

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF YUMA
AND THE CITY OF SOMERTON**

This Intergovernmental Agreement (“Agreement”) is entered into on this ____ day of _____, 2019, (“Effective Date”) by and between the City of Yuma (“Yuma”), an Arizona municipal corporation, and the City of Somerton (“Somerton”), an Arizona municipal corporation. Yuma and Somerton are sometimes hereafter referred to individually as the “Party” and collectively as the “Parties.”

WHEREAS, Yuma and Somerton are authorized by A.R.S. § 11-952 *et. seq.* and Yuma is also authorized and empowered pursuant to Article III, Section 13, of the Yuma City Charter, to enter into agreements for the joint exercise of any power common to the contracting Parties as to governmental functions necessary to the public health, safety and welfare, and the proprietary functions of such public agencies; and,

WHEREAS, Somerton is a growing community in need of traffic engineering support; and,

WHEREAS, Yuma has properly-trained traffic engineering staff who can provide traffic engineering services, both on an as-needed and annual planning basis; and,

WHEREAS, it is deemed to be of public necessity and would be of public benefit to cooperate in providing traffic engineering services for the safety and welfare of the residents of Somerton and the motoring public.

NOW, THEREFORE, the Parties agree as follows:

1. **Yuma’s Responsibilities.** Yuma shall provide traffic engineering services to Somerton in accordance with the following provisions:
 - A. Annually review and analyze the operation of Somerton’s Signalized Intersections (“Review Services”). Review Services may include, but not be limited to:
 - i. Video data collection and analysis.
 - ii. Synchro analysis.
 - iii. Signal timing review and analysis.
 - B. Provide as-needed traffic engineering support when requested by Somerton (“Support Services”). Each Support Services request will be reviewed by Yuma and Yuma will provide a cost estimate and schedule for Somerton’s review and approval prior to Yuma performing the Support Services. Support Services may include, but not be limited to:
 - i. Signal and/or stop sign warrant analyses.
 - ii. School zone safety analysis.
 - iii. Signing and marking minor modifications.

- C. Provide a written summary of the analysis conducted and recommendations resulting from the services provided.
 - D. Invoice Somerton upon completion of the services for the actual cost of services rendered in accordance with the following fee schedule:
 - i. Signalized intersection operating analyses as described in Section 1(A) above at One-Thousand (1,000) dollars per signalized intersection per year.
 - ii. As-needed traffic engineering services as described in Section 1(B) above at One Hundred (100) dollars per hour, in accordance with each mutually agreed upon estimate and any agreed upon modifications.
2. **Somerton's Responsibilities.** Somerton shall:
- A. Submit all requests for service in writing to the Yuma City Engineer.
 - B. Review and respond to Yuma's fee proposals for as-needed traffic engineering services in a timely manner so as to not delay or interfere with other Yuma traffic engineering activities.
 - C. Remit payment to Yuma within 30 days of receiving Yuma's invoice for services.
3. **Priority.** Yuma will respond to requests from Somerton in a prompt and expeditious manner, however, the Parties acknowledge and agree that at all times during the term of this agreement services required by Yuma will have priority over services provided to Somerton.
4. **Term.** This Agreement shall be effective as of the Effective Date set forth above and shall remain in full force and effect for a period of five (5) years ("Initial Term") from the Effective Date, unless terminated as otherwise provided in this Agreement. After the expiration of the Initial Term, this Agreement shall automatically renew for up to two (2) successive five-year terms (each a "Renewal Term") unless either Party provides thirty (30) days written notice of termination to the other Party before the expiration of the Initial Term or any Renewal Term or the Agreement is terminated as otherwise provided in this Agreement.
5. **Termination.** Either Party may terminate this Agreement for any reason upon thirty (30) days written notice to the other Party. If either Party's performance under this Agreement depends upon the appropriation of funds by the Arizona Legislature, and if the Legislature fails to appropriate the funds necessary for performance, then either Party may provide written notice to the other Party and cancel this Agreement without further obligation. Appropriation is a legislative act and is beyond the control of both Parties.
6. **Indemnification.** To the fullest extent permitted by law, and to the extent of policy limits in place as of the Effective Date under each Parties' policy(ies), each Party shall indemnify, defend and hold harmless the other Party and its respective council member, officer, director, employee or agent thereof (Party and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, fines, penalties, judgments, costs and expenses (including, but not limited to, reasonable attorneys' fees, and

court costs) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (collectively "Claims"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the intentional, reckless, or negligent acts, misconduct, errors, directives, mistakes or omissions of the other Party, its officers, officials, employees, agents, contractors, volunteers, students, or parents or guardians of students in the performance of this Agreement. The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this Section.

7. **Insurance.** Before the commencement of this Agreement, Somerton shall carry public liability and property insurance whose limits of liability shall be at least one million dollars (\$1,000,000.00) per occurrence, and at least five million dollars (\$5,000,000.00) general aggregate for the duration of this Agreement. The policy shall include bodily injury, property damage, personal injury or death claims, and broad form contractual liability, and shall name and endorse Yuma, and its officials, officers, employees, and agents as additional insureds and include an endorsed waiver of subrogation in favor of Yuma. The policy required under this Section shall be written on an occurrence basis, and shall be, or endorsed to be, a primary, non-contributory insurance policy and any insurance policy maintained by Yuma is considered excess insurance. The existence of excess insurance policies should in no way be construed to limit the requirements of insurance described herein. All insurance policies are subject to approval by Yuma. It is expressly provided that the Certificates of Insurance and required endorsements are a condition precedent and this Agreement shall not be in effect until such Certificates and required endorsements have been received by Yuma. If the policy or policies are cancelled, materially reduced, or not renewed, the insurance company shall provide an unqualified thirty (30) days written notice to Yuma prior to the effective date of such cancellation or termination. If a renewal Certificate is not sent to Yuma within said time, this Agreement shall automatically terminate without further notice to Somerton. Failure to provide required coverage and failure to comply with the terms and conditions of this Agreement shall not waive the contractual obligations herein. A "blanket" insurance policy carried by Somerton shall be acceptable as the insurance required by this section so long as the amount of insurance coverage required by this section is not in any way diminished by use of the blanket policy.

