

**OPERATION AND MAINTENANCE AGREEMENT  
BETWEEN THE CITY OF YUMA AND  
THE HOUSING AUTHORITY OF THE CITY OF YUMA**

THIS Agreement for the Operation and Maintenance of Certain Properties (“Agreement”) is entered into by and between the City of Yuma, an Arizona municipal corporation, ( “City”), and the Housing Authority of the City of Yuma, ( “HACY”). The City and HACY are sometimes referred to individually as a “Party” and collectively as the “Parties”.

**RECITALS**

WHEREAS, pursuant to Title 36 of the Arizona Revised Statutes, on October 10, 1975, the Yuma City Council adopted Resolution No. 1908 (repealed and restated by Resolution No. R2009-89) whereby the City created HACY to act as the City’s agent to construct, maintain, operate and manage public housing projects; and,

WHEREAS, HACY is not a department of the City but operates with limited autonomy as a self-governing state public body to construct, maintain, operate and manage public housing projects; and,

WHEREAS, to give HACY more flexibility in fulfilling its mission of providing housing to low-income residents in the community, HACY wants to convert the City’s public housing units to the Rental Assistance Demonstration (“RAD”) program; and,

WHEREAS, as part of the conversion process and pursuant to Yuma City Ordinance O2017-009HACY and the City entered into a Transfer Agreement dated \_\_\_\_\_, 2017, ( “Transfer Agreement”) in which the City will transfer \$1,900,000 to HACY to assist in the conversion to the RAD program.

WHEREAS, as part of the conversion process, the U.S. Department of Housing and Urban Development ( “HUD”) and the City executed the Rental Assistance Demonstration (RAD) Conversion Commitment ( “RAD Commitment”); and,

WHEREAS, as part of the conversion process, HACY and the City entered into a Section 8 Project-based Voucher (PBV) Housing Assistance Payments (HAP) Contract, OMB Approval 2577-0169, including the Rider to the Section 8 Project-based Voucher (PBV) Housing Assistance Payments (HAP) Contract, OMB Approval 2577-0276 (collectively referred to as the “HAP Contracts”) for each of the three projects associated with the RAD conversion; and,

WHEREAS, after the RAD conversion, the HAP Contracts and RAD Commitment require the City, as owner of the public housing units, to make certain certifications and fulfill certain obligations as set forth in the HAP Contracts and RAD Commitment; and,

WHEREAS, HACY staff possess the technical expertise required to meet the City’s obligations under the HAP Contracts, and is committed to operating, maintaining and enhancing the City’s public housing units.

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

**I. HACY Responsibilities**

A. HACY shall:

1. Manage and operate all of the City's public housing units as set forth in Exhibit A (each unit individually referred to as "City Property" and collectively referred to as "City Properties"), attached and incorporated by reference, on a daily basis, being responsible for all operating and maintenance costs;
2. In addition to fulfilling its own obligations and commitments in the HAP Contracts and the RAD Commitment, HACY shall fulfill and meet all of the City's responsibilities, certifications, and requirements set forth and detailed in the HAP Contracts and the RAD Commitment, the same as if HACY were named as owner in place of the City in the HAP Contracts and the RAD Commitment, such that the City is fully compliant with each and every applicable provision of the HAP Contracts and the RAD Commitment. The HAP Contracts, and any and all amendments, exhibits, addendums, and/or riders to the HAP Contracts are attached as Exhibit B and incorporated herein by reference. The RAD Commitment and any and all amendments, exhibits, addendums, and/or riders to the RAD Commitment are attached as Exhibit C and incorporated herein by reference;
3. Make any and all housing assistance payments due to the City as set forth in the HAP Contracts, subsection to Section I(B) below of this Agreement;
4. Perform each and every necessary step to ensure that the City is, and remains, in full compliance with all of the U.S. Department of Housing and Urban Development (referred to as "HUD") requirements regarding income mixing;
5. Pay the City the initial rent for each contract unit, as set forth in Exhibit A of the HAP Contracts, subsection to Section I(B) below of this Agreement; and
6. Perform the appropriate steps to ensure that all City Properties are and remain in compliance with the housing quality standards, as defined in the HAP Contracts. Perform the appropriate steps to ensure that the City is and remains in compliance with the terms of the assisted leases and the HAP Contracts.

