

**INDEFEASIBLE RIGHT-OF-USE AGREEMENT
BETWEEN THE CITY OF YUMA AND UNITE PRIVATE NETWORKS, LLC**

THIS INDEFEASIBLE RIGHT-OF-USE AGREEMENT (“Agreement” or “IRU Agreement”) dates this ____ day of _____, 2019 (“Effective Date”), by and between Unite Private Networks, LLC, a Delaware limited liability company (“Grantor”) and the City of Yuma, Arizona, a municipal corporation (“City”).

RECITALS

WHEREAS, Grantor is a party to a License Agreement with City which was approved by the Yuma City Council on September 18, 2013 (“License”), which agreement requires Grantor to dedicate fibers in Grantor’s Communications System to the City with an irrevocable right of use to the fibers (“City Fibers”);

WHEREAS, Grantor has agreed to dedicate fibers for the City’s use as it builds out its system in Yuma except in that portion of the network where construction was for the Crane ISD, and was completed prior to August 1, 2018;

WHEREAS, the parties desire to enter into a separate agreement that implements the City’s rights to use the City Fibers (as defined below), and further desire to enter into an agreement under which Grantor will agree to build out fiber for the City and to provide certain services to the City (the “YumaNet Maintenance Agreement”);

WHEREAS, this Agreement addresses the rights of the parties with respect to the use of City Fibers called “YumaNet,” herein for purposes of identification and associated facilities and equipment now existing, or hereinafter installed pursuant to the YumaNet Maintenance Agreement, which is a separate agreement for which there is separate consideration; and

WHEREAS, the parties believe that this Agreement is not an executory contract, and could not be rejected in the event of the bankruptcy of Grantor, as to fibers once dedicated, but is instead intended to be a fully performed transfer of irrevocable right of use as to such fibers.

NOW, THEREFORE, in consideration of the above-described premises and other good and valuable consideration, and subject to the terms and conditions of this Agreement, THE PARTIES DO HEREBY AGREE as follows:

1. INDEFEASIBLE RIGHT OF USE

1.1. Grant of Right and Title

The “City Fibers” consist of six (6) pairs of fiber that are, or will become in the future, part of a system of fiber lines and associated facilities owned or controlled by Grantor (the “System”) in connection with Grantor’s provision of the Services, as defined in the License, in and around Yuma, Arizona as shown in Exhibit A. The “City Fibers” are those specific

fiber optic strands and certain associated equipment at the Demarcation Point, described more fully below, that are provided by Grantor or its successors in interest for use by the City; and such replacement strands or additional strands as may be constructed by Grantor and paid for pursuant to the YumaNet Maintenance Agreement, and shall comprise the "YumaNet." Notwithstanding the foregoing, City Fibers are not provided for that portion of the network where construction was for the Crane ISD, and was completed prior to August 1, 2018. The location of that fiber and fiber counts are shown on Exhibit. B. If fiber is subsequently added to those routes, it will include City Fibers.

Subject to the terms and conditions of this Agreement, Grantor hereby grants to the City an indefeasible right of use ("IRU") to use the City Fibers during the Term (as defined below). This grant is a transfer to the City of rights to exclusive use of the City Fibers sufficient to grant the City an exclusive and irrevocable right to use the fibers during the Term, the term "use" includes the right to: send signals to and through the fibers; attach devices to the fibers; and splice and maintain the City Fibers subject to the limitations set forth in the Maintenance Requirements Section herein. Grantor may take no action with respect to the City Fibers that would prevent its continued use by the City, or otherwise adversely affect the rights of the City granted herein, except with the City's written and signed consent. The IRU attaches on the Effective Date for all fibers in existence as of the Effective Date, and for all fibers hereafter installed as soon as the fiber is constructed; or, if later, the date the City of Yuma extends the License by five years from the current scheduled expiration date of September 17, 2023.

The IRU includes, without additional charges, all rights necessary to fully maintain and utilize the City Fibers, subject to the express limitations of this Agreement, and without need to separate the fibers subject to IRU from other facilities; and further includes all rights necessary to permit the City to splice fibers or attach equipment that it installs, constructs and owns to the City Fibers.

