

# **AGREEMENT BETWEEN THE CITY OF YUMA AND YUMA CROSSING NATIONAL HERITAGE AREA FOR THE OPERATION AND MAINTENANCE OF THE YUMA QUARTERMASTER DEPOT STATE HISTORIC PARK**

THIS Agreement is entered into by and between the City of Yuma, an Arizona municipal corporation, hereinafter called City, and YUMA CROSSING NATIONAL HERITAGE AREA CORPORATION, hereinafter called YCNHAC. The City and YCNHAC are sometimes referred to individually as a "Party" and collectively as the "Parties".

WHEREAS, since 1997, the City and Arizona State Parks have partnered to build and operate the Yuma Quartermaster Depot State Historic Park, hereinafter called QMD, under the revised Intergovernmental Agreement, hereinafter called Revised IGA;

WHEREAS, due to state budget deficits; Arizona State Parks intended to close QMD;

WHEREAS, City wished to avoid that closure, and entered into an Intergovernmental Agreement with Arizona State Parks to operate QMD, and subsequently entered into an Operating Agreement with YCNHAC in October 2009;

WHEREAS, the City intends to continue providing operating assistance to QMD, but wishes to limit its financial obligation under the Revised IGA to the amount currently budgeted for in Fiscal Year 2016-2017;

WHEREAS, YCNHAC, as part of its management plan, is committed to operating, maintaining and enhancing the National Historic Landmark in which QMD is located, and is willing to pay operating costs which exceed the City's contribution;

WHEREAS, YCNHAC staff possess the technical expertise required to meet the curatorial and historic preservation requirements included in the Revised IGA,

NOW, THEREFORE, the Parties hereto, in consideration of the above recitals and the following mutual covenants and stipulations, agree as follows:

## **I. YCNHAC RESPONSIBILITIES**

YCNHAC shall:

- A. Manage and operate QMD on a daily basis, being responsible for all operating and maintenance costs, including any costs which exceed the City's annual commitment;
- B. Continue coordinated operations with the Welcome Center of Yuma Visitors Bureau in the main building of QMD. YCNHAC shall coordinate daily operations with the Yuma Visitors Bureau, and shall coordinate major special events at the QMD with the Yuma Visitors Bureau;
- C. Develop and implement interpretive programming in cooperation with Arizona State Parks, which tell the story of the Quartermaster Depot and the Bureau of Reclamation's Yuma project;
- D. Fulfill and meet all the City responsibilities and requirements detailed in the Revised IGA between the City and Arizona State Parks, approved the Arizona State Parks Board on September 11, 2009, and approved by Yuma City Council at the meeting of October 7, 2009, and as updated as of July 20, 2011, and as extended in June 2012, June 2015, and December 2015, incorporated herein by reference.;
- E. Work with the City's Park and Recreation Department to promote arts and culture as an integral part of the programming at the QMD;

F. With guidance from the City, coordinate with Arizona State Parks a QMD capital improvement program, developing a funding plan that involves state funding, grant funding, and Heritage Area funding. These improvements shall address the capital needs included in Exhibit 2 of the Revised IGA. YCNHAC shall be responsible for design and implementation of any capital improvements, with review and approval by Arizona State Parks. The City shall not be obligated for any additional costs associated with the QMD capital improvement program without the express written commitment by the City and its incorporation into the City's annual budget;

G. Seek grants and corporate sponsorships to improve the QMD and expand the programming schedule;

H. Maintain accurate records of all monies received and disbursed. YCNHAC shall maintain an accounting system which complies with generally accepted accounting principles, including, but not limited to, SOP 78-10, FASB 116 and 117 as issued by the American Institute of Certified Public Accountants ("ACIPA"), and with the AICPA Audit Guide for Non-Profit Corporations and shall separately accounts for all funds provided by the City pursuant to this Agreement;

I. On or before July 1, 2016, provide the City with names and addresses of officers or directors, bylaws, and articles of incorporation and amendments thereto of YCNHAC. In the event of any change of officer and/or director, bylaws or articles of incorporation, YCNHAC shall also provide notice of said change, and, if applicable, a copy of any changed bylaws or articles of incorporation within thirty (30) days thereafter.

J. Within thirty (30) days after the end of each quarter of each year this Agreement is in effect, provide the City (i) records of revenue and disbursements of monies received from the City and (ii) a written program status report. Such reports shall be reviewed by YCNHAC's Board of Directors prior to submission.

K. Charge no regular admission to the public without the prior written approval of the City and Arizona State Parks.

## **II. CITY RESPONSIBILITIES**

The City shall:

A. Evaluate YCNHAC's performance relative to the performance criteria set forth herein. In order to assess the impact of the efforts of YCNHAC, any additional information desired by the City which is relevant and necessary to the City's evaluation shall be made available by YCNHAC.

B. Provide funds in the amount which is stated herein as directed by the City Council to YCNHAC for the Fiscal Year 2016-17, unless terminated as provided herein. Such sum is to be disbursed on a monthly basis as set forth in Article III of this Agreement.

