

**OUTSIDE AGENCY AGREEMENT  
WESTERN ARIZONA COUNCIL OF GOVERNMENTS**

THIS Outside Agency Agreement (“Agreement”) is entered into by and between the City of Yuma (“City”), an Arizona municipal corporation, and the Western Arizona Council of Governments (“WACOG”), an Arizona non-profit organization as of the Effective Date set forth below. The City and WACOG may be referred to individually as the “Party” and collectively as the “Parties.”

WHEREAS, WACOG is a governmental non-profit that assists income challenged households and vulnerable populations; and

WHEREAS, the City needs the knowledge and experience of WACOG to provide special professional services for the development and administration of a utilities payment program to assist low-income City residents in paying City utilities; and

WHEREAS, WACOG is interested in providing such services.

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

**I. WACOG RESPONSIBILITIES**

WACOG shall:

- A. Work jointly with the staff of the City’s Utilities and Finance departments to administer a program that provides acute financial assistance to utility customers of the City (the “Program”) in the event that such customers are unable to pay their current utility charges under certain circumstances;
- B. Use a comprehensive application and income verification process to determine the financial hardship and need of the City’s utility customers;
- C. Conduct screening interviews with the City’s utility customers referred to WACOG by the City’s Finance department to determine if such customer’s meet the Program’s eligibility requirements;
- D. Issue a voucher, in a form approved in writing by the City’s Finance department staff, to eligible City utility customers for unpaid City utility charges, not to exceed \$250.00 per voucher. Such vouchers shall be emailed to the City Finance department’s designated inbox and shall only be valid for use as payment of the customer’s unpaid City utility charges. WACOG shall not issue more than one (1) such voucher to the same City utility customer per twelve (12) month period;
- E. Within fifteen (15) calendar days after the end of each month this Agreement is in effect, provide the City with a report listing the following information for the preceding month:

1. Number of persons applying for Program assistance;
  2. Number of applicants approved for Program assistance;
  3. Total dollar amount of vouchers distributed in the Program;
  4. Record of revenues and disbursements of monies received from the City;
  5. General summary of hardships encountered that required customers to seek assistance from the Program; and
  6. Any additional statistical information requested by the City that the City considers beneficial to aid in future Program refinements or improvements.
- F. Within fifteen (15) calendar days after the end of each month this Agreement is in effect, pay the City an amount equal to the aggregate value of the vouchers distributed in the Program for the preceding month;
- G. In conjunction with City staff, provide Program applicants with educational materials and information regarding water conservation and measures that applicants can implement to reduce water usage;
- H. Maintain accurate records of all monies received from the City and the disbursement of all such monies. WACOG shall maintain an accounting system which complies with generally accepted accounting principles, including, but not limited to, SOP 78-10, FASB 116 and 117 as issued by the American Institute of Certified Public Accountants (“ACIPA”), and with the AICPA Audit Guide for Non-Profit Corporations and shall separately account for all funds provided by the City pursuant to this Agreement.
- I. On or before July 1<sup>st</sup> of each year this Agreement is in effect, provide the City with names and addresses of the current officers or directors, and a copy of the current WACOG bylaws, and articles of incorporation and any amendments thereto. In the event of any change of officer and/or director, bylaws, or articles of incorporation, WACOG shall provide the City written notice of said change and, if applicable, a copy of any changed bylaws or articles of incorporation within thirty (30) days thereafter.
- J. Within fifteen (15) days after the end of each quarter (the end of each quarter being March 31, June 30, September 30, and December 31) of each year this Agreement is in effect, provide the City with a report and records of revenue and disbursements of monies received from the City for the most recent quarter. Such report shall contain analytical memoranda which:
1. Lists travel activities;
  2. Lists capital expenditures;
  3. Describes results of activities and expected achievements; and
  4. Describes program effectiveness.

WACOG shall submit biannual program status reports documenting activities from July 1st to December 31<sup>st</sup> (“First Report”) and January 1st to June 30<sup>th</sup> July 1st to December 31<sup>st</sup> (“Second Report”). The First Report shall be submitted to the City on or before January 15<sup>th</sup> each year this Agreement in effect. The Second Report shall be submitted to the City on or before July 15<sup>th</sup> each year this Agreement in effect..

- K. The City Administrator may also require WACOG to provide a brief monthly statement or status report in a form set forth by the City.