1.2. Access to System

City shall be entitled, during the term, to have access to the City Fibers on Grantor's side of the Demarcation Point only if (i) Grantor has failed to perform maintenance pursuant to the terms of the Maintenance Agreement or (ii) Grantor has abandoned the fiber containing the City Fiber. The City shall comply with the terms contained in the Maintenance Agreement for access to the City Fibers.

2. IDENTIFICATION OF CITY FIBERS/DEMARCATIION POINT

The Demarcation Point will be the point at which ownership and responsibility for the City Fibers begin and end for each of the Parties. The Demarcation Point may be a patch panel, fiber distribution panel or a splice point or similar equipment, as further designated on a Work Order. City will connect locations and equipment to City Fibers in one of two ways: it may bring fiber to, or attach equipment to the City Fibers installed as part of the build-out of the System; or it may pay Grantor to build fibers to a designated location, as provided in the YumaNet Maintenance Agreement.

Where fiber terminates at a patch panel at a YumaNet location, the Demarcation Point is the point at which the fiber connects to the side of the patch panel facing the System. The parties agree that City will have full title and interest, free and clear of all liens and encumbrances, to any patch panel installed at YumaNet locations.

3. OWNERSHIP AND USE

3.1. Inclusion in Sheath Does Not Alter Rights.

The City shall have an IRU for all City Fibers even if enclosed within a sheath that contains other fibers. Grantor shall own and have full responsibility for maintaining the sheath and the other fibers in the sheath (collectively, the “Grantor Facilities”).

3.2. City to Retain Ownership of City Facilities

Any facilities owned by the City that are connected to the System shall at all times remain the sole property of the City (“City Facilities”). Grantor shall make no representations and take no actions inconsistent with the City’s ownership of the City Facilities. Grantor shall not represent to any third party that any party other than the City is the owner of the City Facilities.

3.3. Use of Fibers by the City

3.3.1. Use of City Fibers

The City shall have the exclusive use of the City Fibers for City use, which use shall include but not be limited to, providing Wi-Fi services to the public, public safety Internet and intranet services, data transmission, and providing connections to, from and among City-owned or City-controlled facilities, streetlights, and structures, regardless of whether such connections are to devices owned by the City or devices owned by a third-party; *provided that* where the connections are to devices owned by a third party, the fiber may not be used to provide commercial services to non-governmental entities (other than services like Wi-Fi offered to the general public). “Governmental entities” for these purposes includes non-profit groups providing services that would otherwise be provided by a governmental entity.

3.3.2. No Liens

The City and Grantor shall keep the City Fibers and the System free from all liens and encumbrances, including mechanics and materialmen’s liens, and shall promptly secure the release of any such lien or encumbrance filed and affecting the System.

4. CONSIDERATION FULLY PAID

The parties acknowledge that the City was provided use of the City Fibers under the terms of the License as part of the consideration for the rights granted Grantor (or its predecessors in interest) under the License. The parties will include such releases as may be

required to effectuate the foregoing in any renewal license agreement, or in other appropriate documents. The parties agree no further consideration is due Grantor for the rights provided the City under this Agreement, and the City will owe no further consideration under this Agreement in any form for facilities added to the City Fibers, nor may offsets be taken against any other obligations that Grantor may have to the City. Nothing in this Section alters payment obligations the City may have to Grantor under the YumaNet Maintenance Agreement.

5. REGULATORY CHANGES

The parties agree that in the event a decision by a telecommunication's regulatory authority at the federal or state level necessitates modifications in this Agreement, the parties will negotiate in good faith to modify this Agreement in light of such decision.

6. [RESERVED]

7. REPRESENTATIONS AND WARRANTIES OF GRANTOR

Grantor hereby represents and warrants to the City as follows:

7.1. Organization and Standing

Grantor is duly organized, validly existing and in good standing under the laws of the State of its organization.

7.2. Power and Authority

Grantor has the full and unrestricted power and authority, corporate and otherwise, to own, lease and otherwise to hold and operate the System, to carry on its business as now conducted, and to enter into and perform the terms of this Agreement and the transactions contemplated hereby.

7.3. Authorization

The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, have been duly and validly authorized by all necessary actions of Grantor.

7.4. Valid and Binding Obligation

This Agreement constitutes, and upon execution and delivery of each other document or instrument to be delivered by Grantor in connection herewith will constitute, a valid and binding agreement and obligation of Grantor enforceable in accordance with its respective terms.

