



CITY OF
Yuma

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE:

October 16, 2019

DEPARTMENT:

City Administration

DIVISION:

Administration

- Motion
- Resolution
- Ordinance - Introduction
- Ordinance - Adoption
- Public Hearing

TITLE:

Development Agreement: Francisco Guzman and Irene Guzman Family Wealth Trust Dated December 2, 2008

SUMMARY RECOMMENDATION:

Approve the terms of a development agreement with the Francisco Guzman and Irene Guzman Family Wealth Trust Dated December 2, 2008. The development agreement permits the continued mobile food vending operation located at 1744 S. Pacific Avenue under a City of Yuma issued Conditional Use Permit (CUP) which will resolve Yuma County Superior Court Case No. S1400CV2019-00159, Guzman v. City of Yuma. (Rodney C. Short) (Alyssa Linville)

REPORT:

The Francisco Guzman and Irene Guzman Family Wealth Trust Dated December 2, 2008 (Owners) operate a mobile food vending court located at 1744 S. Pacific Avenue (Property). Owners began operation of the mobile food vending court under the jurisdiction of Yuma County. Access to the Property was over two unimproved, dirt parcels owned by the City of Yuma. Owners applied for a Yuma County issued Special Use Permit (SUP) and at the hearing, the City objected to the use of its unimproved, dirt property as access to the subject Property without improvements. The City alleged Owners had a license to use City land for access to the subject Property, at best. Owners alleged access over the adjacent City parcels via an easement of prescription or of necessity. Yuma County issued the SUP to the Owners for the use on the Property and gave the Owner and City time to work out access to the subject Property.

In 2015, the City exchanged the two unimproved, dirt parcels to Fortuna De Oro, LLC, the developer of the Gomez Plaza (Fortuna), who intended to construct a private street on the 17th Street alignment for access to Gomez Plaza. Owner, City, and Fortuna entered into a three-way memorandum of understanding (MOU) to exchange the City's two unimproved parcels and in exchange, Fortuna would construct 17th Street as private access, provide title to other needed right-of-way, and grant Owner perfected access by easement on 17th Street to the subject Property. City would recognize Owner's use of the Property as a mobile food vendor site for the duration of the Yuma County issued SUP and agree to annex into the City. The Owner's responsibilities under the MOU was to pay Fortuna for a share of the construction improvements and to obtain a City Conditional Use Permit (CUP) by meeting all City requirements under a CUP prior to the expiration of the Yuma County issued SUP.

The Yuma County SUP expired in May 2018. Owners were not in agreement with the required City conditions for a CUP. Owner filed the above-referenced lawsuit against the City alleging inverse-condemnation. After a motion to dismiss by the City, the lawsuit was essentially resolved and the City and Owners agreed to permit Owners to meet the required conditions of the CUP through the attached proposed Development Agreement.

The Development Agreement will allow Owners to meet the conditions of the CUP in incremental milestones, with all milestones to be completed no later than July 1, 2021. Further, the Development Agreement will fully and finally resolve any dispute between the parties related to access, contribution for construction improvements or inverse condemnation and although the matter has already been dismissed by the Superior Court, the parties will execute and file a notice of settlement pursuant to the development agreement in Yuma County Superior Court Case No. S1400CV2019-00159 and agree to end the matter, with prejudice.

By adopting this resolution, Mayor and City Council direct the City Administrator to execute the Development Agreement, which provides for full and final resolution of the above-referenced lawsuit and also sets forth the timing of the conditions for Owner's CUP allowing Owner to continue the mobile food vending operations at the Subject Property subject to the CUP conditions and meeting the milestones in the Development Agreement.

FISCAL REQUIREMENTS	CITY FUNDS:	\$0.00	BUDGETED:	\$0.00
	STATE FUNDS:	\$0.00	AVAILABLE TO TRANSFER:	\$0.00
	FEDERAL FUNDS:	\$0.00	IN CONTINGENCY:	\$0.00
	OTHER SOURCES:	\$0.00 \$0.00 \$0.00	FUNDING FOR THIS ITEM IS FOUND IN THE FOLLOWING ACCOUNT / FUND / CIP:	
	TOTAL:	\$0.00		
	FISCAL IMPACT STATEMENT:			
ADDITIONAL INFORMATION	SUPPORTING INFORMATION NOT ATTACHED TO THE CITY COUNCIL ACTION FORM THAT IS ON FILE IN THE OFFICE OF THE CITY CLERK:			
	1. 2. 3. 4. 5.			
IF CITY COUNCIL ACTION INCLUDES A CONTRACT, LEASE OR AGREEMENT, WHO WILL BE RESPONSIBLE FOR ROUTING THE DOCUMENT FOR SIGNATURE AFTER CITY COUNCIL APPROVAL?				
<input type="radio"/> Department <input checked="" type="radio"/> City Clerk's Office <input checked="" type="checkbox"/> Document to be recorded <input type="checkbox"/> Document to be codified				
SIGNATURES	CITY ADMINISTRATOR:			DATE:
	John D. Simonton			10/9/2019
	REVIEWED BY CITY ATTORNEY:			DATE:
	Richard W. Files			10/9/2019
RECOMMENDED BY (DEPT/DIV HEAD):			DATE:	
WRITTEN/SUBMITTED BY:			DATE:	
Rodney C. Short			7/22/2019	