- B. Notwithstanding anything to the contrary, and in order to facilitate HACY's obligations and commitments under this Agreement and in the HAP Contracts, all housing assistance payments and tenant rents received by HACY may be retained by HACY in fulfillment of any responsibility of HACY first disbursing such housing assistance payments and tenant rents to the City and then receiving back the same housing assistance payments and tenant rents from the City.

## **II. HACY Certification.**

### **A. HACY certifies that at all times during the term of the HAP Contracts:**

1. All City Properties meet housing quality standards, as defined in the HAP Contracts (hereinafter referred to as “HQS”), or will meet HQS no later than the date of completion of initial repairs as indicated in the RAD Commitment, which will be on \_\_\_\_\_.
2. HACY is providing all the services, maintenance, and utilities that the City is required and agreed to provide under the HAP Contracts. If HACY, as part of any lease with an assisted family, agrees to provide services, maintenance, and utilities beyond what the City is required to provide under the HAP Contracts, HACY is solely responsible to provide such requirements;
3. Each City Property for which the City is receiving housing assistance payments is leased to an eligible family referred by HACY, and the lease is in accordance with the HAP Contracts and HUD requirements;
4. To the best of HACY’s knowledge, the members of the family reside in each City Property for which the City is receiving housing assistance payments, and the unit is the family’s only residence;
5. HACY (including a principal or other interested party) is not the parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a City Property;
6. The amount of the housing assistance payment is the correct amount due under the HAP Contracts;
7. The rent to the City for each City Property does not exceed rents charged by the HACY for other comparable unassisted units;
8. Except for the housing assistance payment and the tenant rent as provided under the HAP Contracts, HACY has not received and will not receive any payments or other consideration (from the family, HUD, or any other public or private source) for rental of the City Property; and
9. The family does not own, or have any interest in the City Property.

### **B. HACY certifies that:**

1. All ordinary and necessary operating expenses under the applicable HUD requirements of the project, as defined in the RAD Commitments, (hereinafter referred to as the “Project”) are paid through the Closing Date, as defined in the RAD Commitment.

2. All statutory, regulatory, and HUD administrative requirements pertaining to the Project are and shall be satisfied notwithstanding HACY's participation in the Program, as defined in the RAD Commitment, except as expressly modified by the RAD Commitment and/or the Closing Documents, as defined in the RAD Commitment.
3. HACY has provided all notices relating to the Program in the form approved by HUD, to such persons and in the manner required by the Program in compliance with applicable Program requirements promulgated by the Secretary.
4. HACY continues to meet all program eligibility requirements as stipulated in PIH Notice 2012-32.
5. As of the date of the RAD Commitment, HACY is not subject to, or received any notice of any debarment, suspension or other administrative proceeding or investigation, including any sanctions against a public housing agency (including, but not limited to employees, board members and principals), initiated by HUD, or any other federal or state government agency against such party.
6. Prior to the Closing Date, HACY, on behalf of the City, agrees to notify HUD immediately, in writing, of any proposed or actual transfer of any ownership interests in the Project (whether or not such transfer requires HUD approval). HACY also agrees that no such transfer shall become effective until the Secretary has issued any approval that may be required under applicable HUD requirements.

Upon the request of HUD or the City, HACY shall provide HUD with evidence satisfactory to HUD relating to each of the certifications in this subsection B.

Any certification, representation or warranty delivered by HACY, on behalf of the City, pursuant to the RAD Commitment shall be true and correct when given, and shall remain true and correct at all times through and including the Closing Date. In the event any such certification, representation or warranty is no longer complete or correct, HACY, on behalf of the City, shall immediately provide to HUD an updated document completing or correcting the certification, representation or warranty.

