

HERITAGE GRANT  
AGREEMENT

BETWEEN THE ARIZONA GAME AND FISH COMMISSION  
AND CITY OF YUMA

This Heritage Fund Grant Agreement (“Agreement”) is entered into between the Arizona Game and Fish Commission (“Commission”) and City of Yuma (“Grantee”) (collectively “Parties” and singularly “Party”) pursuant to A.R.S. § 17-231 (B)(7). The terms “Department” and “Director” refer to the Arizona Game and Fish Department and its Director, acting as administrative agent for the Commission.

WHEREAS, the Commission believes it is important to collaborate with other agencies or organizations in conserving Arizona’s wildlife and preserving Arizona’s wildlife heritage;

WHEREAS, the Commission wishes to foster this valuable relationship by granting funds to the Grantee to carry out the project(s) set forth in the Grantee’s approved grant application (“Application”), which is incorporated herein and attached as Attachment A, in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the above premises, the Parties hereto agree as follows:

I. The Commission agrees that the Department shall:

1. Provide to the Grantee **\$ 18,714.00** to carry out the project(s) set forth in the Grantee’s Application. The Grantee shall place all grant monies received in a non-interest bearing account.

Payment shall be made as follows:

- a. 90 percent payable upon execution of this Agreement.
  - b. 10 percent, less any adjustment for actual expenditures, upon receipt of a written request and a certification of project completion from the Grantee.
2. Not reimburse the Grantee for items other than those defined in this Agreement.
3. Not make any grant payment on the remaining 10 percent until the Grantee has submitted all past due project status reports.

II. Grantee shall:

1. Deposit all amounts received under the terms of this Agreement to appropriate accounts for each project under the name and number of the project and use such non-interest bearing funds to fulfill the purposes set forth in the Grantee’s Application. Should the Grantee use funds provided to it under this Agreement for

purpose(s) other than those set forth in the Grantee's Application, this Agreement shall terminate automatically and the Grantee shall return to the Department all misappropriated and unused funds. The Grantee shall not use grant funds for the purpose of producing income. The Grantee shall not use grant funds to pay compensation in excess of the established salary for any permanent public employee. The funds shall be expended only for grant work as authorized under the terms of this agreement

2. Maintain full accounting of all actual expenses associated with completing this project and provide copies to the Department as requested.
3. Publicly acknowledge that Commission funds were used to assist project accomplishments. All materials prepared in the performance of this Agreement shall be acknowledged as having been funded by the Arizona Game and Fish Department and the Heritage Fund.
4. Install a permanent sign that credits the Fund and contains the official Department logo and states that funding for the project(s) has been provided by the Commission at the project site, if a project involves acquisition of property, development of public access or renovation of a habitat site.
5. Submit semi-annual project status reports that include the following information:  
1) Progress toward completing approved work; 2) An itemized, cumulative project expenditure sheet; 3) Any anticipated delays or other problems that may prevent on-time completion of the project; 4) Any additional information that the Department requests in accordance with this Agreement.
6. Operate and maintain grant-assisted capital improvements, provide reasonable protection of any project improvements, and ensure that reasonable public access is maintained as specified in this Agreement.
7. Return to the Department any unused monies upon completion of the awarded project. The Grantee may make a written request that the Department award the unused monies for an additional project that is consistent with the original scope of work.

### III. The Commission and the Grantee mutually agree and understood that:

1. At its discretion, the Department may conduct periodic on-site inspections of the project(s) at all reasonable times. Before final payment is released, the Department may perform a completion inspection and review of an awarded project.
2. In the event of a conflict between the terms of this Agreement and the Grantee's Application, the terms of this Agreement shall govern.

3. This Agreement shall become effective upon the date of final signature and shall continue for a period not to exceed three years. This Agreement may be amended at any time by mutual agreement of the parties in writing. It may be terminated by either party upon thirty 30 days written notice to the other Party. Upon termination, the Grantee shall cease all work performed pursuant to this Agreement and return any unused funds to the Department.
4. The Parties may amend the terms of this Agreement by mutual written consent. The Department shall prepare any approved amendment in writing, and both the Department and the Grantee shall sign the amendment. An amendment lacking a required signature is invalid.
5. The Department may temporarily suspend grant assistance under the project pending required corrective action by the grantee or pending a decision to terminate the grant by the Department by notifying the Grantee in writing. Whenever one party to this contract in good faith has reason to question the other party's intent to perform, he or she may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within ten (10) days, the demanding party may treat this failure as an anticipatory repudiation of the contract.
6. The Department may terminate the project in whole or in part at any time before the date of completion, whenever it is determined that the GRANTEE has failed to comply with the terms or conditions of the grant. In case of default, the Department will provide written notification. The Grantee will have ten days to correct the default or show cause. The Department will promptly notify the Grantee in writing of the determination and the reasons for the termination, together with the effective date. All payments made to the Grantee shall be recoverable by the Department under the project terminated for cause.
7. The Department or Grantee may terminate grants in whole, or in part, at any time before the date of completion, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date of the termination and, in the case of partial termination, the portion to be terminated. The Grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The Department may allow full credit to the Grantee for the grant share of non-cancelable obligations properly incurred by the Grantee before termination.
8. The Department may require specific performance of the terms of this agreement or take legal steps necessary to recover the funds granted if the Grantee fails to comply with the terms of the grant or breaches any condition or special condition of the grant agreement.

