomez as Manager of Fortuna de Oro, LLC, an Arizona limited liability company.

Samantha C. Vaughan  
Notary Public

My Commission Expires:  
12/18/2019



If to Grantee: Francisco & Irene Guzman  
1149 S. 14<sup>th</sup> Avenue  
Yuma, AZ 85364

**12. Attorneys' Fees and Costs.** In the event it is necessary for either party to institute legal proceedings to enforce or interpret any of the terms and conditions of this Agreement, the prevailing party in any such action shall be entitled to recover a reasonable additional sum as and for attorneys' fees and costs.

**13. Entire Agreement.** This document constitutes the entire agreement between the parties as to the Easement and may not be amended or otherwise modified except by the express written agreement of the parties.

Dated this \_\_\_ day of \_\_\_\_\_, 2017.

**GRANTOR:**

Fortuna de Oro, LLC  
December 2,

**GRANTEE:**

Francisco Guzman and Irene Guzman  
Family Wealth Trust dated  
2008

By: \_\_\_\_\_  
Jesse G. Gomez, Manager

By: Francisco S. Guzman  
Francisco S. Guzman, Trustee

By: Irene G. Guzman  
Irene G. Guzman, Trustee

State of Arizona }  
                                  }ss  
County of Yuma }

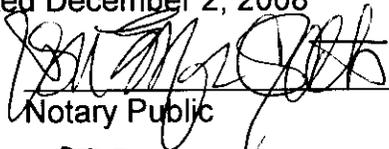
Subscribed and sworn to before me this \_\_\_ day of \_\_\_\_\_, 2017 by  
Jesse G. Gomez as Manager of Fortuna de Oro, LLC, an Arizona limited liability  
company.

\_\_\_\_\_  
Notary Public

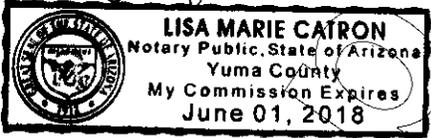
My Commission Expires:  
\_\_\_\_\_

State of Arizona        }  
                                  }ss  
County of Yuma        }

Subscribed and sworn to before me this 31 day of October, 2017 by Francisco E. Guzman and Irene G. Guzman as Trustees of the Francisco Guzman and Irene Guzman Family Wealth Trust dated December 2, 2008

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
June 01, 2018



Unofficial Copy

**EXHIBIT "A"**  
**Legal Description of Grantor's Property**  
**[Attached hereto]**

"UnOfficial Copy"

**Gomez Plaza Subdivision 17th Street Access Easement  
Legal Description**

That portion of the Northeast quarter of the Northeast quarter of Section 34, Township 8 South, Range 23 West, Gila and Salt River Base and Meridian, Yuma County, Arizona, more particularly described as follows:

Beginning at the northeast corner of said Section 34;

Thence South  $00^{\circ}13'14''$  East along the East line of said Section 34 a distance of 738.50 feet;

Thence South  $89^{\circ}45'45''$  West a distance of 92.00 feet to the TRUE POINT OF BEGINNING;

Thence South  $00^{\circ}13'14''$  East parallel with and 92.00 feet westerly of the East line of said Section 34 a distance of 40.00 feet;

Thence South  $89^{\circ}45'45''$  West a distance of 106.71 feet;

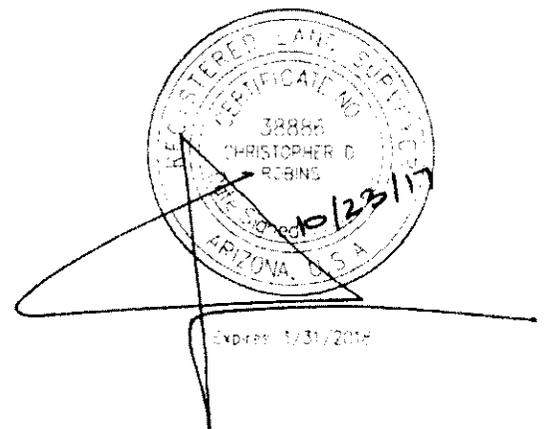
Thence North  $84^{\circ}47'50''$  West a distance of 105.48 feet;

Thence South  $89^{\circ}45'45''$  West a distance of 11.92 feet;

Thence North  $00^{\circ}12'19''$  West a distance of 30.00 feet;