## **II. CITY RESPONSIBILITIES**

The City shall:

- A. In order to assess the impact of the efforts of WACOG, evaluate WACOG’s performance relative to the performance criteria set forth herein in order to assess the impact of the efforts of WACOG in this Agreement. Any additional information desired by the City which is relevant and necessary to the City’s evaluation shall be made available by WACOG.
- B. Unless terminated as provided in Article V, provide funds as directed by the City Council to WACOG for each fiscal year this Agreement is in effect in the amount approved by City Council as part of the annual budget process.

## **III. METHOD OF PAYMENT**

The City shall pay WACOG the amount set forth in Section IV of this Agreement on or before July 30<sup>th</sup> of each year this Agreement is in effect so long as such funds are appropriated and available in the City’s budget for such fiscal year.

## **IV. FINANCIAL SUPPORT AND TERM OF AGREEMENT**

- A. The term of this Agreement shall commence on July 1, 2018 (“Commencement Date”) and shall remain in full force and effect for one (1) year from the Commencement Date (the “Initial Term”), unless terminated as otherwise provided in this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for up to two (2) successive one-year terms (each, a “Renewal Term”) unless terminated as otherwise provided in this Agreement.
- B. The City agrees to pay to WACOG the amount of \$50,000 for services to be provided by WACOG pursuant to this Agreement each fiscal year this Agreement is in effect, so long as such funds are appropriated and available in the City’s budget for such fiscal year as set forth in this Agreement.
- C. WACOG shall allocate and distribute at least eighty percent (80%) of the funds received from the City pursuant to this Agreement to qualified applicants in the form of vouchers.

WACOG shall neither allocate nor retain more than twenty percent (20%) of the funds received from the City pursuant to this Agreement for program delivery purposes.

- D. Funding amounts and renewal of this Agreement shall be subject to the annual appropriation of funds for this activity by the City Council pursuant to the required budget process of the City.
- E. Renewal of this Agreement beyond the Initial Term will be contingent upon WACOG's performance hereunder. If WACOG's performance does not, in all material respects, meet the minimum requirements as described in Section I of this Agreement, this Agreement may not be renewed.
- F. Nothing herein shall preclude the City from contracting separately with WACOG for services to be provided in addition to those to be provided hereunder, upon terms and conditions to be negotiated by the City and WACOG.
- G. In no event shall WACOG use any monies received from the City under this Agreement to increase the compensation of any WACOG employee or officer. "Compensation" as used herein includes salary, commissions, bonuses or other monies, but does not include reimbursements for expenses, such as travel, materials or supplies if expenses are incurred in the course of furthering the objectives of this Agreement.

## **V. TERMINATION**

This Agreement may be terminated by the City at any time if any of the following occur:

- A. At the City's sole discretion, without cause, in which case the City shall provide thirty (30) days written notice;
- B. WACOG breaches this Agreement or defaults on any of its obligations set forth in this Agreement. Prior to such termination, the City shall provide WACOG ninety (90) days' written notice of the specific grounds for termination and provide a reasonable time for remedial action by WACOG. In no event shall such time to remedy exceed ninety (90) days; or
- C. By mutual written consent of both Parties.
- D. In the event that this Agreement is terminated prior to end of the then current Term, any funds unused by WACOG as of the termination date shall be returned to the City. Such funds shall be returned in the form a check issued to City of Yuma within thirty (30) days after the termination date.

## **VI. INDEMNIFICATION**

To the fullest extent permitted by law, WACOG shall defend, indemnify and hold harmless the City, and the City's agents, representatives, officers, directors, officials, volunteers, and

employees from and against all claims, liabilities, demands, damages, losses, injuries to property or persons (including death), and expenses (including attorney fees and litigation expenses, and the cost of appellate proceedings) (collectively “Claims”) to the extent that such Claims result from and/or arise out of WACOG’s intentional, reckless, or negligent acts, errors, mistakes, directives, or omissions, in performance of this Agreement. This includes any intentional, reckless, or negligent acts, errors, mistakes, directives, or omissions of WACOG’s employees, agents, advertisers, contractors, subcontractors, or any other person for which WACOG may be legally liable, in the performance of this Agreement.

The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this paragraph. The indemnity requirements set forth in this Agreement will in no way be construed as limiting the insurance required in this Agreement.

