

## LEASE AGREEMENT

THIS LEASE (“Lease”), dated this \_\_\_\_\_ day of \_\_\_\_\_, 2023 is entered into between the City of Yuma, an Arizona municipal corporation (“Lessor”), and the Yuma Crossing National Heritage Area Corporation, a 501(c)3 nonprofit corporation (“Lessee”), concerning the real property referred to as the “Premises” described and defined in Section 1 below. In this Lease, Lessor and Lessee may be referred to individually as a “Party” or collectively as the “Parties.”

### WITNESSETH

WHEREAS, Lessor seeks to preserve and promote Yuma’s future and historic interconnection with the Colorado River which transverses the Yuma area, including development within the Yuma Crossing National Heritage Area; and,

WHEREAS, Lessee is organized exclusively for charitable and educational purposes whose primary mission is to conserve, interpret, and promote the Yuma Crossing National Heritage Area, and by doing so, to assist the Lessor with economic development in the historic Downtown and Riverfront area, and the education and general welfare of all people; and,

WHEREAS, Lessee has leased and operated the real property and building at 180 W First Street, known as the Heritage Center or Historic City Hall, under a ten-year lease through September 30, 2012. That lease was extended in 2012 through September 30, 2017, revised and extended again in 2015 through September 30, 2022, and extended again in 2022 through December 31, 2023. The Heritage Center is a historic building on the National Register of Historic Places and is an important part of the Yuma Crossing National Heritage Area; and,

WHEREAS, In December 2022, Congress enacted the National Heritage Area Act, S.1942, which reauthorized all National Heritage Areas, including the Yuma Crossing National Heritage Area, for an additional 15 years through September 30, 2037; and,

WHEREAS, Lessee continues to require facilities for the purpose of conducting its activities relating to updating and implementing the Plan for the Yuma Crossing National Heritage Area (the “Plan”) through September 30, 2037, which Congress authorized through the National Heritage Area Act of 2022; and,

WHEREAS, Lessor is entering into this Lease as a local match for Federal Yuma Crossing National Heritage Area Funding and for the purpose of maintaining the Heritage Center.

NOW THEREFORE, IT IS AGREED by and between the Parties as follows:

1. Description of Premises. Lessor hereby leases to Lessee, on the terms and conditions set forth in this Lease, the real property and premises at 180 West First Street, Yuma, Arizona 85364 (“Premises”), more particularly described in Exhibit “A” attached and incorporated into this Lease by this reference.

2. Term. This Lease is effective for a period of one year, beginning on January 1, 2024 (the “Effective Date”). This lease may be renewed for two (2) additional one-year periods. Lessee shall notify Lessor in writing not less than sixty (60) days prior to the end of the current Lease term of Lessee’s intent to renew.
3. Rent. Lessee agrees to pay Lessor the sum of Twelve Dollars (\$12.00) annually as rent for the Premises, due and payable in advance on January 1 of each year and prorated by month for any partial year periods. Lessee shall mail all payments of rent to the City of Yuma, Attention: Finance Director, One City Plaza, Yuma, Arizona 85364.
4. Use. The Premises shall be used to further the mission and purposes of Lessee consistent with the terms of this Lease.
5. Premises Leased As Is. Lessee acknowledges the Premises is leased in “as is” condition. Lessee, at the termination of this Lease, agrees to surrender the Premises to Lessor in as good or better condition and repair as at the commencement of the Lease, normal wear and tear excepted.
6. Taxes. Any excise, sales, property, transaction privilege or use tax, or any other applicable tax imposed or levied by any government or governmental agency upon Lessor or Lessee and attributable to the rent payable by Lessee shall be paid by Lessee in addition to the rent otherwise payable under this Lease.
7. Compliance With All Laws. Lessee shall, at Lessee’s sole cost and expense, comply with the requirements of any and all Municipal, County, State and Federal laws, ordinances, contracts, and regulations now in force or which may hereafter be amended or enacted which affect the Premises or affect Lessee’s use of the Premises.
8. Alterations and Improvements. Lessee may make alterations, additions, or modifications to the Premises, but only upon written approval of Lessor, such approval not to be unreasonably withheld. All additions, alterations, or modifications to the Premises shall be completed at the sole expense of Lessee and at no expense to Lessor, unless otherwise agreed to in writing by both Parties. Any alterations to the exterior of the Premises shall require prior approval of the Historic District Review Commission. Lessee shall indemnify Lessor for any mechanic’s or materialmen’s liens place on the Premises as a result of Lessee’s improvements.
9. Maintenance. Lessee at Lessee’s sole expense shall maintain the Premises in as good condition and repair as when received.
10. Capital Improvements. Lessor acknowledges that, should a need arise for major capital repairs and improvements in excess of \$25,000, Lessor and Lessee shall jointly determine how best to fund those improvements. During the term of this Lease, Lessor shall undertake a capital needs assessment and Lessee may request inclusion of capital improvements through the Lessor’s Capital Improvement Project Budget upon the recommendation of City staff and subject to the discretionary approval of the Yuma City Council.