In the event that HACY fails to take any action, or deliver any information, called for by the City under the RAD Commitment, within the time frames contemplated under the RAD Commitment (including any time frames provided under applicable law and regulations, and taking into account any requirements of applicable law and regulations regarding notices and opportunities to cure), the City may (without further notice and without offering an additional opportunity to cure) declare this Agreement null and void and of no further force or effect

- C. HACY shall indemnify, defend, and hold the City harmless from all Claims (as "Claims" and the "City" are defined in and to the extent of Section XIII, captioned Indemnity, of this Agreement), if the City is accused of, or determined to have violated any of the certifications set forth in this Section.

- D. Any certification or warranty by HACY pursuant to this Agreement shall be deemed a material representation of fact upon which reliance was placed when this transaction was made or entered into.

### **III. Condition of City Properties**

- A. HACY warrants that it has inspected each and every City Property and determined that all of the City Properties fully comply with the HQS;
- B. HACY shall maintain and operate the City Properties and premises to provide decent, safe and sanitary housing in accordance with the HQS, including performance of ordinary and extraordinary maintenance. HACY shall provide all the services, maintenance and utilities set forth in Exhibits B and C of the HAP Contracts, and in the lease with each assisted family.
- C. If a City Property fails any inspection required by the HAP Contracts, HACY shall, within the maximum period authorized under the HAP Contracts, take the proper remedial steps to bring such property into compliance with all federal, state, and local statutes and regulations, and any requirements under the HAP Contracts. While HACY is taking any remedial steps required under this Section, HACY shall continue to pay the City the full amount of housing assistance payments. Said payments shall be made in accordance with Section I(B) above of this Agreement.

### **IV. Term of Agreement**

- A. The term of this Agreement shall be for twenty (20) years commencing on the Effective Date, as defined in the HAP Contracts (the "Initial Term"). This Agreement shall automatically be renewed and extended for one (1) three (3) year term beginning at the expiration of the Initial Term unless either Party gives written notice to the other Party no later than one-hundred and eighty (180) days prior to expiration of the Initial Term that such notifying Party does not wish to renew this Agreement.
- B. The Parties may only extend this Agreement if the City and HACY extend the HAP Contracts in accordance with the terms of the HAP Contracts. Any extension of this Agreement shall not exceed length of the extended term of the HAP Contracts.
- C. Nothing herein shall preclude the City from contracting separately with HACY for services to be provided in addition to those to be provided hereunder, upon terms and conditions to be negotiated by the City and HACY.

### **V. Non-Discrimination**

- A. HACY shall not refuse to lease contract units to, or otherwise discriminate against any person or family in leasing of a contract unit, because of race, color, religion, sex, national origin, disability, age or familial status.

- B. HACY shall comply with the following requirements: The Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100 et seq.; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing Programs) and implementing regulations at 24 CFR part 107; title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4) (Nondiscrimination in Federally Assisted Programs) and implementing regulations at 24 CFR part 1; Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146; section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 et seq.; 24 CFR part 8; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135; Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (3 CFR, 1964–1965 Comp., p. 339; 3 CFR, 1966–1970 Comp., p. 684; 3 CFR, 1966–1970 Comp., p. 803; 3 CFR, 1978 Comp., p. 230; and 3 CFR, 1978 Comp., p. 264, respectively) (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR chapter 60; Executive Order 11625, as amended by Executive Order 12007 (3 CFR, 1971–1975 Comp., p. 616 and 3 CFR, 1977 Comp., p. 139) (Minority Business Enterprises); Executive Order 12432 (3 CFR, 1983 Comp., p. 198) (Minority Business Enterprise Development); and Executive Order 12138, as amended by Executive Order 12608 (3 CFR, 1977 Comp., p. 393 and 3 CFR, 1987 Comp., p. 245) (Women's Business Enterprise).

