

**SPECIAL USE PERMIT AGREEMENT
CITY OF YUMA**

This Special Use Permit Agreement (“Permit”), made and entered into this ____ day of _____, 2018, by and between the City of Yuma, an Arizona municipal corporation (“City”), and Charles A. Jones II, dba Yuma River Tubing, located at 2992 W. 30th Street, Yuma, AZ 85364 (“Permittee”).

WITNESSETH: The City hereby grants a Special Use Permit to the Permittee for temporary, non-exclusive use of the described City property for the purpose of operating a commercial water tubing concession within the City.

CITY BUSINESS LICENSE

Permittee shall at all times during the term of this Permit hold and maintain a current City of Yuma Business License and shall pay when due all fees and taxes associated with such license.

TERM

The Permit is valid from _____ through October 31, 2018, April 1, 2019 through October 31, 2019, and April 1, 2020 through October 31, 2020.

THE PROPERTY

This Permit provides Permittee non-exclusive access to and use of the property described as: The City of Yuma West Wetlands Park, 282 N. 12th Street, northeast parking lot, as a staging area and tubing participant pick-up location, and the West Wetlands Park boat launch and Gateway Park beach area, 259 S. Gila Street, as tubing participant take out locations only. Permittee may also use Gateway Park beach for drop offs, but shall not solicit, stage Permittee’s operations, or allow Permittee’s customers to park at Gateway Park.

FEES

As a fee for the use of property during the term of this permit, the Permittee agrees to pay the City monthly, 4% of its gross revenues derived from use of the City parks referenced above. Fees must be accompanied by appropriate documentation showing the number of tubes rented, the number of participants served, charges per participant and total gross receipts for the month for which the fees are remitted. Fees are due monthly on the 15th day of the month following the end of the month for which the fees are remitted. Fees not paid by the due date accrue interest at the rate of 1.5% per month until paid.

USE OF THE PROPERTY

Permittee shall use the City parks subject to this Permit solely and exclusively as set forth herein. Permittee may use the West Wetlands Park northeast parking lot as a staging area and participant pre-trip pickup location only. Permittee may park in designated area at the West Wetlands Park boat launch and in the parking lot at Gateway Park and use areas solely as take-out locations for tubing participants ending tubing trips and not as a staging area or tubing participant pre-trip

pick-up location. Permittee shall not interfere with public use of the boat launch facility and its designated parking area.

Permittee and its patrons may use minimal public parking facilities available at the West Wetlands Park northeast parking lot. Minimal parking facilities is defined as no more than 20 vehicles at any one time. In the event the Permittee requires additional parking, approval must be obtained through the Parks and Recreation Office 24 hours prior to the time the additional parking is needed. No overnight or reserved parking is permitted by either tubing participants or by the Permittee.

Use of the park by Permittee shall be within the normal park hours, specifically from dawn to 11:00 p.m. **Permittee acknowledges that the park will be locked promptly at 11:00 p.m.** and all tubing trips must be planned to end prior to 10:00 p.m., with all participants exiting the park by 11:00 p.m. In the event a Full Moon trip is planned, arrangements must be made in advance with Parks and Recreation if the trip will end after 10:00 p.m. Participant parking for Full Moon trips must be outside of the park gates if the trip's scheduled time to return to the park is after 10:00 p.m.

No alcoholic beverages are permitted in a city park without an alcohol permit issued upon application to the Yuma Parks and Recreation Department by the individual tubing participants.

Permittee may not post advertising signs on the park premises, with the exception of advertising on Permittee's vehicle and trailer. Permittee may not attach or display signage or objects on City property.

CARE OF PROPERTY

Permittee shall not make any improvements on the property. Permittee shall, at Permittee's sole expense, maintain city property in a good and sanitary condition and a good state of cleanliness and repair to city standards and in accordance with all applicable laws, rules, and regulations. Trash generated by Yuma River Tubing patrons during tubing trips, may not be disposed of in park trash receptacles and must be taken out of the parks by the Permittee at the end of each trip.

INDEMNITY

To the fullest extent permitted by law, Permittee shall defend, indemnify and hold harmless the City, its agents and employees and volunteers from and against all claims, demands, causes of action, damages, losses, including by theft, and expenses including reasonable attorney's fees, arising out of or resulting from Permittee's performance under this Permit, caused in whole or in part by any negligent or intentional acts, errors, or omissions of Permittee, its officers, agents, employees, volunteers, guests, customers, clients, patrons, invitees, or trespassers, regardless of whether or not caused by a party indemnified hereunder.

PERMITTEE'S INSURANCE

Permittee, at Permittee's sole expense, shall provide and keep in force with companies acceptable to the City, public liability insurance for the joint benefit of the City and Permittee which policies shall insure against liability for bodily injury and property damage in the amount

of not less than Two Million Dollars (\$2,000,000) in respect to injuries to or death of more than one person in any one occurrence, and in the amount of not less than One Million Dollars (\$1,000,000) per occurrence in respect to damage to property, with such limits to be for any greater amounts as may be reasonably indicated by circumstances from time to time at the sole discretion of the City. Certificates naming the City as additional insured with endorsements shall be delivered to the City prior to the effective date of this Permit and Permittee shall provide continuing verification that said policy or policies of insurance remain effective during the terms of this Agreement. Such insurance shall be primary and noncontributing with any insurance carried by the City. Any such policy will provide that it shall not be canceled or altered without twenty (20) days prior written notice to the City.

NO ASSIGNMENT

Permittee shall not assign this Permit.

REVOCATION OF PERMIT

The City may revoke this Permit at any time, with or without cause, by giving written notice of intent to revoke to the Permittee. Such revocation shall be effective five (5) days after notification. All monies due the City shall be paid within 10 days following the effective date of the revocation. Permittee shall leave the property in good, safe and sanitary condition in accordance with City of Yuma standards and all applicable local, state and federal laws. The Permittee may relinquish this Permit at any time by giving written notice to the City. Such relinquishment shall be effective five (5) days after notification.

NOTICES

Any notice given hereunder by one party to the other shall be mailed, First Class Mail, return receipt requested to the following addresses:

To City: City Administrator
 City of Yuma
 One City Plaza
 Yuma AZ, 85366-3014

To Permittee: Yuma River Tubing
 Attn: Charles A. Jones, II
 2992 W. 30th Street
 Yuma, AZ 85364

DEFAULTS AND REMEDIES

If Permittee breaches or defaults on this Permit, the City is entitled to exercise all available legal and equitable rights, including revocation of the Permit, provided, however, that the City shall give Permittee written notice of such default and an opportunity to cure. Permittee shall cure the breach within 10 days.

The failure of the City to insist upon strict performance of any term or condition of this Permit, or to exercise or delay the exercise of any right or remedy or by law, shall not release Permittee from any responsibilities or obligations imposed by this Permit or by law, and shall not be deemed a waiver of any right of the City to insist upon strict performance.

ATTORNEY'S FEES, CHOICE OF LAW AND VENUE

Permittee shall at all times comply with all federal, state, county and local statutes, ordinances, rules and regulations applicable to its performance under this Agreement. In the event that either party brings any action to enforce any covenant contained in this Agreement, the prevailing party in any such action shall be entitled to reasonable attorney fees approved by the court. The laws of the State of Arizona shall govern this Agreement as to interpretation and validity. Venue shall be in the Superior Court of Yuma County, Arizona.

Dated this ____ day of _____, 2018.

CITY OF YUMA

PERMITTEE

Gregory K. Wilkinson
City Administrator

Charles A. Jones II
Yuma River Tubing

Attest:

Lynda Bushong
City Clerk

Approved as to form

Richard Files
City Attorney