9. The remedies expressed in this agreement are not intended to limit the rights of the Department. This agreement shall not in any way abridge, defer, or limit the Department's right or remedy under law or equity that might otherwise be available to the Department.
10. If the Grantee violates state law or this agreement, the Department may seek recovery of all funds granted and classify the Grantee as ineligible for heritage Funds grants for a period not to exceed five (5) years.
11. The Grantee is subject to the Department's on-site monitoring inspections to validate grantee's compliance with the Grant Agreement. All open grants (ongoing), closed grants (within 5 years of grant closure) and grants still within the "term of public use" are subject to Department monitoring inspections. When a Department monitoring inspection discovers the Grantee's default or non-compliance with the terms of the Grant Agreement, the Department will provide written notification to the Grantee, and the Grantee will have ten business days to correct the default or non-compliance. The Department may pursue any remedy if the Grantee fails to correct the default or non-compliance within the period to correct, unless the Grantee can show good cause for not correcting the default or non-compliance.
12. Remedies may include repayment of the grant if the Grantee fails to provide for operation and maintenance of the equipment, facilities or product of any Heritage grant funded project during the Term of Public Use. The Grantee shall reimburse the Heritage Fund as follows:

<u>Years maintained within term of Public Use</u>	<u>Grant Repayment Required</u>
0-20%	100%
21-40%	75%
41-60%	50%
61-80%	25%
81-100%	0%

13. All written notices concerning this Agreement shall be delivered in person or sent by certified mail, return receipt requested, to the Parties as follows:
  - A. For the Commission and Department:  
Grants Coordinator  
Directors Office Funds/Planning Section  
Arizona Game and Fish Department  
5000 W. Carefree Highway  
Phoenix, Arizona 85086

B. For the Grantee:  
City Attorney  
City of Yuma  
One City Plaza  
Yuma, Arizona 85364

14. In carrying out the terms of this Agreement, the Parties agree to comply with Executive Order 2009-09 prohibiting discrimination in employment, the provisions of which are incorporated herein by reference.
15. Pursuant to A.R.S. § 35-214, all books, accounts, reports, files, electronic data, and other records relating to this Agreement shall be subject at all reasonable times to inspection and audit by the State of Arizona for five (5) years after completion of this Agreement.
16. The Grantee shall use equipment purchased with grant funds for a public purpose for the useful life of the equipment, or surrender the equipment to the Department upon completion of the project, whichever comes first, if the equipment purchased with grant funds has an acquisition cost of greater than \$500. If the equipment is sold, the Grantee shall pay the Department the amount of any resulting proceeds in the ratio equivalent to the funds provided for the purchase.
17. To the extent required under A.R.S. § 12-1518, the Parties agree to use arbitration to resolve any dispute arising under this Agreement, with each Party to bear its own attorneys' fees and costs.
18. Unless the Grantee is a State agency, or an agency of the United States of America, the Grantee shall indemnify, save and hold harmless the Department, and the State of Arizona, its agents, departments, officers and employees from all claims, loss, damage, liability, expense, costs, and charges incident to or resulting in any way from any injuries or damage to any person or any damage to any property caused by or resulting from the issuance of or the performance of services rendered as part of this agreement
19. Assignment-Delegation: No right or interest in this contract shall be assigned by the Grantee without the prior written permission of the Department, and no delegation of any duty of the Grantee shall be made without the prior written permission of the Department.
20. This Agreement is subject to termination for conflict of interest pursuant to A.R.S. § 38-511.
21. This Agreement shall terminate automatically if funds necessary to carry out this Agreement are not allocated or available to the Commission or the Department. In the event of such termination, the Commission and the Department shall incur no obligation or liability to the Grantee under this Agreement.

22. This Agreement in no way restricts either Party from participating in similar activities with other public or private agencies, organizations, or individuals.
23. All work performed pursuant to this Agreement shall be in compliance with all applicable state and federal laws and regulations. If Grantee violates state or federal law or this Agreement, the Department shall seek recovery of all monies awarded and classify the Grantee as ineligible for grant monies for a period not to exceed five (5) years.
24. The attached Application and estimated cost sheet is hereby incorporated and becomes a part of this Agreement.
25. It is understood by the Parties that the Grantee is an independent contractor with respect to Arizona and not an employee of the Department. The Department will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefits to the Grantee.
26. Grantee's employees, if any, who perform services for the Department under this Agreement are bound by the provisions of this Agreement. At the request of the Department, the Grantee shall provide adequate evidence that such persons are the Grantee's employees.
27. Grantee acknowledges its obligation to obtain appropriate insurance coverage for the benefit of the Grantee (and Grantee's employees, if any). The Grantee waives any rights to recovery from the State of Arizona, the Commission or the Department for any injuries or property damage that the Grantee (and/or Grantee's employees) may sustain while performing services under this Agreement and that are a result of the negligence of the Grantee or Grantee's employees.
28. If Grantee contracts with a third party or subcontractor, the Grantee shall be responsible for ensuring said third party's or subcontractor's compliance with the terms of this Agreement, and Grantee shall be responsible to the state of Arizona, the Commission and the Department if the third party or subcontractor defaults or violates any terms or conditions of this Agreement.
29. If applicable, Grantee shall ensure that the value of real property purchased with grant assistance is appraised by a state certified appraiser within six (6) months before its acquisition, in accordance with the Uniform Standards of Professional Appraisal Practice. The Department reserves the right to select an appraiser for an independent evaluation if the Department has evidence that the participant's appraised value of the real property is not accurate.

30. The Parties agree to comply with Executive Order 2005-30, "Ensuring Compliance with Federal Immigration Laws by State Employers and Contractors," the provisions of which are hereby incorporated by reference.

31. Any special terms and conditions attached hereto as Attachment B are hereby incorporated into this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date below:

City of Yuma

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Greg Wilkinson  
City Administrator

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Steven W. Moore  
City Attorney

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[Date]

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[Date]

**ARIZONA GAME AND FISH COMMISSION**

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Larry D. Voyles  
Secretary to the Commission  
Director, Arizona Game and Fish Department

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[Date]