11. Utilities. Lessee agrees to contract for and pay the cost of all utilities provided to Lessee upon the Premises, including without limitation, all electricity, gas, telephone, trash, cable and video services, internet data services, and water and sanitary sewer service charges.
12. Insurance. Before the commencement of this Lease, Lessee shall name the Lessor, Lessor's employees, officials, officers, and agents as Additional Insured on all of Lessee's required insurance policies and provide Lessor with the Additional Insured endorsements. The insurance policies required under this Section 12 shall be endorsed as primary insurance policies, and any insurance carried by the Lessor shall be excess and not contributory coverage to that provided by the Lessee. All required insurance policies shall be endorsed with a waiver of subrogation as to Lessor and Lessor's employees, officials, officers, and agents, and are subject to approval by the Lessor. The existence of excess insurance policies of Lessor or Lessee shall in no way be construed to limit the requirements of insurance described in this Lease. Evidence of the Lessee's insurance coverage and all endorsements required in this Section 12 shall be provided before the commencement of this Lease. Lessee shall also furnish Lessor with Certificates of Insurance. Failure to provide the required coverage and failure to comply with the terms and conditions of this Lease shall not waive the obligations in this Lease. Any such required policy may not be cancelled or materially altered by either the insurer or the insured without 30 days prior written notice provided to the Lessor and the City Attorney at the addresses described in Section 24 below.

Lessee shall, during the term of this Lease agreement, at the expense of Lessee:

- A. Insure the fixtures and equipment belonging to Lessee against broad perils of property loss or casualty.
  - B. Carry public liability insurance on the Premises providing for a minimum of One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate.
  - C. Lessee shall during the term of this Lease, at the expense of Lessee, insure the Premises and other improvements owned by Lessor on the Premises against broad perils of property loss or casualty for a minimum of Three Million Dollars (\$3,000,000.00).
13. Vacation or Abandonment. Lessee shall not vacate or abandon the Premises at any time during the term of this Lease. If Lessee abandons, vacates, or surrenders the Premises, or is dispossessed by process of law or otherwise, any personal property left on the Premises belonging to Lessee, at the sole option of Lessor, shall be deemed to be abandoned.
  14. Injury or Damage to Premises. In the event of a partial destruction of the Premises from any cause covered by Lessee's property insurance for the Premises, Lessee shall immediately repair such destruction provided that such repairs can be made within one-hundred eighty (180) days of the date of the loss. Partial destruction of the Premises shall in no way annul or void this Lease agreement, and Lessee shall not be entitled to a proportionate reduction of rent while Lessee makes the repairs. If the partial destruction of the Premises was caused

by any risk not covered by Lessee's insurance, Lessor may, at its sole option, make such repairs, provided the repairs can be made within one-hundred eighty (180) days of the date of the loss, and this Lease shall remain in full force and effect. In no event of partial or greater destruction of the Premises shall Lessor bear any responsibility to Lessee's permitted sublessees as described in Section 16 below.

- A. If Lessor elects not to make any optional repairs, or if repairs cannot be made within 180 days, or if repairs cannot be made under law, this Lease may be terminated at the option of either Party.
  - B. In the event that more than forty percent (40%) of the replacement cost of the Premises is destroyed, either Party may elect to terminate this Lease, without liability of payment of rent to the other Party.
  - C. A total destruction of the Premises, or of the building, shall terminate this Lease.
  - D. The proceeds from Lessee's insurance policy shall only be used for repair or restoration if Lessor elects to repair the building, otherwise the entire insurance proceeds shall belong to and be payable to the Lessor.
15. Entry and Inspection. Lessee shall permit Lessor or Lessor's agents or employees to enter the Premises at reasonable times for the purpose of inspecting or maintaining the Premises.
16. Assignment and Subletting. So long as Lessee continues to occupy space in the Premises as Lessee, Lessee may sublet a portion of the Premises or any part thereof to other non-profit agencies, if and only if, Lessee receives approval in writing from Lessor, such approval not to be unreasonably withheld. This Lease shall not, nor shall any interest in this Lease be assignable, as to the interest of Lessee, without the prior written and signed consent of Lessor. In addition to non-profit agencies, Lessor shall permit Lessee to continue subletting space to no more than one for-profit entity or professional at a time.
17. Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Lessee:
- A. The vacating or abandonment of the Premises by the Lessee.
  - B. The failure by Lessee to make any payment of rent or any payment required to be made by Lessee hereunder within ten (10) days of the due date.
  - C. The failure by Lessee to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by the Lessee, other than described in Subsection (B) above, where such failure shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee.
  - D. Any failure of Lessee to provide and maintain in force, at all times, the required insurance and endorsements.