## **VII. INSURANCE**

### **A. General.**

1. *Insurer Qualifications.* Without limiting any obligations or liabilities of WACOG, WACOG shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to Arizona Revised Statutes (“A.R.S.”) § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City’s option.
2. *No Representation of Coverage Adequacy.* The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve WACOG from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
3. *Additional Insured.* All insurance coverage and self-insured retention or deductible portions, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.
4. *Waiver.* All policies, except for Professional Liability, shall contain an endorsed waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of WACOG. WACOG shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.

5. *Coverage Term.* All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
6. *Primary Insurance.* WACOG's insurance shall be, or endorsed to be, primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.
7. *Claims Made.* In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
8. *Policy Deductibles and/or Self-Insured Retentions.* The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. WACOG shall be solely responsible for any such deductible or self-insured retention amount.
9. *Use of Subcontractors.* If any work under this Agreement is subcontracted in any way, WACOG shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and WACOG. WACOG shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
10. *Evidence of Insurance.* Prior to receiving any funds, or commencing any work or services under this Agreement, WACOG will provide the City with suitable evidence of insurance in the form of certificates of insurance, endorsements, and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by WACOG's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance, endorsements, and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, WACOG shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the title or this Agreement. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds for commercial general liability under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.
- b. WACOG’s insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
- c. All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by WACOG under this Agreement.

B. Required Insurance Coverage.

1. *Commercial General Liability.* WACOG shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
2. *Professional Liability.* If this Agreement is the subject of any professional services or work, or if the WACOG engages in any professional services or work adjunct or residual to performing the work under this Agreement, the WACOG shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the WACOG, or anyone employed by the WACOG, or anyone for whose negligent acts, mistakes, errors and omissions the WACOG is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

C. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days’ prior written notice to the City.

D. Workers Compensation: WACOG understands and agrees that WACOG’s employees, agents, contractors, volunteers, and directors, are not serving as an employee of the City in any manner and therefore are not entitled to any of the City’s industrial benefit coverages, including Workers’ Compensation coverages. WACOG acknowledges that any injury its employees sustain in the performance of this Agreement will be not be eligible for industrial benefits and any necessary treatment will be WACOG, or WACOG’s insurer’s, sole responsibility.

## VIII. GENERAL CONDITIONS

- A. Non-Discrimination Laws. WACOG shall not discriminate against any person on the basis of race, religion, color, age, sex, disability, or national origin in the performance of this Agreement, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, as amended, State Executive Order 2009-09, the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental disability, and with the Americans with Disability Act of 1990. In addition, WACOG shall include similar requirements of subcontractors in any contracts entered into for performance of WACOG's obligations under this Agreement.
- B. Financial Review. WACOG shall make their financial records available for inspection by the City, or its designee, upon reasonable notice during normal business hours of the City. If the City desires a financial audit by a certified public accountant of the WACOG's financial records to verify use of City funds according to the terms and conditions of this Agreement, WACOG shall cooperate fully in the performance of such audit. WACOG shall be responsible for the cost of such an audit if requested by the City and are entitled to a copy of any resulting reports that are received by the City.
- C. Compliance with Laws. WACOG shall comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. In addition, WACOG shall include similar requirements of subcontractors in any contracts entered into for performance of WACOG obligations under this Agreement.
- D. Successors and Assigns. This Agreement is not assignable unless both Parties mutually consent otherwise in writing and signed by both Parties. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.
- E. Attorney Fees and Costs. In the event any action, suit or proceeding is brought for failure to observe any of the terms, covenants, or provisions of this Agreement, the prevailing party shall be entitled to recover as part of such action or proceeding, all litigation, arbitration and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney fees.
- F. Laws Governing/Venue. This Agreement shall be governed by the laws of the State of Arizona, as to validity, interpretation and performance. Any and all suits for any and every breach of this Agreement, or other judicial proceeding for the enforcement or interpretation of this Agreement shall be instituted and maintained in Superior Court in Yuma County, Arizona.
- G. Non-Waiver. The failure or delay of either Party to insist upon strict performance of any of the provisions of this Agreement, or to exercise any of the rights or remedies provided by this Agreement, shall not release either Party from any of the responsibilities or



obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Agreement.