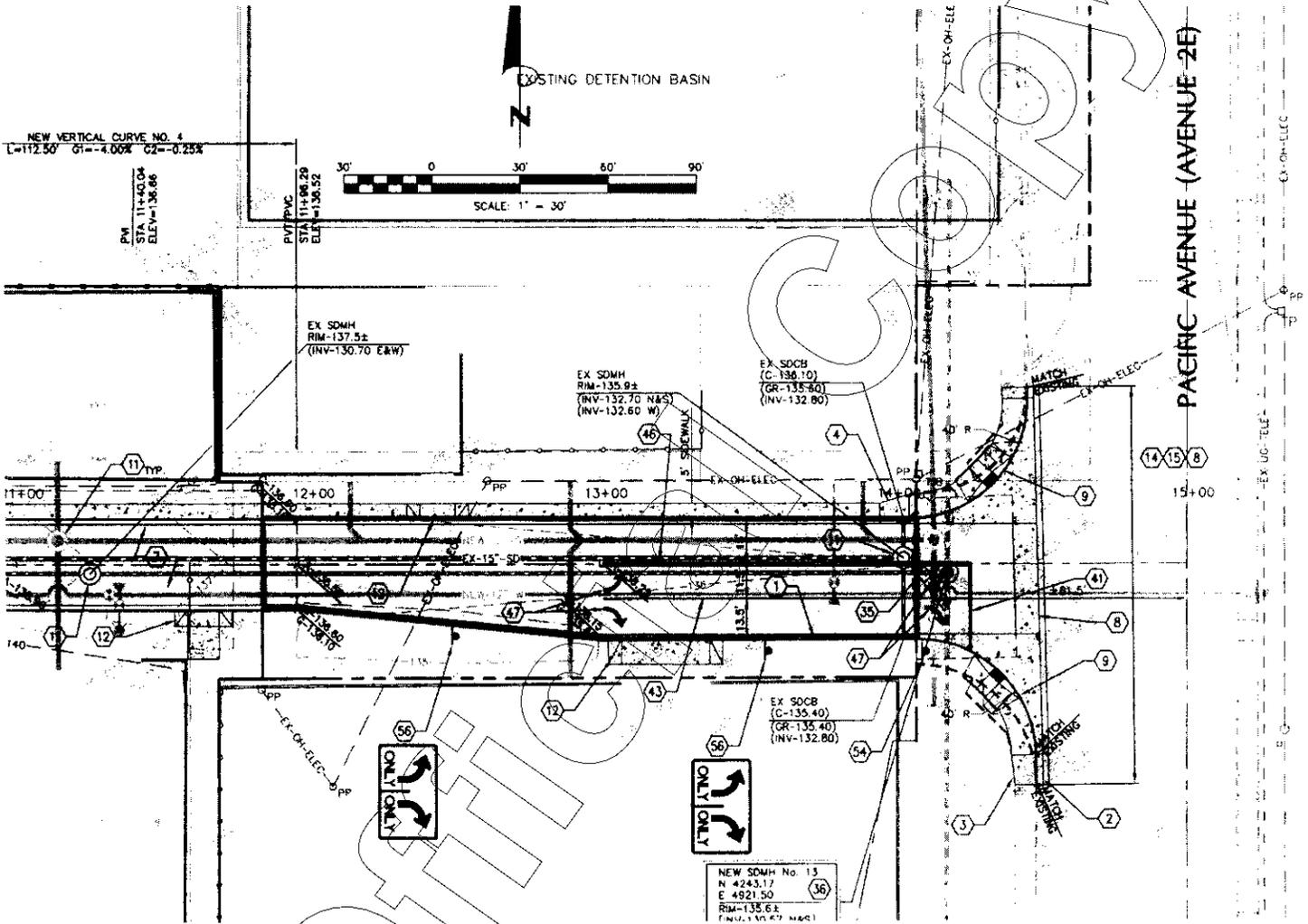
Thence North  $89^{\circ}45'45''$  East a distance of 223.63 feet to the TRUE POINT OF BEGINNING;

Said parcel contains 8,301 square feet, more or less.



**EXHIBIT "B"**  
**Depiction of Grantor's Property**  
**[Attached hereto]**

"Unofficial Copy"



**ATTACHMENT F**  
**DEVELOPMENT AGREEMENT (R2019-045)**

RESOLUTION NO. R2019-045

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUMA,  
ARIZONA, AUTHORIZING AND APPROVING THE EXECUTION OF A  
DEVELOPMENT AGREEMENT WITH THE OWNER OF REAL PROPERTY  
LOCATED AT 1744 S. PACIFIC AVENUE**

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

WHEREAS, the owner of certain real property located at 1744 S. Pacific Avenue (the Property) operated a mobile food vending site under Yuma County issued Special Use Permit No. 13-08 (SUP); and,

WHEREAS, in August 2015, the owner, the adjacent developer, Fortuna de Oro, LLC, and the City entered into a three-party agreement which provided, among other things, the City's recognition of owner's County SUP until it expired and thereafter owner was to obtain a City Conditional Use Permit (CUP) and meet all requirements under the CUP to continue use as a mobile food vendor site; and,

WHEREAS, the County SUP has expired and owner must obtain a CUP to continue to use the Property as a mobile food vending site; and,

WHEREAS, owner needs additional time to meet required standard conditions to obtain a CUP; and,

WHEREAS, the conditional use and development of the Property as a mobile food vending site is consistent with the goals and objectives of the City of Yuma General Plan, as amended, and adopted in 2012; and,

WHEREAS, entering into this Development Agreement furthers the objectives established in the August 2015 three-party agreement and permits owner to continue to use the Property as a mobile food vendor site subject to the terms in the proposed Development Agreement and further resolves disputes between the owner and City.

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

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

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

Adopted this 16th day of October 2019.

APPROVED:

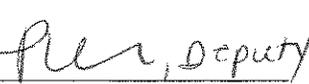
  
Douglas J. Nicholls  
Mayor

ATTESTED:

APPROVED AS TO FORM:

  
Richard W. Files  
City Attorney

  
Lynda L. Bushong  
City Clerk

  
Janet L. Pierson  
deputy city clerk

## DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this day of \_\_\_\_\_, 2019 (“Effective Date”), by and between the FRANCISCO GUZMAN AND IRENE GUZMAN FAMILY WEALTH TRUST DATED DECEMBER 2, 2008 (“Trust”), Martin Guzman, Trust representative and effective property owner, (“Guzman”) (“Trust” and “Guzman” are collectively referred to herein as “Owner”) and the City of Yuma, Arizona, an Arizona municipal corporation (“City”). The Owner and City are collectively referred to herein as the “Parties,” and individually as a “Party”.