7.5. Title to Assets

Grantor is the sole and exclusive legal and equitable owner of the System, subject to the City's right to use the City Fibers as provided herein.

7.6. Warranties

Grantor represents and warrants that, each of the City Fibers will meet the cable manufacturer's specifications for dB per kilometer loss on installation date or as existing on the Effective Date.

7.7. Required Rights

Grantor has obtained, or shall obtain prior to the installation and use of the System, all required regulatory authorizations, construction permits, and appropriate agreements for installation and use of the System in ducts, on poles, and/or in trenches on public or private property ("Required Rights"), and all of the Required Rights are in full force and effect.

8. REPRESENTATIONS OF THE CITY

The City hereby represents to Grantor as follows:

8.1. Organization and Standing

The City is a municipal corporation of the State of Arizona.

8.2. Power and Authority

The City has the corporate power and authority to enter into and perform the terms of this Agreement and the transactions contemplated hereby.

8.3. Authorization

The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, have been duly and validly authorized by all necessary actions of the City.

8.4. Valid and Binding Obligation

This Agreement constitutes, and upon execution and delivery each other document or instrument to be delivered by the City in connection herewith will constitute, a valid and binding agreement and obligation of the City, enforceable in accordance with its respective terms.

9. TERM AND TERMINATION; ABANDONMENT

9.1. Term

The IRU shall commence upon the effective date of this Agreement and shall continue until Grantor, or any successor in interest, abandons the System or any part thereof that includes a portion of the City Fibers. Provided that the IRU may be terminated:

- (a) by City, for any reason; or
- (b) by the Grantor if City is in substantial breach of its obligations under this Agreement or the YumaNet Maintenance Agreement, and fails to timely cure any such breach.

9.2 Abandonment.

If Grantor (or a successor or assign thereof) abandons its System or any part thereof, in addition to the City's rights set forth in the License, the City may require Grantor to transfer title to the YumaNet to the City at no charge, free and clear of encumbrances, and the same will become the City's property and the City may use, keep, sell, assign, or transfer all or part of the assets or otherwise dispose of those assets as it sees fit.

10. LIMITATION OF WARRANTIES; LIABILITY

The warranties set forth in this Agreement constitute the only warranties with respect to this Agreement. Such warranties are in lieu of all other warranties, written or oral, statutory, express or implied, including without limitation the warranty of merchantability and the warranty of fitness for a particular purpose or use. Neither party shall be liable to the other for any consequential damages or lost profits, or punitive damages arising out of, or in connection with such party's breach of this IRU or breach of its respective representations hereunder.

11. MISCELLANEOUS

11.1. Notices

All notices under this Agreement shall be in writing and shall be deemed to have been given: if by mail, three days after deposit in the U.S. Mail, Certified Mail, Postage Prepaid, Return Receipt Requested; if by overnight courier, one day after delivery to an overnight courier service, fee prepaid, or if by facsimile, on the date indicated on the receiving party's transmitted copy, and addressed as provided as follows:

If to Grantor:

Unite Private Networks LLC
Attn: Legal Department
7200 NW 86th Street, Ste. M
Kansas City, MO 64153

If to the City:

City Administrator
One City Plaza
Yuma, AZ 85364-1436

With a copy to:

City Attorney
One City Plaza
Yuma, AZ 85364-1436

or at such other address as may be designated in writing to the other party.

11.2. Assignment

(a) Grantor may assign this IRU Agreement and its rights and obligations hereunder, and may sublicense any rights granted hereunder to any third party subject to any assignee agreeing to become party to and subject to all terms and conditions of this IRU Agreement, and provided that such assignee is or will become the owner of the System at the time of such assignment and will hold the Required Rights.

(b) The City may assign this IRU Agreement to an agency, instrumentality or subdivision of itself or to any entity that succeeds it as a governing body for a geographic area that includes the City of Yuma which agrees to be party to the YumaNet Maintenance Agreement, but may not assign this IRU Agreement to any other entity without Grantor's prior written consent; and

(c) Nothing in this Agreement will be deemed to limit or restrict Grantor's ability to transfer the System, subject to the rights of the City under this Agreement.