- H. Severability. If any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Arizona, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.
- I. Entire Agreement and Amendments. This instrument contains the entire Agreement between the Parties, and no oral or written statement, promises, or inducements made by either Party or agent of either Party that is not contained in this written Agreement, or specifically referred to in this written Agreement shall be valid or binding; and this Agreement may not be enlarged, modified, or altered except in writing signed by both Parties.
- J. Relationship of Parties. The Parties understand and expressly agree that WACOG is an independent contractor and is not an employee of the City. Nothing in this Agreement constitutes a partnership or joint venture between the Parties and neither Party is the principal or agent of the other.
- K. Rights/Obligations of Parties Only. The terms of this Agreement are intended only to define the respective rights and obligations of the Parties. Nothing in this Agreement shall create any rights or duties in favor of any potential third-party beneficiary or other person, agency or organization.
- L. Time of the Essence. Time is of the essence in this Agreement. Unless otherwise specifically provided in this Agreement, any consent to delay in the performance of WACOG of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not be applicable to any other obligation or transaction.
- M. Dispute Resolution. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Arizona Uniform Rules of Procedure for Arbitration currently in effect unless the parties mutually agree otherwise. Request for arbitration shall be filed in writing with the other party to this Agreement.
- N. Conflict of Interest. This contract shall be subject to the Conflict of Interest provisions of A.R.S. § 38-511, as amended.
- O. Environmental Conditions. WACOG shall take all steps necessary to ensure WACOG compliance with all applicable federal, state, and local environmental laws, regulations and ordinances, and shall indemnify and hold the City harmless for any remediation required and from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death to any person or damage to any property or the environment of any nature whatsoever arising out of violations of such laws, regulations and ordinances.

- P. E-verify Requirements. To the extent applicable under A.R.S. § 41-4401, WACOG and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). WACOG's or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

The City retains the legal right to inspect the papers of any WACOG contractor or subcontractor employee who works on this Agreement to ensure that WACOG or subcontractor is complying with this warranty.

- Q. Political Activities. Employees, directors, board members, officers, and volunteers of WACOG are prohibited from engaging in any political activity with respect to candidates for political office beyond the private expression of personal opinion, registering as a member of a political party, signing petitions and voting in any special, general, or primary election. No employee, director, board member, officer, or volunteer shall solicit any contribution in cash or service from any WACOG employee, director, board member, officer, or volunteer to support any candidate for public office. No employee, director, board member, officer, or volunteer shall use the name of WACOG, or use their affiliation with WACOG, to engage in any political activity of any kind or to solicit any contribution in cash or services to support any candidate for public office. If an employee, director, board member, officer, or volunteer should engage in said activities, they shall make it clear that they are doing so in their personal and private capacity, and are not associated with WACOG in any way while engaging in said activity. Employees, directors, board members, officers, and volunteers will refrain from engaging in any political activity while attending or participating in any WACOG function or event.
- R. Boycott of Israel. Pursuant to A.R.S. § 35-393.01, WACOG certifies that WACOG is not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel.
- S. Notices. Unless otherwise provided in this Agreement, all notices, demands, requests, consents, approvals and other communications (collectively "Notices") required or permitted hereunder shall be in writing and delivered by registered or certified U.S. mail, postage prepaid, or personally delivered, at the address shown below. Notices shall be deemed received at the time of actual receipt, which shall be evidenced by a copy of receipt (in the case of notices that are personally delivered), or as evidenced by the United States Postal Service receipt; or five (5) calendar days after mailing, whichever comes first, in the case of notices that are mailed.:

To City:

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

To WACOG:

WACOG  
Attn: Executive Director  
899 E. Plaza Circle, Ste. 2  
Yuma, Arizona 85364

- T. Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.
- U. Non-Appropriation: Every obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the fulfillment of such obligations. Notwithstanding any other provision of this Agreement, if funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the City at the end of the period for which the funds are available. No liability shall accrue to the City in the event this provision is exercised, and the City shall not be obligated or liable for any future payments as a result of termination under this paragraph

IN WITNESS WHEREOF, the Parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2018 ("Effective Date").

City of Yuma, an Arizona municipal  
corporation

Western Arizona Council of Governments,  
an Arizona non-profit Corporation

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

\_\_\_\_\_  
Brian H. Babiars, Executive Director

\_\_\_\_\_  
Date

ATTEST:

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

\_\_\_\_\_  
DATE

APPROVED AS TO FORM:

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