### RECITALS

WHEREAS, Owner holds fee title to approximately one (1) acre of real property within the corporate limits of the City of Yuma located west of the Southwest corner of 17<sup>th</sup> Street & Pacific Avenue in Yuma, Arizona, known as Arizona Parcel Number 665-40-011, and more particularly described and depicted as lot number 11 in the attached Exhibit 1 (“Property”); and,

WHEREAS, in 2015, Owner, City, and another entity, Fortuna De Oro, LLC, developer of the Gomez Plaza, entered into a Memorandum of Understanding setting forth rights and responsibilities of Owner, City, and Fortuna De Oro, LLC, for contribution and perfected access to the Property and to Gomez Plaza; and,

WHEREAS, the Property’s current primary use is for mobile food vending court; and,

WHEREAS, Owner obtained a Yuma County-issued special use permit for the mobile food vending operation and pursuant to terms of the 2015 Memorandum of Understanding, Owner was to obtain a City-issued Conditional Use Permit and meet City development standards prior to the expiration of the Yuma County-issued special use permit; and,

WHEREAS, the Property’s current condition does not meet the City development standards for the current use; and,

WHEREAS, Owner desires and intends to develop the Property to bring it into conformance with City development standards applicable to the current use; and,

WHEREAS, Owner has presented a conceptual plan for the intended development and improvement of the Property, which includes the design, installation and construction of landscaping, lighting and the paving of a parking lot, each of which are depicted in Exhibit 2 (the “Plan”); and,

WHEREAS, Owner initiated a lawsuit in Yuma County Superior Court, Cause No. S1400CV201900159, asserting an inverse condemnation claim against the City relating to the Property (“Lawsuit”); and

WHEREAS, the Parties intend this Agreement, to among other things, be a full and final settlement of the Lawsuit; and

WHEREAS, Owner and City are entering into this Agreement pursuant to the provisions of ARIZ. REV. STAT. § 9-500.05 in order to facilitate the development of the Property by providing for, among other things the conditions, terms, restrictions and requirements for the construction and installation of infrastructure improvements related to the development of the Property; and,

WHEREAS, development of the Property in accordance with this Agreement will result in the planning, design, engineering, construction, acquisition, and installation of infrastructure improvements that will authorize the current use of the Property; and

WHEREAS, improving the Property will enhance the general area around the Property, and be of a public benefit; and,

WHEREAS, the Parties understand and acknowledge that the terms of this Agreement shall constitute and be interpreted as covenants running with the Property as more fully described in this Agreement.

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

1. Incorporation of Recitals. The foregoing Recitals are incorporated into this Agreement by reference as though fully restated.

2. Term. This Agreement will commence and become operative as of the Effective Date, and will terminate when the obligations of the Parties have been completed, including (i) the completion of the dedication of public rights-of-way; and (ii) the construction, dedication and final City acceptance of the public improvements contemplated herein; and (iii) any Owner surcharge or financial contribution contemplated by this Agreement has expired or been paid in full; or (iv) the Parties mutually provide for termination in writing; or (v) if no vertical construction requiring a building permit has commenced on the Property, upon the expiration of three (3) years from the Effective Date, whichever occurs first. Notwithstanding the provisions of this Section 2, and any other term of this Agreement, express covenants shall survive the term of this Agreement and shall run with the land.

3. Development of the Property.

A. Adherence to Plan. Owner acknowledges and agrees City is materially relying on Owners representations regarding its development of the Property, as depicted on the Attached Plan (See Exhibit 2, "Plan"), in entering into this Agreement.

4. MATERIAL TERMS

A. Landscaping. Owner shall (i) submit a substantially complete landscaping Plan to the City Department of Community Development no later than December 15, 2019, and upon City approval of the landscaping Plan and the issuance of any required permits; (ii) install

the landscaping and irrigation improvements in substantial conformance with the approved landscaping Plan, all of which shall be installed no later than January 15, 2020.

B. Lighting. Owner shall (i) submit a substantially complete lighting Plan to the City Department of Community Development no later than September 15, 2020, and upon City approval of the lighting Plan and the issuance of any required permits; (ii) Owner shall install the lighting improvements in substantial conformance with the approved lighting Plan no later than October 15, 2020.

C. Paving. Owner is required to pave all areas in which vehicles will be driven or parked. Owner shall (i) submit a substantially complete paving Plan to the City Department of Community Development no later than January 15, 2021, and upon City approval of the paving Plan and the issuance of any required permits; (ii) install the paving improvements in substantial conformance with the approved paving Plan no later than July 15, 2021.

D. Paving Location. Paving is only required on the areas where vehicles will park, drive or where the mobile food vendors will operate, each of which areas are depicted on the Plan.

E. Recognition of Use. City, in reliance of Owner's commitments relating to improvements to the Property contained in this Agreement and provided Owner is not in breach of this Agreement, will recommend approval of Owner's application for a Conditional Use Permit for a mobile food vending court. Provided Owner is not in breach of this Agreement and does not cause a condition to occur upon the Property relating to the current use that is a violation of the City of Yuma City Code or Arizona or federal laws, Owner may continue the current use now existing on the Property. In the event the City issues a Conditional Use Permit for the mobile food vending court and Owner fails to satisfy the conditions of approval for the Conditional Use Permit, City shall revoke the Conditional Use Permit.

F. Conditional Use Permit Revocation. If any material terms of this Agreement are breached by Owner, the City shall revoke the Conditional Use Permit.

G. Primary Use. Mobile food vending court is the primary use.

H. Mobile Food Vending Court. Pursuant to city ordinance and state law, mobile food vendors must be mobile. City will delay Owner's compliance with the vendor mobility requirements and site development requirements as set forth in City Code Section 154-15.13 for a period 18 months from the Effective Date, but in no case shall the City delay Owner's compliance beyond January 15, 2021.