## **VI. Default**

- A. HACY acknowledges and agrees that if HUD assumes, or performs and enforces, HACY's rights and obligations under the HAP Contracts, pursuant to Part 2, Section 14 of the HAP Contracts, HACY shall continue to fulfill the City's responsibilities and obligations under the HAP Contracts. If HUD assumes, or performs and enforces, any of HACY's rights and obligations as set forth in the HAP Contracts against the City, HACY shall defend, indemnify and hold the City harmless from all Claims (as "Claims" and the "City" are defined in and to the extent of Section XIII, captioned Indemnity, of this Agreement) in connection therewith.
- B. If HACY's failure to comply with the provisions of this Agreement causes or may cause the City to be in default of the HAP Contracts, in whole or in part, HACY shall notify the City in writing and shall take corrective action to bring the City into compliance within three (3) calendar days of such failure. HACY shall diligently pursue such corrective action until the City is no longer at risk of or in default of the HAP Contracts and HACY shall have the maximum time allotted under the HAP Contracts to make said corrective action, including additional time which may be granted by HUD. If HACY fails to comply with this requirement, the City shall have the option to perform or cause to be performed such corrective action, and charge HACY for the actual cost incurred by the City. Upon receipt of a demand for payment by the City, HACY shall reimburse the City for such costs within thirty (30) days.

## **VII. Relation to Third-Parties**

Notwithstanding any provision in the HAP Contracts to the contrary, HACY acknowledges and agrees that the City has no responsibility for or liability to any person injured as a result of the HACY's act(s) or failure to act on behalf of the City in connection with the implementation of the HAP Contracts, or as a result of any other action or failure to act by HACY on behalf of the City.

#### **VIII. Transfer of HAP Contracts and City Property**

HACY agrees that neither the HAP Contracts nor any City Property may be transferred without the advance written and signed consent of the City. For purposes of this Section, "transfer" shall have the same meaning as defined in the HAP Contracts.

#### **IX. Lobbying Certification**

A. HACY certifies, to the best of HACY's knowledge and belief, that:

1. No Federally appropriated funds have been paid or will be paid, by or on behalf of HACY, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of the HAP Contracts, or the extension, continuation, renewal, amendment, or modification of the HAP Contracts; and
2. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the HAP Contracts, HACY must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

B. This certification by HACY is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352.

#### **X. City's Responsibilities**

- A. The City shall pay HACY any and all housing assistance payments the City receives from HACY or HUD pursuant to the HAP Contracts, subject to Section I(B) above of this Agreement.
- B. Pursuant to Section 22 of the HAP Contracts, the City will disclose to HACY, in accordance with HUD requirements, information regarding any related assistance from the Federal Government, a State, or a unit of general local government, or any agency or instrumentality thereof, that is made available or is expected to be made available with respect to the contract units. Such related assistance includes, but is not limited to, any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance.

#### **XI. Termination:**

- A. If any of the HAP Contracts is cancelled, expires, or is terminated, both parties shall continue to be obligated to perform under this Agreement as though the HAP Contracts was still in effect unless this Agreement is otherwise terminated as set forth in this Section XI.
- B. This Agreement may be terminated by the City at any time if any of the following occur:
  - 1. If the HAP Contracts is cancelled, expires, or is terminated for any reason;
  - 2. At the City's sole discretion, without cause, in which case the City shall provide one hundred twenty (120) days written notice to HACY;
  - 3. HACY breaches this Agreement or defaults on any of its obligations, certifications, or requirements set forth herein, in which case, the City shall provide thirty (30) days written notice to HACY. Prior to such termination, the City shall notify HACY of the specific grounds for termination and provide a reasonable time for remedial action by HACY. In no event shall such time to remedy exceed one hundred twenty (120) days; or
  - 4. By mutual written consent of both Parties hereto.

