

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA
THROUGH THE ARIZONA DEPARTMENT OF VETERANS' SERVICES AND THE
CITY OF YUMA**

This Intergovernmental Agreement (the "**Agreement**") is made and entered into this ___ day of _____, 2019 ("**Effective Date**"), by and between the City of Yuma, an Arizona municipal corporation ("**City**") and the State of Arizona acting by and through its Arizona Department of Veterans' Services ("**ADVS**"). City and ADVS may be referred to herein individually as a "**Party**" or collectively as the "**Parties**."

RECITALS

WHEREAS, ADVS intends to construct a new Veterans Home to be located at 6051 E. 34th Street, Yuma, AZ 85365 (the "**Project**").

WHEREAS, the current condition of the Project area consists of crops and a compacted dirt road, which is elevated above the crops and serves as a berm for flood irrigation.

WHEREAS, ADVS has requested that the City provide full building inspection services for the proposed Veterans Home to be built in Yuma, Arizona.

WHEREAS, the State is empowered by Arizona Revised Statutes § 41-603(B)(4) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

WHEREAS, the City is empowered by Arizona Revised Statutes § 48-572(B)(1) and 11-952; Article III, Section 13 of the Yuma City Charter to enter into this Agreement and has by motion resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual terms and conditions contained in this Agreement, the sufficiency of which is acknowledged, the Parties agree as follows:

AGREEMENT

1. **Scope of Work.** The purpose of this Agreement is for the City to provide full building inspection services for the proposed Veterans Home that is planned to be built in Yuma, AZ.
2. **ADVS Responsibilities.** ADVS will reimburse the City for the monthly cost of providing building inspection services according to the table in Exhibit A. ADVS will not be liable for any amount greater than the total not-to-exceed cost of \$45,000 unless the Parties enter into a subsequent written modification of this Agreement that is signed by authorized representatives of both Parties. In addition, ADVS shall not be responsible for any payment in the event of the unavailability of legislative funding, as provided in A.R.S. § 35-154.

3. **City Responsibilities.** The City will provide full building inspection services for the new Veterans Home to be located in Yuma, AZ. The City understands a preliminary building concept to consist of wood-framed building construction, Type VA Construction, to potentially include several buildings, with a total building area of approximately 73,298 SF. The City will perform inspections for all aspects of construction from the ground up, to include the following:

- a. Inspect all footings for proper size and reinforcement placement.
- b. Inspect all underground DWV (drain, waste and vent) and potable water plumbing. This includes pressure testing all piping and checking for proper size and slope.
- c. Inspect all underground conduits. This will include checking for proper size, type of material, depth and number of bends.
- d. Verify compaction tests are being performed and are at minimum compaction percentages.
- e. Inspection prior to grouting all masonry walls (as applicable). This will include verification of all rebar placements, size, grade and spacing of rebar, head and bed joints of the masonry. All lintels will be inspected. Special attention will be focused on jamb steel and masonry joint due to our seismic location.
- f. Inspect all steel/wood stud wall construction. This will check the gauge/size and spacing of the studs, assure studs have proper bracing and are secured to the floor or foundation per plans.
- g. Perform all shear wall nailing and all roof nailing for the project.
- h. Inspect all rough electrical wiring in the building. This will include proper wire type, size, locations, conduit size, bends, boxes and outlets are installed correctly, wire fill.
- i. Inspect all HVAC equipment and ducts. This will include duct sizing, gauge, bends, supports (including seismic). If installed, will inspect chiller piping and perform required pressure tests. The City will inspect equipment to verify it is installed in proper locations, has clearances and is listed.
- j. Inspect all rough plumbing for the building to include pipe size materials, slope, support, and pressure test all piping in the building. The City will also verify that all potable water piping in the building has been sanitized prior to occupancy of the building.