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

6. Notice. Except as otherwise required by law, any notice, demand or other communication given shall be in writing by personal delivery or sent by certified or registered

U.S. Mail, return receipt requested, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph, or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid:

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

To Owner:  
Francisco Guzman & Irene Guzman Family  
Wealth Trust Dated December 2, 2008  
c/o Martin Guzman  
3766 W. 25<sup>th</sup> Ln.  
Yuma, AZ 85364

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

7. Default. If either Party defaults (the "Defaulting Party") with respect to any of such Party's obligations, then the other Party (the "Non-Defaulting Party") shall give written notice in the manner described in Section 6 above to the Defaulting Party. The notice shall state the nature of the default claimed and make demand that such default be corrected. The Defaulting Party shall then have:

A. Twenty (20) days from the date of receipt of such notice within which to correct such default if it can be reasonably corrected by the payment of money, or

B. Sixty (60) days from the date of receipt of such notice to cure such default if action other than payment of money is reasonably required, or

C. If any such non-monetary default cannot reasonably be cured within sixty (60) days for reasons beyond the Defaulting Party's control (financial inability, construction delays and unexpected market conditions), 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.

8. Owner Representations. Owner represents and warrants that:

A. Owner has the full right, power and authorization to enter into and perform this Agreement and the obligations and undertakings of Owner under this Agreement,

and the execution, delivery and performance of this Agreement by Owner has been duly authorized, agreed to, and is in compliance with any organizational documents of Owner.

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

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

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

E. This Agreement (and each undertaking of Owner contained herein) constitutes a valid, binding and enforceable obligation of Owner according to its terms, except to the extend limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principals, whether considered at law or in equity.

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

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

H. Owner understands the previously issued Yuma County Special Use Permit is expired and there is no City issued Conditional Use Permit for Owner's current use of the Property and this Agreement shall serve as the basis for City staff's recommendation of approval of a Conditional Use Permit for a mobile food vending court.

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

9. City Representations. City represents and warrants to Owner that:

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

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

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

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

E. This Agreement (and each undertaking of City contained herein), constitutes a valid, binding and enforceable obligation by 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.

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

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

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

11. Attorneys' Fees and Costs. 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 litigation 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.

12. Miscellaneous.

A. Consents and Approvals. Whenever this Agreement requires or permits the consent or approval of a Party to any act, document, use, or other matter, such consent or approval shall be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise.

B. 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 laws 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 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 by or through the subject of this Agreement.

C. Construction; Severability. Captions 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 waive the application of any rule of law that ambiguous or conflicting terms or provisions shall be interpreted or construed against the Party who prepared the Agreement.

D. 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 Owners 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.

E. 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 to this Agreement (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 Owners under this Agreement.

F. 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 have been executed by both Parties and approved by the Yuma City Council

G. Successors and Assigns; All Terms and Covenants Run With Land. 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 and will run with the land during the Term of the 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, tenants, lessees and sublessees.

H. A.R.S. § 38-511 and A.R.S. § 35-393.01 (Boycott of Israel). Notice is hereby given of the applicability of A.R.S. § 38-511 to this Agreement. Additionally, pursuant to A.R.S. § 35-393.01, Owners certify that they are not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agree for the duration of this Agreement to not engage in a boycott of Israel.

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

J. 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.

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

L. Individual Nonliability. In the event of any default or breach by City, no Yuma 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, nor 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 Owners shall be limited solely to the Property and the assets of Owners related to the Property, and shall not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are members, stockholders, officers, agents, trustees, or beneficiaries of Owners.

M. Proposition 207 Waiver. Owners waive and release 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 Property or any portion thereof, as a result of City's approval or failure to approve this Agreement. 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 termination of this Agreement.

N. Avigation Easement. Owners acknowledge the subject Property is located within the vicinity of the Yuma County International Airport and the United States Marine Corps Air Station, both of which may result in aircraft overflight, vibrations or related noise as may be inherent in the operation of aircraft now known or hereafter used for flying within Navigable Airspace.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