## **XII. Insurance**

- A. General.
  - 1. Insurer Qualifications. Without limiting any obligations or liabilities of HACY, HACY 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 HACY 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 HACY. HACY 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. HACY's insurance shall be 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. HACY shall be solely responsible for any such deductible or self-insured retention amount.
9. Use of Subcontractors. If HACY use subcontractors to fulfill any of its obligations or requirements under this Agreement in any way, HACY shall execute written agreements with its subcontractors containing the indemnification provisions set forth in Section XIII and the insurance requirements set forth in this Section XII protecting the City and HACY. HACY 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, HACY 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 HACY'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, HACY 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 of this Agreement. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- i. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
  - a. Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.
  - b. Auto Liability – Under ISO Form CA 20 48 or equivalent.
  - c. Excess Liability – Follow Form to underlying insurance.
- ii. HACY’s insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
- iii. 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 HACY under this Agreement.

B. Required Insurance Coverage.

1. Property Insurance. The City shall include the City Properties on its general property insurance policies.
2. Commercial General Liability. HACY shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$1,000,000 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.

3. Vehicle Liability. HACY shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on HACY's owned, hired and non-owned vehicles assigned to or used in the performance of the HACY's work or services under this Agreement. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 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.
  4. Worker's Compensation Insurance. HACY shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over HACY's employees engaged in the performance of this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.
  5. Flood Insurance. If a City Property is located in an area that has been identified by the Federal Emergency Management Agency as an area having special flood hazards and if the sale of flood insurance has been made available under the National Flood Insurance Program, the City agrees, at the City's cost, that: (1) the City Property will be covered, during the life of the property, by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less; and (2) that it will advise any prospective purchaser or transferee of the property in writing of the continuing requirement to maintain such flood insurance during the life of the property. [Sec. 32]
- 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. To the extent insurance proceeds permit, the City agrees to promptly restore, reconstruct, and/or repair any damaged or destroyed City property of a project, except with the written approval of HUD to the contrary.

### **XIII. Indemnity**

- A. To the fullest extent permitted by law, HACY shall indemnify, defend and hold harmless the City, and its officers, officials, agents, employees, or volunteers (collectively the "City") from and against all claims, liabilities, demands, damages, losses (including theft), penalties, fines, judgments, injuries to property or persons (including death), and expenses (including attorney's fees and litigation or arbitration expenses, and the cost of appellate proceedings) (collectively referred to as "Claims") to the extent that such Claims arise out of or result from HACY's intentional, reckless, or negligent acts, errors, directives, mistakes, or omissions in

the performance or non-performance of this Agreement, the HACY Agreement, the RAD Commitment, or the HAP Contracts. This includes any intentional, reckless, or negligent acts, errors, directives, mistakes, or omissions of HACY's employees, agents, advertisers, contractors, subcontractors, guests, patrons, licensees, invitees, trespassers or any other person for which HACY may be legally liable, in the performance of this Agreement or the HAP Contracts.

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 Section. The indemnity requirements set forth in this Agreement will in no way be construed as limiting the insurance required in this Agreement.

- B. This Section shall survive the termination of this Agreement.

#### **XIV. General Conditions**

- A. Recitals and Exhibits. The recitals and the exhibits to this Agreement are incorporated herein by this reference and made a part hereof for all purposes.
- B. Interpretation of Agreement. The Agreement and the HAP Contracts must be interpreted and implemented in accordance with all statutory requirements, and with all HUD requirements, including amendments or changes in HUD requirements during the term of the HAP Contracts. HACY agrees that it shall fulfill all of the City's obligations under such laws and HUD requirements.
- C. Nondiscrimination. Neither party shall discriminate against any person on the basis of race, religion, color, age, sex, disability, or national origin in the performance of this Agreement, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964), and with the Americans with Disability Act of 1990. In addition, HACY shall include similar requirements of subcontractors in any contracts entered into for performance of HACY's obligations under this Agreement.
- D. Financial Review. HACY 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 HACY's financial records to verify use of City funds according to the terms and conditions of this Agreement, HACY shall cooperate fully in the performance of such audit. HACY shall be responsible for the cost of such an audit if requested by the City and is entitled to a copy of any resulting reports that are received by the City.
- E. Compliance with Law. The Parties shall comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. In addition, HACY shall include similar requirements of subcontractors in any contracts entered into for performance of HACY's obligations under this Agreement.