11.3. Transfer of Rights

The parties agree that it is their intent and understanding, in entering into this Agreement, to create the transfer of rights to the City as more fully described herein. Grantor will take all steps reasonably necessary to provide further assurance to the City of the effectiveness of this transfer and will take no actions to impair or cast doubt upon the continuing effect of this Agreement as a complete and irrevocable transfer of a right of use.

11.4. Binding Obligation

This Agreement, and each of the parties, respective rights and obligations hereunder, shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective successors and permitted assigns.

11.5. No Third Party Beneficiaries

This Agreement does not provide and is not intended to provide third parties with any remedy, claim, liability, reimbursement, cause of action, or any other right.

11.6. Governing Law

The rights and obligations of the parties hereunder shall be construed in accordance with the laws of the State of Arizona without giving effect to its choice of law rules. Any action to enforce any provision of this Agreement or to obtain any remedy with respect this Agreement shall be brought exclusively in the Superior Court, Yuma County, Arizona (or, as may be appropriate, in the United States District Court for the District of Arizona, if, and only if, the Superior Court lacks jurisdiction over such action). The Parties expressly and irrevocably consent to the exclusive jurisdiction and venue of such courts and expressly waive the right to transfer or remove any such action.

11.7. Rules of Construction

The headings of the Articles in this Agreement are strictly for convenience and shall not in any way be construed as amplifying or limiting any of the content of this Agreement as set forth in the body of such Articles. The singular herein shall include the plural, and the plural herein shall include the singular, where appropriate.

11.8. Severability

If any provision of this Agreement is found, by an arbitral, judicial or regulatory authority having jurisdiction, to be void or unenforceable, such provision shall be deemed to be deleted from this Agreement and the remaining provisions shall continue in full force and effect.

11.9 Statutory Requirements

11.9.1 Conflict of Interests.

This Agreement may be cancelled in accordance with A.R.S. § 38-511.

11.9.2 Boycott of Israel.

Pursuant to A.R.S. § 35-393.01, Grantor certifies that Grantor 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.

11.9.3 E-verify Requirements.

To the extent applicable under Arizona Revised Statutes ("A.R.S.") § 41- 4401, the Grantor and its subcontractors warrant compliance, and are contractually obligated to comply,

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) (“Immigration Warranty”). Grantor’s or its subcontractor’s failure to comply with Immigration Warranty shall be deemed a material breach of this Agreement and may subject Grantor to penalties up to and including termination of this Agreement at the sole discretion of the City.

The City retains the legal right to inspect the papers of all Grantor personnel who provide services under this Agreement to ensure that Grantor or its subcontractors are complying with the Immigration Warranty. Grantor agrees to assist the City in regard to any such inspections. The City may, at its sole discretion, conduct random verification of the employment records of Grantor and any subcontractor to ensure compliance with the Immigration Warranty. Grantor agrees to assist the City in regard to any random verification performed. Neither Grantor nor any subcontractor will be deemed to have materially breached the Grantor Immigration Warranty if Grantor or subcontractor establishes that it has complied with the employment verification provisions prescribed by Sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214 (A).

11.9.4 Non-Discrimination.

Grantor shall comply with the Americans with Disabilities Act (ADA) and shall indemnify City for any costs, including but not limited to, damages, attorney's fees, and staff time in any action or proceeding brought alleging violation of the ADA. Grantor shall not discriminate against any person on the basis of race, religion, color, age, sex, or national origin in the performance of this Agreement, and must comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964) and State Executive Order No. 2009-09. Grantor shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its performance under this Agreement.

11.10. Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto with respect hereto and supersedes all agreements previous to this Agreement with regard hereto, whether written or oral, between Grantor and the City. This Agreement may not be amended or otherwise altered except by written agreement between the parties hereto.

11.11. Execution in Counterparts

To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary in any proof of this Agreement to produce or account for more than a number of counterparts containing the respective signatures of or on behalf of both parties.

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IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the Effective Date set forth above.