**CITY:**  
City of Yuma, an Arizona municipal corporation

**OWNER:**  
TRUST: Francisco Guzman and Irene Guzman Family Wealth Trust Dated December 2, 2008

By: \_\_\_\_\_  
John D. Simonton, City Administrator

By: \_\_\_\_\_  
Its: Trustee

-and-

GUZMAN: Martin Guzman, an individual

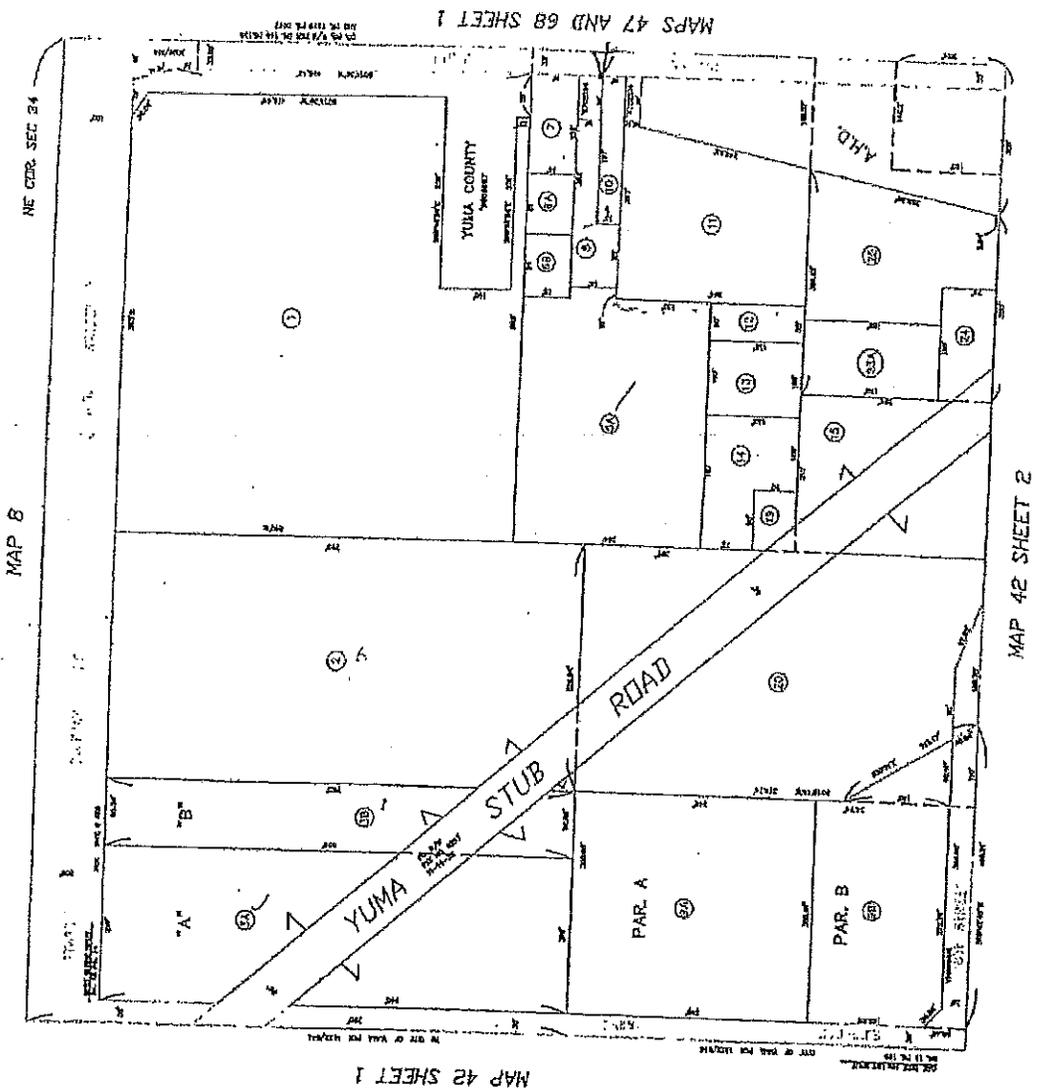
By: \_\_\_\_\_

ATTEST

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

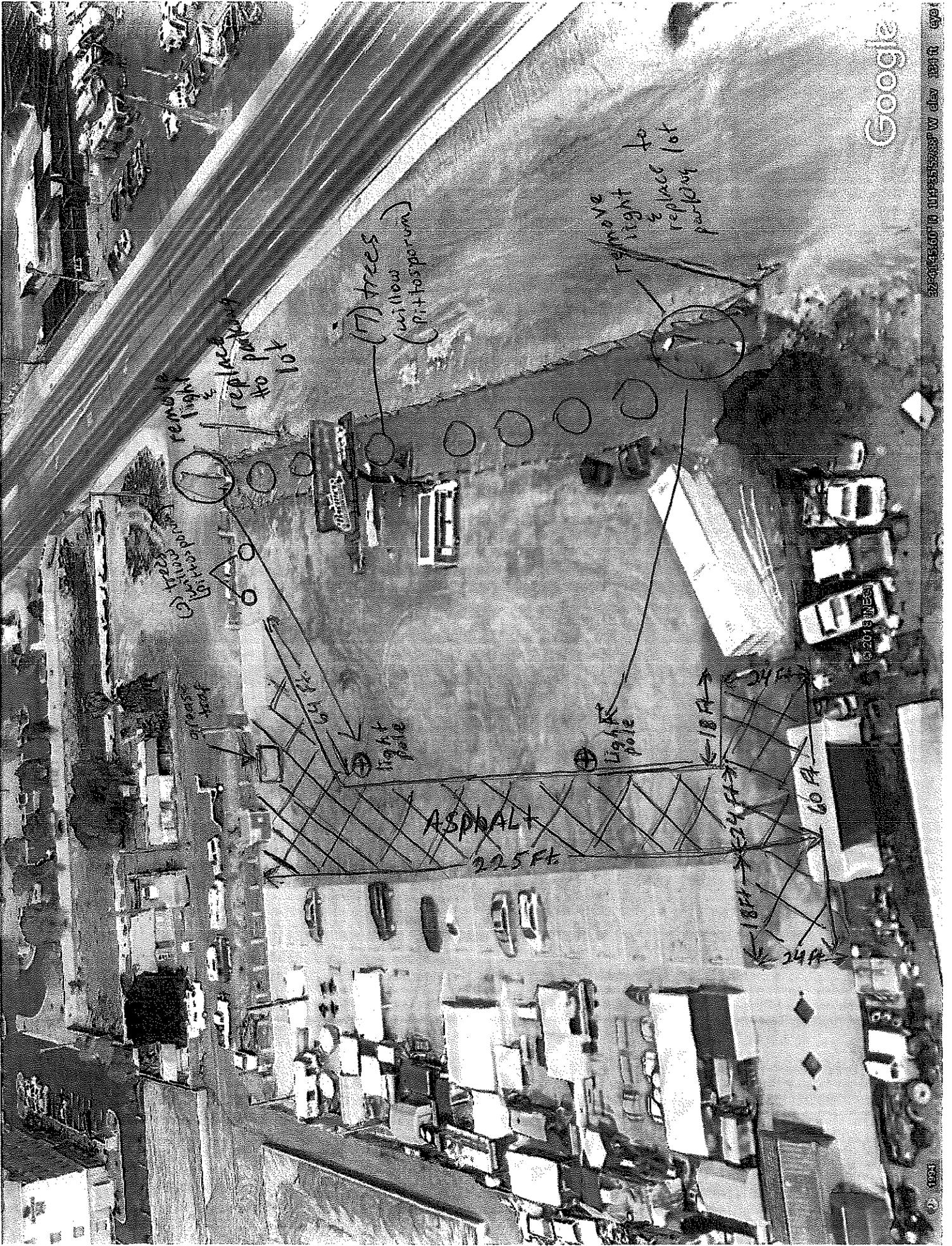
APPROVED AS TO FORM

By: \_\_\_\_\_  
Richard W. Files  
City Attorney



YUMA COUNTY ASSESSOR	
SCALE	1" = 100'
FOR INFORMATION ONLY NO LIABILITY ASSUMED YUMA COUNTY ASSESSOR	
MAP LAST AMENDED	