18. Remedies. If Lessor at any time terminates this Lease for any breach, in addition to any other remedy Lessor may have, Lessor may recover from Lessee(s) all damages Lessor may incur by reason of such breach, including the cost of recovering the Premises. Lessee understands and agrees that the Lessor's remedies in this Lease shall be cumulative, and the exercise of any one remedy by Lessor shall not be to the exclusion of any other remedy.
19. Non-Waiver For Default. The waiver by Lessor of any default or breach of any term, covenant or condition contained in this Lease shall not be deemed to be a waiver of such term, covenant or condition, or any subsequent default or breach of the same or other term, covenant or condition of this Lease. The acceptance of rent shall not be a waiver of any default or breach by Lessee of any term, covenant or condition of this Lease.
20. Effectiveness. This Lease shall become effective as binding upon Lessor and Lessee when all of the following occurs:
- A. Authorization has been approved by the Yuma City Council and if required, the Yuma Crossing National Heritage Area Corporation's board;
  - B. Each Party has signed and delivered to the other Party a copy of this Lease; and,
  - C. All blanks in this Lease have been completed or filled in.
21. Indemnification. To the fullest extent permitted by law, Lessee shall indemnify, defend, and hold harmless Lessor, Lessor's agents, representatives, officers, directors, officials, volunteers, and employees from and against any and all liabilities, damages, losses, suits, claims, judgments, fines, demands, and expenses (including all reasonable costs for investigation, attorney fees and litigation expenses, and the cost of appellate proceedings) (collectively "Claims") to the extent such Claims result from or arise out of Lessee's use or occupancy of the Premises, or Lessee's intentional, reckless, or negligent directives, acts, errors, mistakes, or omissions in performance or non-performance of this Lease. This includes any intentional, reckless, or negligent acts, errors, mistakes, or omissions of Lessee's officers, agents, employees, volunteers, contractors, licensees, or invitees, regardless of where the injury, death or damage may occur, unless such injury, death or damage is caused by the negligence of the Lessor.

The amount and types of insurance coverage requirements set forth in this Lease shall in no way be construed as limiting the scope of the indemnity in this Lease.

22. Hazardous Materials Indemnification.
- A. As used in this Lease, the term "Hazardous Materials" shall mean any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing a risk or injury to health, safety or property, including but not limited to all of those materials and substances designated as hazardous or toxic by the city and county in which the Premises is located, the U.S. Environmental Protection Agency, the Consumer Product Safety Commission, the U.S. Food and

Drug Enforcement Administration, the Arizona Department of Environmental Quality, or any other governmental agency now and hereafter authorized to regulate materials and substances in the environment.

B. Representations, Warranties and Indemnification by Lessor:

- (1) Lessor represents and warrants to Lessee that the Premises are in compliance with all applicable environmental laws. There are no current, pending, or threatened claims, administrative proceedings, judgments, declarations, or orders relating to the presence of Hazardous Materials on, in, or under all or part of the Premises. The Premises are being delivered to the Lessee free of all known Hazardous Materials.
- (2) Lessor shall indemnify and hold Lessee harmless from any and all liabilities which may result from the presence of Hazardous Materials on or in the surface or subsurface soils or water of the space and the land provided by Lessor, and the storage, release, emission, discharge, generation, disposition, handling or transportation of any Hazardous Materials in, on or from such Premises which predates Lessee's occupancy of such Premises, whether now known or discovered at a later date.