- F. 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.
- G. 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.
- H. 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 the Superior Court in Yuma County, Arizona.
- I. 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.
- J. 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.
- K. 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 Agreement, or specifically referred to in written Agreement shall be valid or binding; and this Agreement may not be terminated, enlarged, modified, or altered except in writing signed by the Parties and endorsed hereon.
- L. Rights/Obligations of Parties Only. The terms of this Agreement are intended only to define the respective rights and obligations of the Parties. Nothing expressed herein shall create any rights or duties in favor of any potential third-party beneficiary or other person, agency or organization.
- M. 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 HACY 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.
- N. Conflict of Interest. This Agreement shall be subject to the Conflict of Interest provisions of A.R.S. § 38-511, as amended.

- O. Boycott of Israel. If HACY is subject to the provisions of A.R.S. § 35-393.01, HACY certifies HACY 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.
- P. Environmental Conditions. The Parties shall take all steps necessary to ensure their respective compliance with all applicable federal, state, and local environmental laws, regulation and ordinances, and shall indemnify and hold the other Party harmless for any remediation required and from and against any and all from all Claims (as “Claims” are defined in and to the extent of Section XIII, captioned Indemnity, of this Agreement), 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.
- Q. Political Activities. Employees, directors, board members, officers, and volunteers of HACY 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 HACY 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 HACY, or use their affiliation with HACY, 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 HACY 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 HACY function or event.
- R. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery, or mailing by United States mail, postage prepaid, registered or certified, return receipt, addressed as follows:

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

To HACY:  
Housing Authority of the City of  
Yuma  
Attn: Executive Director  
420 South Madison Avenue,  
Yuma, Arizona 85364

- S. Compliance with Federal and State Laws. To the extent applicable under A.R.S. § 41-4401, HACY warrants, and shall require its contractors and subcontractors to warrant, that it is in compliance with all federal immigration laws and regulations that relate to its employees and with A.R.S. § 23-214 relating to verification of employment eligibility. A breach of this clause shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of this Agreement.

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

- T. Provisions Required by Law. Each and every provision of law and any clause required by 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.

*[signatures follow on next page]*

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2017.

CITY OF YUMA, a municipal corporation

HOUSING AUTHORITY OF THE CITY OF  
YUMA, an independent agency of the City of Yuma  
authorized by A.R.S. § 36-1404

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

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



## **EXHIBIT A**

List of the City of Yuma Public Housing Units

[see following pages]

## **EXHIBIT B**

### **Project 1**

“HAP Contract/Section 8 Project-based Voucher Housing Assistance Payments Contract,  
OMB Approval 2577-0169,  
including the rider to the Section 8 Project-based Voucher Housing Assistance Payments Contract,  
OMB Approval 2577-0276  
between  
the City of Yuma and the Housing Authority of the City of Yuma”

[see following pages]

## **Project 2**

“HAP Contract/Section 8 Project-based Voucher Housing Assistance Payments Contract,  
OMB Approval 2577-0169,  
including the rider to the Section 8 Project-based Voucher Housing Assistance Payments Contract,  
OMB Approval 2577-0276  
between  
the City of Yuma and the Housing Authority of the City of Yuma”

[see following pages]

### **Project 3**

“HAP Contract/Section 8 Project-based Voucher Housing Assistance Payments Contract,  
OMB Approval 2577-0169,  
including the rider to the Section 8 Project-based Voucher Housing Assistance Payments Contract,  
OMB Approval 2577-0276  
between  
the City of Yuma and the Housing Authority of the City of Yuma”

[see following pages]

## **EXHIBIT C**

“Rental Assistance Demonstration (RAD) Conversion Commitment  
(Public Housing and Section 8 Moderate Rehabilitation (Mod Rehab) Program Conversions; First  
Component),  
OMB Approval 2577-0276