<small>           THE ABOVE MAPS SHOW THE PROPERTY LINES AND ARE NOT TO BE USED FOR ANY OTHER PURPOSES. THE INFORMATION CONTAINED HEREIN IS FOR INFORMATION ONLY AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE OF ANY KIND. THE USER OF THIS MAP SHALL BE RESPONSIBLE FOR VERIFYING THE ACCURACY OF THE INFORMATION CONTAINED HEREIN.         </small>	

Yuma County Assessor's Office  
 1000 N. Lincoln Street, Suite 100  
 Yuma, Arizona 85402  
 Phone: (928) 782-1234  
 Fax: (928) 782-1235  
 Website: www.yumacountyassessor.com



**ATTACHMENT G**  
**NEIGHBORHOOD MEETING COMMENTS**

**Date Held:** March 6, 2019

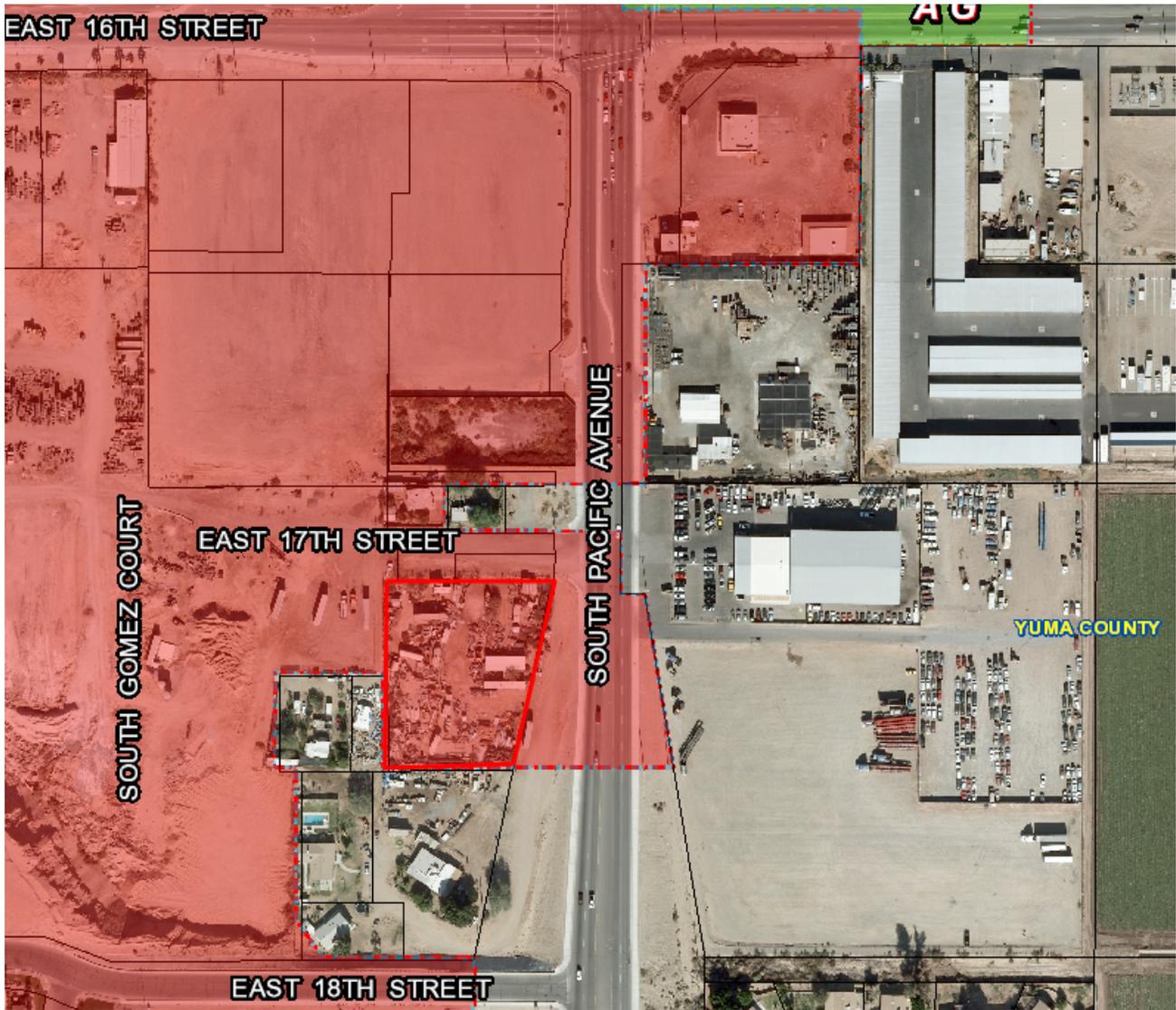
**Location:** On-Site (1744 S. Pacific Avenue)

