



REQUEST FOR CITY COUNCIL ACTION

MEETING DATE:

December 20, 2017

DEPARTMENT:

City Administration

DIVISION:

City Attorney

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

TITLE:

Yuma Riverfront Modification Agreement, Third Amendment to Yuma Riverfront Development First Phase Land and Improvements Lease, and Non-Disturbance and Recognition Agreement

SUMMARY RECOMMENDATION:

Approve the terms and authorize the City Administrator to execute the following documents on behalf of the City of Yuma: (1) Yuma Riverfront Modification Agreement, (2) Third Amendment to Yuma Riverfront Development First Phase Land and Improvements Lease, and (3) Non-Disturbance and Recognition Agreement attached as Exhibits A, B and C to the ordinance. (City Administration/City Attorney) (Richard Files)

REPORT:

In 2004, the Yuma City Council approved a Master Development and Disposition Agreement for the entire 22-acre downtown riverfront site. The Agreement was subsequently amended and restated.

The Hilton Garden Inn and Conference Center was built on a portion of the First Phase Lease acreage and in a subsequent amendment, the First Phase Lease was reduced to the Hilton Garden Inn and Conference Center site only of 5.14 acres.

Hilton Garden Inn and Conference Center is a sublease under the First Phase Lease. The current sublease involves Clark-Lankford LLC acting as the City's tenant and as sub-landlord to Kesari Hospitality LLC operates the Hilton Garden Inn and Conference Center. Kesari Hospitality LLC now seeks to move from subtenant to tenant, replacing Clark-Lankford LLC as the current tenant.

The purpose of this ordinance is to approve the documents (Yuma Riverfront Modification Agreement) that will allow Clark-Lankford LLC's interest in the First Phase Lease to be assigned to Kesari Hospitality LLC. This assignment will extinguish all of Clark-Lankford LLC's rights, title and interest in the First Phase Lease and sublease.

The Yuma Riverfront Modification Agreement also includes an exhibit titled, Third Amendment to Yuma Riverfront First Phase Land and Improvements Lease. This proposed third amendment to the First Phase Lease incorporates provisions from the Master DDA which were not previously needed in the lease (because they were covered in the Master DDA) such as Incremental Rent, the 1% Surcharge, City's use of the Conference Center for 30 days per year without the base charge, Government

Property Lease Excise Tax, shared parking, and deletion of the cross default provision with the Master DDA.

The third document, the Non-Disturbance and Recognition Agreement between Wells Fargo Bank, Kesari Hospitality, and the City of Yuma provides the lender sufficient assurances in order to provide refinancing of the Pivot Point Hotel and Conference Center.

The three agreements would go into effect upon the payoff of the existing loan through the funding of a new loan which is anticipated to occur in late January of 2018. In the event the closing on the loan does not occur by March 1, 2018, the documents become void and of no effect.

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	\$0.00		
	FISCAL IMPACT STATEMENT:			
ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK:			
	1. 2. 3. 4. 5.			
ADDITIONAL INFORMATION	IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?			
	☐ Department ☒ City Clerk's Office ☐ Document to be recorded			
SIGNATURES	CITY ADMINISTRATOR:		DATE:	
	Gregory K. Wilkinson		12/12/2017	
	REVIEWED BY CITY ATTORNEY:		DATE:	
	Richard W. Files		12/12/2017	
SIGNATURES	RECOMMENDED BY (DEPT/DIV HEAD):		DATE:	
	WRITTEN/SUBMITTED BY:		DATE:	