C. Representations, Warranties and Indemnification by Lessee:

- (1) Lessee agrees not to introduce any Hazardous Materials in, on or adjacent to the Premises without obtaining Lessor's prior written approval, providing Lessor with thirty (30) days prior written notice of the exact amount, nature, purpose and manner of intended use of such Hazardous Materials, and complying with all applicable federal, state and local laws, rules and regulations, ordinances, policies and authorities related to the storage, use, disposal and clean-up of Hazardous Materials, including, but not limited to, the obtaining of all proper permits.
- (2) Lessee warrants to Lessor that during the terms of this Lease, at Lessee's own cost and expense, Lessee shall promptly observe and comply with all present and future laws as they apply to the use of hazardous material or the disposal of hazardous wastes in the course of Lessee's operations.
- (3) Lessee shall indemnify, defend, and hold Lessor harmless from any liabilities and cleanup costs, which may result from environmental conditions relating to the generation of or use of Hazardous Materials as a result of Lessee's activities or manner of use of the Premises furnished by Lessor.

23. Exterior Signs. Lessee may affix exterior signs, logos, or other devices to the exterior portion of the Premises consistent with the guidelines of the Historic District

Review Commission of the City of Yuma, and approved by Lessor, such approval not to be unreasonably withheld.

24. Notice. Where written notice is required under this Lease, the Parties agree that delivery of notice will take place upon personal delivery, or three (3) days after proof of mailing by the U.S. Post Office to the address shown below for each Party, or substituted address acknowledged in writing by both Parties. The following is the initial address selected by each respective Party:

**Lessor:**

City Administrator  
City of Yuma  
One City Plaza  
Yuma, Arizona 85364-1436

*With a copy to:*

City Attorney  
City of Yuma  
One City Plaza  
Yuma, Arizona 85364-1436

**Lessee:**

Chairman  
Yuma Crossing National Heritage Area  
Corporation  
180 West 1st Street, Suite #E  
Yuma, Arizona 85364

*With a copy to:*

Benesch, Shadle & White, P.C.  
833 E Plaza Cir #100,  
Yuma, AZ 85365

25. Attorney's Fees. If any legal action or other legal proceeding is brought for the enforcement of this Lease, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of the Lease, or if an attorney is retained to enforce the provisions of this Lease, the successful or prevailing Party shall be entitled to reimbursement for reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which the prevailing Party may be entitled.
26. Governing Law. The Parties agree that this Lease shall be governed by the laws of Arizona.
27. Modification. This Lease sets forth the entire agreement of the Parties and shall not be modified except by written agreement signed by both Parties.
28. Time. Time is of the essence in this Lease.
29. Heirs, Assigns, Successors. The covenants and conditions in this Lease shall, subject to the provisions set forth in Section 16 of this Lease, apply to and bind the heirs, successors, executors, administrators and assigns of all of the Parties hereto.
30. Conflict of Interest. This Lease is subject to the conflict of interest provisions of A.R.S. § 38-511, *et. seq.*

31. Venue. Any action to enforce any provision of this Lease or to obtain any remedy with respect to this Lease 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, but 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 commenced in accordance with the terms of this Section 30.
32. Severability. If any terms, parts, or provisions of this Lease are for any reason invalid or unenforceable, the remaining terms, parts, or provisions are nevertheless valid and enforceable.
33. Integration. This Agreement contains the entire agreement between the Parties and supersedes any prior lease agreements between the Parties. No oral or written statements, promises, or inducements made by either Party or the Party's agents not contained or specifically referred to in this Agreement is valid or binding. All modifications to this Agreement must be made in writing, signed by all Parties.
34. No Partnership. Nothing in this Lease constitutes a partnership or joint venture between the Parties and neither Party is the principal or agent of the other.
35. Non-Discrimination. The Parties shall comply with Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 2009-09, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The Parties shall comply with 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 handicap, and the Americans with Disabilities Act.
36. Rights/Obligations of Parties Only. The terms of this Lease 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.

*[Remainder of page intentionally blank]*



WITNESSED, the Parties executed this Lease through their authorized representatives as of the date first written above.

**CITY OF YUMA**

**YUMA CROSSING NATIONAL  
HERITAGE AREA CORPORATION**

By: \_\_\_\_\_  
John D. Simonton  
Acting City Administrator

Lessee: \_\_\_\_\_  
Shelley Mellon  
Chair

ATTEST:

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

APPROVED AS TO FORM:

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

**Exhibit "A"**

That part of Tract One Section 35, Township 16 South, Range 22 East, San Bernardino Meridian, Yuma County, Arizona, more particularly described as follows:

The East 547.97 feet of said Tract One.

EXCEPTING therefrom the east 332.00 feet.

Containing 1.874367734 acres, more or less.