**Attendees:** Alyssa Linville, City of Yuma; Cheri Skinner, City of Yuma; Martin Guzman, Agent

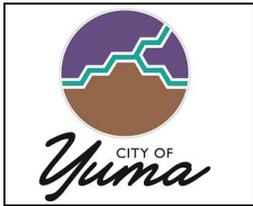
SUMMARY OF ATTENDEE(S)' COMMENTS RELATED TO THE PROJECT:

- **THERE WERE NO NEIGHBORS IN ATTENDANCE FOR THE NEIGHBORHOOD MEETING.**

ATTACHMENT H  
AERIAL PHOTO



**ATTACHMENT I  
STAFF RESEARCH**



**STAFF RESEARCH – CONDITIONAL USE PERMIT**

**CASE #: CUP-28183-2019**  
**CASE PLANNER: ALYSSA LINVILLE**

**I. PROJECT DATA**

Project Location:	Located approximately 300 feet north of the northwest corner of S. Pacific Avenue and E. 18 <sup>th</sup> Street		
Parcel Number(s):	665-40-011		
Parcel Size(s):	53,164 square feet		
Total Acreage:	1.2 acres		
Proposed Dwelling Units:	None		
Address:	1744 S. Pacific Avenue		
Applicant:	Francisco and Irene Guzman		
Applicant's Agent:	Martin Guzman		
Land Use Conformity Matrix:	Conforms:	YES	X No

Zoning Overlay:	Public	AO	X	Auto	B&B	Historic	None
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	Airport	Noise Contours	65-70	70-75	75+	APZ1	APZ2	Clear zone
	<b>Existing Zoning</b>			<b>Use(s) on-site</b>			<b>General Plan Designation</b>	
<b>Site</b>	General Commercial/Aesthetic Overlay (B-2/AO)			Mobile Food Vending Court			Commercial	
<b>North</b>	General Commercial/Aesthetic Overlay (B-2/AO); Yuma County (Light Industrial)			Undeveloped; Residential			Commercial	
<b>South</b>	Yuma County (Light Industrial)			Residential			Commercial	
<b>East</b>	Yuma County (Light Industrial)			Vacant			Industrial	
<b>West</b>	General Commercial/Aesthetic Overlay (B-2/AO); Yuma County (Light Industrial)			Undeveloped; Residential			Commercial	

Prior Cases or Related Actions:

Type	Conforms			Cases, Actions or Agreements
Pre-Annexation Agreement	Yes	No		N/A
Annexation	Yes	No	X	Ord. O2015-051 (October 2, 2015)
General Plan Amendment	Yes	No		N/A
Development Agreement	Yes	No		N/A
Rezone	Yes	No	X	Ord. O2015-51 (October 2, 2015: Zoned upon annexation)
Subdivision	Yes	No		N/A
Pre-Development Meeting	Yes	No	X	December 29, 2016; November 16, 2017
Conditional Use Permit	Yes	No		N/A
Design Review Commission	Yes	No		N/A
Enforcement Actions	Yes	No		N/A
Avigation Easement Recorded	Yes	No	X	Fee #

Land Division Status: Legal lot of record.

Irrigation District: None

Water Conversion Agreement Required	Yes	No	N/A
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Adjacent Irrigation Canals & Drains:		None			
<b>Facility Plans</b>					
Transportation Master Plan		<b>Planned</b>	<b>Existing</b>	<b>Difference</b>	<b>Requested</b>
Pacific Avenue – 4-Lane Minor Arterial		50 FT H/W ROW	148 FT H/W ROW	+98 FT	0 FT
Median Covenant		Required			
Gateway Route	X	Scenic Route		Hazardous Cargo Route	
				Truck Route	X
2009 Bicycle Facilities Master Plan		Pacific Avenue – Proposed Bike Lanes			
YCAT Transit System		Pacific Avenue – Orange Route 2			
<u>Detailed Narrative</u>		<p>On March 17, 2014, while under the jurisdiction of Yuma County, the subject property was granted a County Special Use Permit (SUP) for the development of a seven unit, mobile food vending court.</p> <p>During the County SUP, Applicant’s access was across two unimproved dirt lots owned by the City. For many years, the unimproved dirt lots were identified as a potential street. Prior to 1997, the subject property had direct access to Pacific Avenue (Avenue 2E). In December 1996, Applicant’s predecessor in interest sold the portion of the subject parcel giving direct access to Pacific Avenue to Yuma County. The warranty deed conveying fee simple title to an approximate 22’ by 59’ parcel to Yuma County by warranty deed is recorded as Yuma County Recorder’s Fee #1997-02523. After this conveyance to Yuma County, Applicant’s predecessor in interest began using the unimproved dirt lot for access to the subject property.</p> <p>Pacific Avenue was reconstructed and widened in 2004 over the parcel conveyed to the County. The project included curb, gutter and sidewalk aligned to the two unimproved dirt parcels, which was planned to align to a future 17th Street. Access to the property was continued over the unimproved dirt lots. In 2015, the City conveyed the unimproved dirt lots to the Gomez Plaza/Fortuna de Oro development. The City, Gomez Plaza and Applicant entered into a Memorandum of Understanding (MOU) which granted a perfected titled easement for access to the subject property. (Attachment D). Under the MOU, Gomez Plaza granted a perfected titled easement for access to the subject property. Gomez Plaza would also construct a private street on the 17th Street alignment with a curb, gutter and five-foot sidewalk on the south side of the street in front of the subject property and Gomez Plaza would construct water and sewer cutouts for the benefit of the subject property. Attorneys for Gomez Plaza and Applicant negotiated Applicant’s contribution for these improvements (approximately 15% of the costs).</p> <p>The MOU also provided for the City to recognize subject property’s use as a mobile food vendor site under the County SUP for the duration of the County SUP. Prior to the expiration of the County issued SUP, the Applicant must apply for a City CUP and meet all City requirements under a City CUP in order to continue using the subject property as a mobile food vendor site. In return, the Applicant agreed to annex into the City of Yuma.</p> <p>Applicant’s County SUP for the subject property expired on March 17, 2019. Applicant now seeks a City CUP to continue the use as set forth in the MOU.</p> <p>The subject property, now located within the City of Yuma, is a non-conforming use. In order to continue operating the mobile food vending court, the property owner is required to apply for and receive approval for a Conditional Use Permit. With the Conditional Use Permit, certain</p>			