UNITE PRIVATE NETWORKS, LLC

By: _____
Name:
Title:

CITY OF YUMA, ARIZONA

By: _____
Name: John D. Simonton
Title: City Administrator

ATTEST

By: _____
Lynda L. Bushong
City Clerk

APPROVED AS TO FORM

By: _____
Richard W. Files
City Attorney

Exhibit A

Existing City Limits and Possible Future City Annexations

- Legend**
- Existing City Limits
 - Possible Future Central
 - Possible Future East
 - Possible Future South
 - Possible Future West

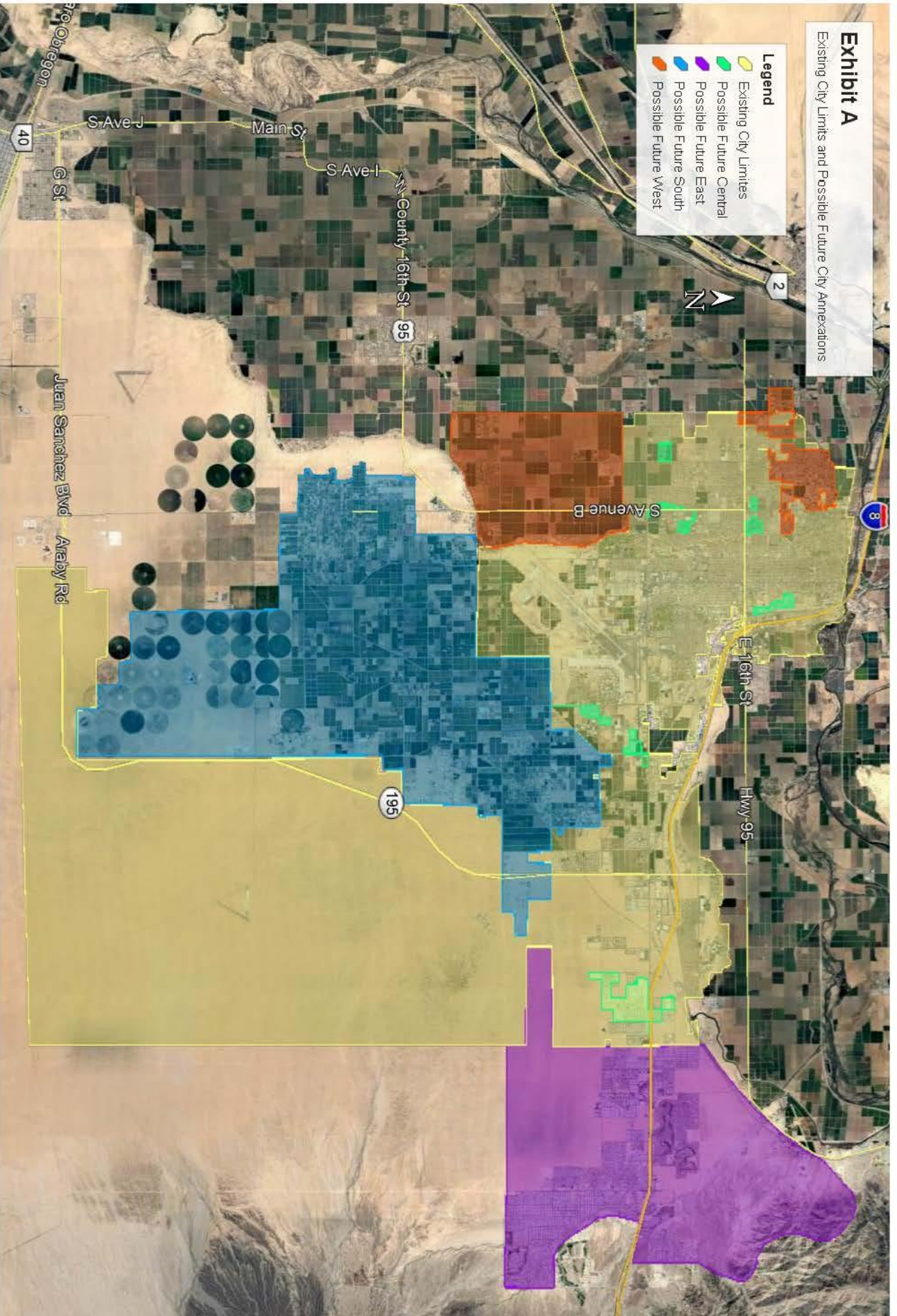


EXHIBIT B