- k. Inspect all drywall installations for proper fastener spacing and fastener types. The City will also inspect drywall for fire ratings, where installed in the building.
- l. Inspect all exterior finishes of the building to include stucco, curtain wall systems, EFIS and veneer systems.
- m. Inspect the complete fire suppression system (fire sprinklers) for the building. This will include checking all pipe sizing, head spacing, verification of proper sprinkler heads, support, bracing (including seismic) and document pressure testing.
- n. Perform a complete final inspection of the building including all life safety systems. This will include confirmation that the building finishes are all in place and in compliance. The City will also test the fire alarm system to ensure functionality. This test will include all Fire dampers, smoke detectors and operational verification for each pull station.
- o. If requested/applicable, we will provide a full comprehensive elevator inspection.
- p. Inspect for compliance with the Americans with Disabilities Act (ADA).
- q. One (1) inspector will be assigned to this Project for the duration for consistency and efficiency. The inspector will be ICC certified, commercial experience, and minimum six (6) years of experience.
- r. The City's inspector will conduct a weekly walk through with the Building Inspection Manager and/or the Chief Building Official and the ADVS Facilities Project Manager to discuss and review any issues that may develop during the week. The City will commit to inspection services, up to twice a day for two (2) to three (3) hours a day for the duration of the Project.
- s. This Agreement excludes materials sampling and testing (soils, concrete, grout, etc.), or any required third party special inspections (concrete, masonry, welding, epoxy installed anchors, etc.) as specified in Chapter 17 of the International Building Code.

4. **Term of Agreement.** The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of the Project and all related deposits and/or reimbursements are made. This Agreement may be cancelled after thirty (30) days written notice to the other Party. It is understood and agreed that, in the event ADVS terminates this Agreement, that ADVS will be responsible for all costs incurred by the City up to the time of termination, subject to the limitations set forth in Section 2 above.

5. **Indemnification.** Each Party shall indemnify and hold harmless the other Party, its directors, officers, employees, and agents, pursuant to Arizona law, for, from and against all claims, demands, suits and costs including, but not limited to, costs of defense, reasonable attorneys' fees, witness fees of any type, losses, damages, expenses and liabilities, whether direct or indirect, and whether to any person including, but not limited to, employees of the Party, or to property, to which the other Party, its directors, officers, employees, or agents may be put or subject to by reason of (i) any act or omission by the respective Party, or any of its directors, officers, employees, agents, or invitees relating to the Party's actions under this Agreement by any person or entity, including but not limited to the Party and the Party's employees, agents, contractors, or invitees; or (ii) any failure on the part of the other Party, or any of its directors, officers, employees, or agents to fulfill its obligations hereunder, but only to the extent that any loss, damage, expense, and liability is attributable to the negligent acts and/or misconduct of the Party, its directors, officers, employees, and agents. The provisions of this Section shall survive the revocation and/or termination of this Agreement.

6. **Assignment.** Neither Party may assign any of its duties, rights or responsibilities under this Agreement without the express written consent (which shall comply with the requirements of Section 8, below) of the other Party.

7. **Entire Agreement/Integration/Severability.** This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. The provisions of this Agreement shall be deemed severable and the invalidity or enforceability of any provision shall not affect the validity or enforceability of the other provisions.

8. **Amendments.** No change or addition is to be made to this Agreement except by written amendment executed by authorized representatives of the Parties. All waivers of the provisions of this Agreement must be in writing and signed by authorized representatives of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the authorized representatives of the Parties.

9. **Third-Parties.** This Agreement shall not be construed as an agreement for the benefit of any third-party or parties.

10. **Non-Exclusive Agreement.** The Parties to this Agreement shall not be precluded from entering into similar agreements with other agencies.

11. **Notice.** All notices, demands or other communications must be in writing and are deemed duly delivered upon personal delivery (which may include delivery by e-mail), or as of the second business day after mailing by United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

CITY: City of Yuma
Attn: City Administrator
One City Plaza
Yuma, Arizona 85364

E-mail: [Greg.Wilkinson@yumaaz.gov]

ADVS: Arizona Department of Veterans' Services
Attn: Victor Daniels, Facilities Project Manager
3839 North 3rd Street, Suite 209
Phoenix, Arizona 85012
E-mail: VDaniels@azdvs.gov

If either Party changes its address or other contact information, that Party must give immediate written notice to the other Party. Notice of change of address or other contact information is deemed effective five (5) days after mailing by the Party changing its address, or immediately if delivered by e-mail.