Each Party understands and agrees that its employees, agents, and directors are not serving as (i) employees or (ii) under the jurisdiction or control of the other Party in any manner, and therefore are not entitled to the benefits of the other Party including, but not necessarily limited to, any industrial benefit coverages, including Workers' Compensation coverages or retirement or employment benefits. The Parties also acknowledge that any injury its respective employees, agents, or directors sustain in the performance of this Agreement will be not be eligible for industrial benefits provided by the other Party and any necessary treatment will be the employing Party's, or the employing Party's, sole responsibility.

8. **Entire Agreement.** This instrument contains the entire agreement between the Parties with respect to the subject matter contained in it and supersedes all prior and contemporaneous agreements, discussions and representations related thereto. No supplement, modification or amendment hereof shall be binding and effective unless in writing and signed by all Parties.

9. **Assignment.** No right or interest in this Agreement shall be assigned by either Party without prior, written permission of the other Party. Any attempted assignment by either Party in violation of this provision shall be a breach of this Agreement. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.
10. **Severability.** The Parties agree that should any part of this Agreement be held to be invalid or void, the remainder of the Agreement shall remain in full force and effect and shall be binding upon the Parties.
11. **No Partnership.** Nothing in the Agreement is intended or shall be construed to constitute a partnership or joint venture between the Parties and neither Party shall be deemed the principal, agent, officer, or member of the other.
12. **Rights/Obligations of Parties Only.** The terms of this Agreement 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. Nothing in this Agreement limits any rights or defenses, including any and all immunities found in statute or law.
13. **Choice of Law/Jurisdiction/Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. 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 Justice Courts of Yuma County, Arizona, or 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.
14. **Attorney Fees and Costs.** In the event any action, suit or proceeding is brought for failure to observe any of the terms, covenants, or provisions of this Agreement, the prevailing Party shall be entitled to recover as part of such action or proceeding, all litigation, arbitration, and/or collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney fees.
15. **Records.** Each Party shall keep and maintain records pertaining to the exercise of this Agreement for no less than five (5) years.
16. **Conflict of Interest.** The Agreement is subject to the conflict of interest and cancellation provision of A.R.S. § 38-511, as amended, the provision of which are incorporated herein.
17. **Remedies.** If either Party breaches or defaults on this Agreement the other Party is entitled to exercise legal and equitable rights and remedies. The defaulting Party shall be given written notice and an opportunity to cure the default. In no event shall the time to cure exceed thirty (30) days after receipt of notice, however, that if the default takes longer than thirty (30) days to cure, the defaulting Party will not be deemed to be in default if the defaulting Party has begun the cure and diligently prosecutes the cure to completion.

18. **Employment Eligibility.** To the extent applicable under A.R.S. § 41-4401, the Parties hereby warrant, and represent to each other, that they are in compliance with A.R.S. §§ 41-4401 and 23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. A breach of this warranty shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of this Agreement. The Parties retain the legal right to inspect the papers of any Party or subcontractor employee who works on this Agreement to ensure that the other Party or its subcontractors are complying with this warranty.
19. **Notices.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given and received if (A) personally delivered to the undersigned representatives listed below at the addresses set forth below; (B) three (3) days after it is deposited in the U.S. Mail, postage prepaid, certified, return receipt requested, to the addresses set forth below; or (C) prepaid and given to a recognized and reputable overnight delivery service, such as UPS or FedEx, to be delivered to the addresses set forth below.

If a copy of a notice is also given to a Party's counsel or other authorized recipient, the notice is deemed to have been received on the date on which the undersigned representative received the notice, not the date its counsel or other authorized recipient received the notice.

City of Yuma
Attn: City Administrator
One City Plaza
Yuma, AZ 85364

City of Somerton
Attn: City Manager
PO Box 638
Somerton, AZ 85350

20. **Waiver.** The failure of either Party to insist upon strict performances of any of the provisions of this Agreement, or to exercise any of the rights or remedies provided by this Agreement, or any delay in the exercise of any rights or remedies, shall not release either Party from any of the responsibilities or obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Agreement.
21. **Compliance with Law.** The Parties shall comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. 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 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.
22. **Time is of the Essence.** Time is of the essence in this Agreement. Unless otherwise specifically provided in this Agreement, any consent to delay in the performance by either Party of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not be applicable to any other obligation or transaction.

23. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is an original and all of which together constitute one and the same instrument. Delivery of signature by fax, or scan delivered by email, receipt acknowledged are effective to bind a Party hereto.
24. **Provisions Required by Law.** Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.
25. **Authorization.** This Agreement has been approved by actions taken by each of the governing bodies of the Parties. In such respective action, the undersigned were authorized and directed to execute this Agreement.

IN WITNESS WHEREOF, the Parties thereto have executed this Agreement as of the Effective Date written above.

City of Yuma

City of Somerton

By: _____

By: _____

Philip Rodriguez

Ian McGaughey

Title: City Administrator

Title: City Manager

ATTEST:

ATTEST:

Lynda L. Bushong, Yuma City Clerk

Ana Valenzuela, Somerton City Clerk

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with A.R.S. § 11-952, this contract has been reviewed by the undersigned who have determined that this contract is in appropriate form and within the powers and authority granted to each respective public body.

Attorney for City of Yuma

Attorney for City of Somerton

Richard W. Files

Jorge Lozano