development standards will need to be addressed and rectified; such standards include landscaping, parking lot lighting, and paved access. In addition to the required development standards, operational standards will need to be met. These operational standards include:

1. Each mobile food vendor must maintain a minimum of three paved parking spaces on the site designated for their customers' vehicles.
2. Mobile food vendors shall not operate between the hours of midnight and 5:00 a.m.
3. Any accessory structure(s) used and/or associated with the food vending operation shall also be removed from the mobile vending site during hours of non-operation. This means that all accessory food vending structures shall be removed from the mobile vending site no later than midnight.
4. The site upon which a food vending unit is operating shall at all times be kept clean and free from litter, garbage, rubble and debris. The mobile food vendor is required to provide their own trash can and to dispose of their own trash at appropriate places. This means that the food vendor(s) have the responsibility of maintaining a clean site, even if their customer(s) are not making the mess.
5. Mobile food vendors shall not use bells, chimes, microphones, generators louder than 70 decibels at 10 feet, loudspeakers, amplified music, strobe lights, spot lights or any other audible or visual disturbance as a part of its mobile vending operation.

In addition to the requested use of the site as a mobile food vending court, the property owner would like to maintain a water kiosk and a park-n-sell lot on-site. Staff is in agreement with allowing the water kiosk to remain on-site, as that is classified as an ancillary use, however, the mobile food vending court and park-n-sell are both considered primary uses. Two primary uses would not be permitted on-site, and therefore, the park-n-sell lot will not be permitted to operate in conjunction with the mobile food vending court.

Exception to Development Standards?	Yes		No	X	
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**NOTIFICATION**

- o Legal Ad Published: The Sun (10/25/19)
- o 300' Vicinity Mailing: (02/19/19)
- o 34 Commenting/Reviewing Agencies noticed: (02/21/19)
- o Site Posted on: (11/07/19)
- o Neighborhood Meeting: (03/06/19)
- o Hearing Date: (11/14/19)
- o Comments due: (03/04/19)

<b>External List (Comments)</b>	<b>Response Received</b>	<b>Date Received</b>	<b>"No Comment"</b>	<b>Written Comments</b>	<b>Comments Attached</b>
Yuma County Airport Authority	Yes	03/07/19	X		
Yuma County Engineering	NR				
Yuma County Public Works	NR				
Yuma County Water Users	Yes	02/27/19	X		
Yuma County Planning & Zoning	NR				
Arizona Public Service	NR				
Time Warner Cable	NR				
Southwest Gas	NR				
Qwest Communications	NR				
Bureau of Land Management	NR				
YUHS District #70	NR				
Yuma Elem. School District #1	NR				
Crane School District #13	NR				
A.D.O.T.	Yes	02/27/19	X		
Yuma Irrigation District	Yes	02/27/19	X		
Arizona Fish and Game	Yes	03/01/19	X		
USDA – NRCS	NR				
United States Postal Service	NR				
Yuma Metropolitan Planning Org.	NR				
El Paso Natural Gas Co.	NR				
Western Area Power Administration	NR				
<b>City of Yuma Internal List (Conditions)</b>	<b>Response Received</b>	<b>Date Received</b>	<b>"No Conditions"</b>	<b>Written Conditions</b>	<b>Comments Attached</b>
Rod Hamilton, Police	NR				
Ron Ramirez, Parks	NR				
Damon Chango, Parks	NR				
Andrew McGarvie, Engineering	NR				
Kayla Holiman, Fire	Yes	02/28/19		X	
Randy Crist, Building Safety	Yes	02/27/19	X		
City Engineer	NR				
Traffic Engineer	NR				
MCAS / C P & L Office	NR				
Jay Simonton, Utilities	NR				
Joel Olea, Public Works	NR				
Joel Olea, Streets	NR				

<b>Neighborhood Meeting</b>	<b>Neighborhood Meeting Comments Available</b>
March 6, 2019	See Staff Report Attachment F
<b>Prop. 207 Waiver</b>	
Given to Applicant on November 14, 2019 in person.	

**PUBLIC COMMENTS RECEIVED:** ONE RECEIVED (REFERENCE STAFF REPORT)