12. **Headings.** The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision of this Agreement.

13. **Exhibits; Sections.** All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement. References to Sections are to Sections of this Agreement unless stated otherwise.

14. **Counterparts.** For the convenience of the Parties, this Agreement may be executed in two (2) or more counterparts and each executed counterpart shall for all purposes be deemed an original and shall have the same force and effect as an original, but all of which together shall constitute in the aggregate but one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all Parties may be physically attached to a single document. Neither Party shall have any right, duty or obligation under this Agreement unless and until this Agreement or counterparts hereof have been executed by authorized representatives of both Parties.

15. **Jurisdiction/Venue/Applicable Law.** It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Arizona, both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts located within Maricopa County, but with the Parties obligated to engage in arbitration to the extent required by A.R.S. § 12-1518.

16. **Conflict of Interest.** The Agreement is subject to the conflict of interest and cancellation provisions of the A.R.S. § 38-511, as amended, the provisions of which are incorporated herein.

17. **Attorneys' Fees and Costs.** If either Party brings an action or proceeding for failure to observe any of the terms or provisions of this Agreement, the prevailing Party is entitled to reasonable attorneys' fees and costs.

18. **Compliance with All Laws.** Each Party shall comply with all applicable federal, state, and local laws, rules, regulations, and Executive Orders (including but not limited to the

anti-discrimination requirements of Executive Order 2009-09). The laws and regulations of the State of Arizona will govern the rights of the Parties, the performance of this Agreement and any disputes hereunder. Any changes in the governing laws, rules and regulations during the terms of this Agreement will apply but do not require an amendment of this Agreement. Without limiting the foregoing requirements in any way, the Parties expressly agree that they will comply with the record-keeping requirements of Arizona Revised Statutes §§ 35-214 and 215, and with Arizona Revised Statutes §§ 41-4401 and 23-214 (except that neither Party shall be required to utilize the Federal Government's "E-Verify" system at any time when the Federal Government is not providing access to the "E-Verify" system to that Party).

19. Boycott of Israel. The Parties shall comply with the applicable requirements of Arizona Revised Statutes § 35-393.01. However, the Parties recognize that the U.S. District Court for the District of Arizona has entered an injunction barring enforcement of this statute in *Mikkel Jordahl, et al., v. Mark Brnovich, et al.*, No. CV-17-08263-PCT-DJH, and unless and until the District Court's injunction is stayed or lifted, A.R.S. § 35-393.01 is unenforceable and neither Party can take any action to enforce it.

20. Attorney Verification. In accordance with Arizona Revised Statutes § 11-952(D) attached hereto and incorporated herein is the written determination, of each Party's legal counsel that the Parties are authorized under the laws of this State to enter into this Agreement and that this Agreement is in proper form.

21. Further Acts/Additional Documents. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, certifications, acknowledgments and instruments as may be reasonably required to consummate, evidence, confirm or carry out the matters contemplated by this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

CITY OF YUMA

STATE OF ARIZONA
Arizona Department of Veterans'
Services

Gregory K. Wilkinson
City Administrator

Elena Adame
Chief Procurement Officer

ATTEST:

Lynda L. Bushong
City Clerk

ATTORNEY APPROVAL FOR THE CITY OF YUMA

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its ARIZONA DEPARTMENT OF VETERANS' SERVICES, and the CITY OF YUMA, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this _____ day of _____, 2019.

Richard W. Files, City Attorney

ATTORNEY APPROVAL FOR ADVS

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its ARIZONA DEPARTMENT OF VETERANS' SERVICES, and the CITY OF YUMA, an agreement among public agencies which, has been reviewed pursuant to Arizona Revised Statutes §§ 11-951 through 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to ADVS under the laws of the State of Arizona.

No opinion is expressed as to the authority of the City of Yuma to enter into this Agreement.

DATED this 15th day of March, 2019.

BENJAMIN NORRIS
BENJAMIN NORRIS, Assistant Attorney General

Exhibit "A"

Estimated costs

Position	Net cost (not to exceed)
All Building Inspection Services as specified in Section 3 of this Agreement, billed monthly at \$2,500 per month for a total of 18 months.	\$45,000.00