

FACILITIES MAINTENANCE AGREEMENT

THIS FACILITIES MAINTENANCE AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2018 by and between the City of Yuma, Arizona, a municipal corporation (the “City”) and Tuscany of Yuma Lot Owners Association Phase II, Inc., an Arizona corporation (the “Tuscany Association”) concerning the real property (“Property”) located within 21st Drive rights-of-way between 24th Street and 30th Street and legally described in Exhibit A attached.

WHEREAS, the Yuma County Water Users’ Association (the “YCWUA”) has granted a license to the City under License No. 001-18-001 titled “License For Encroachments and Construction, Installation, Operation and Maintenance of Facilities” which has been and as may be amended from time-to-time (the “License”), a copy of which is attached here as Exhibit “B” and whose terms are incorporated here by reference and acknowledged by the Tuscany Association through signature of its authorized agent on this Agreement; and,

WHEREAS, the City agrees to permit Tuscany Association use of the Property under the City’s License for purposes of the Tuscany Association’s encroachment, construction, installation, operation and maintenance of a storm water retention basin, landscaping, water lines and sewer improvements (“Facilities”); and,

WHEREAS, the Tuscany Association recognizes the terms of this Agreement are subordinate to and subject to the terms contained in License No. 001-18-001 and that the License is revocable at will by the YCWUA.

NOW THEREFORE, in consideration of the City’s willingness to permit the Tuscany Association to install the Facilities and use the Property under the City’s License, the Tuscany Association agrees and covenants the following:

- 1) Non-Permitted Uses.** The Tuscany Association shall not permit any use, encroachment, construction, installation, operation, maintenance or trespass by any persons upon the Property or property of the YCWUA, except as specifically provided for in License No. 001-18 -001.
- 2) Non-Assignable.** The Tuscany Association shall not assign any of its rights under this Agreement without a separate written agreement executed by the City.
- 3) Administrative Fee.** The \$1,000.00 non-refundable administrative fee to the City, if applicable, is hereby waived, since the fee was directly paid to YCWUA by the Tuscany Association.
- 4) Indemnification.** The Tuscany Association shall indemnify the City, the United States Government, and the YCWUA for any and all damages to the property of the United States, the YCWUA, the City, or any third party or parties caused by reason of the use of the Property.
- 5) Hold Harmless Agreement.** To the maximum extent permitted by law, the Tuscany Association agrees to hold forever harmless, indemnify and defend the City, the United States,

and the YCWUA, together with all of their respective officers, employees, successors and assigns from any and all claims related to or in any way connected with the Tuscany Association's construction, operation or maintenance of the Facilities or any use of the Property. The Tuscany Association's obligation hereunder includes, but is not limited to, the obligation to pay the City's attorney fees and costs incurred in connection with any claim, including any costs for attorney's fees chargeable to the City as described in the License and any other costs or fee chargeable to the City as described in the License, even if such claim does not result in litigation. The Tuscany Association, and its insurer, agree to waive subrogation against the City, YCWUA and the United States and shall name the each as additional insured on its insurance policy, with the endorsement of coverage to be primary and in an amount of not less than \$1,000,000 liability per occurrence with a 30 day notice of cancellation provision. The terms and obligations of this Paragraph and Paragraph 4 above shall survive termination of this Agreement and/or termination of the License.

6) Notice of Commencement of Work. The Tuscany Association agrees to provide written notice to both the YCWUA and the City seven (7) working days prior to commencing the actual encroachment and work for the Facilities. Such notice shall be sent to each address listed below:

Yuma County Water Users' Association
Attention: Tom Davis, Manager
PO Box 5775
Yuma, Arizona 85366-5775

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

7) Notice of Archaeological Find. The Tuscany Association agrees to notify the appropriate parties in the event of any archaeological or historical culture find as specified in paragraph 9(d) of the License.

8) Plans and Specifications. Any and all construction or use under this Agreement shall be in accordance with plans and specifications as described in Paragraphs 3 and 4 of the License and subsequent License amendments and as approved by the City.

9) Responsibility for Increased Operating Costs. In the event any construction or use under this Agreement results in increased operation and/or maintenance expense to the YCWUA or the City, the Tuscany Association agrees to pay the amount of any such increase in accordance with the terms and conditions of Paragraph 15 of the License.

10) Payment of Legal Expense and Venue. If any Party commences a legal action to enforce any term or condition of this Agreement, it is understood and agreed that any cause of action shall be filed in the Yuma County Superior Court and that the prevailing Party shall be entitled to recover a reasonable sum as and for attorneys' fees and costs as fixed by the Court.

11) Termination. The Tuscany Association agrees that this Agreement may be terminated by any of the following: a) the City's delivering ten (10) day written notice of such termination to the Tuscany Association, its officers, attorney or agent; b) termination of the underlying License as prescribed in Paragraph 11 of the License; or c) cessation or abandonment of use of the Facilities by the Tuscany Association.

12) Duties Upon Termination. In the event of termination of the License or this Agreement, the Tuscany Association shall comply with all terms in Paragraph 11 of the License and bear all costs related to the termination of the License, including, but not limited to, removing all encroachments constructed under the License or this Agreement within one hundred eighty (180) days after the date of notice of termination. The Tuscany Association further agrees to return the rights-of-way affected by the License and this Agreement to their original condition (or in a condition acceptable to the City, the YCWUA and the United States Bureau of Reclamation) at the Tuscany Association's sole cost and expense.

EXECUTED this _____ day of _____, 2018.

**TUSCANY LOT OWNERS
ASSOCIATION PHASE II, INC.**

By: _____
Name:
Its: Manager

By: _____
Name:
Its: Manager

CITY OF YUMA

By: _____
Name: Gregory K. Wilkinson
Its: City Administrator

ATTESTED:

Lynda L. Bushong, City Clerk

APPROVED AS TO FORM:

Richard W. Files, City Attorney