## **III. METHOD OF PAYMENT**

A. YCNHAC shall submit a request for payment monthly to the City's Director of Finance detailing the proposed expenditures for the month and actual expenditures to date.

B. Upon approval of the request for payment by the City, the City's Director of Finance shall make payments within fifteen (15) days to YCNHAC, except that the City may, at the City's sole discretion, withhold payment, in whole or in part, as may be necessary to protect the City from loss on account of:

1. YCNHAC's failure to render acceptable services as stated in the performance criteria of Section I of this Agreement. The City Administrator, or designee, shall investigate and monitor the quality of YCNHAC's services in order to determine whether such services are acceptable. Upon determination by the City Administrator that acceptable services are not being rendered, the City Administrator shall notify YCNHAC of the specific deficiencies in performance and provide a reasonable time for YCNHAC to rectify said

deficiencies, but in no event shall such time to rectify exceed ninety (90) days. Whether YCNHAC's services are acceptable will be the City's exclusive decision;

2. YCNHAC's failure to supply information, documents, records, or reports as required by this Agreement;

3. YCNHAC's failure to comply with the accounting procedures set forth in this Agreement;

4. YCNHAC's failure to allocate money received from the City for the purposes described in this Agreement; and

5. YCNHAC's failure to fulfill the City's obligations as stated in the Revised IGA.

#### **IV. FINANCIAL SUPPORT AND TERM OF AGREEMENT:**

A. The term of this Agreement shall be for one year commencing on July 1, 2016 and ending on June 30, 2017.

B. The City agrees to pay to YCNHAC \$150,000.00 for services to be provided by YCNHAC pursuant to this Agreement during Fiscal Year 2016-2017.

C. Funding of this Agreement shall be subject to the annual appropriation of funds for this activity by the Yuma City Council pursuant to the required budget process of the City.

D. Renewal of this Agreement beyond the current agreement will be contingent upon YCNHAC's performance hereunder. If YCNHAC's performance does not, in all material respects, meet the minimum requirements as described in Section I of this Agreement, this Agreement may not be renewed by the City Council.

E. Nothing herein shall preclude the City from contracting separately with YCNHAC for services to be provided in addition to those to be provided hereunder, upon terms and conditions to be negotiated by the City and YCNHAC.

F. In no event shall YCNHAC use any monies received from the City under this Agreement to increase the compensation of any YCNHAC employee or officer. "Compensation" as used herein includes salary, commissions, bonuses, or other monies, but does not include reimbursements for expenses, such as for travel, materials, or supplies if expenses are incurred in the course of furthering the objectives of this Agreement.

#### **V. TERMINATION:**

This Agreement may be terminated by the City at any time if any of the following occur:

A. At the City's sole desire, in which case the City shall provide 30-day written notice to YCNHAC;

B. YCNHAC breaches this Agreement or defaults on any of its obligations set forth herein, in which case, the City shall provide ninety (90) days written notice to YCNHAC. Prior to such termination, the City shall notify YCNHAC of the specific grounds for termination and provide a reasonable time for remedial action by YCNHAC. In no event shall such time to remedy exceed ninety (90) days.

C. By mutual written consent of both Parties hereto.

## **VI. INDEMNIFICATION:**

To the fullest extent permitted by law, YCNHAC shall indemnify, defend and hold harmless the City, and its officers, officials, agents, employees, or volunteers (collectively the "City") and the State of Arizona, and its officers, officials, agents, employees, or volunteers (collectively the "State") from and against all claims, liabilities, demands, damages, losses (including theft), injuries to property or persons (including death), and expenses (including attorney's fees and litigation expenses, and the cost of appellate proceedings) (collectively referred to as "Claims") to the extent that such Claims arise out of or result from YCNHAC's intentional, reckless, or negligent acts, errors, directives, mistakes, or omissions in the performance of this Agreement. This includes any intentional, reckless, or negligent acts, errors, directives, mistakes, or omissions of YCNHAC's employees, agents, advertisers, contractors, subcontractors, guests, patrons, invitees, trespassers or any other person for which YCNHAC may be legally liable, in the performance of this Agreement.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph. The indemnity requirements set forth in this Agreement will in no way be construed as limiting the insurance required in this Agreement.

## **VII. INSURANCE:**

Prior to the effectiveness of this Agreement, YCNHAC shall, at YCNHAC's expense, secure and maintain during the term of this Agreement insurance coverage with limits not less than those stated below. The insurance policy shall be primary and not contributory to any other coverage available to the State or its employees or the City or its employees.

### **A. Commercial General Liability**

The policy shall include bodily injury, property damage, personal injury, and broad form contractual liability.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$1,000,000

The policy shall be endorsed to include the following additional language: "The City of Yuma, its officials, officers, employees, and agents and the State of Arizona and the Arizona State Parks officers, officials, agents, and employees are additional insureds with respect to liability arising out of the activities performed by YCNHAC".

All policies shall contain an endorsed waiver of subrogation against the City, its officials, officers, employees, and agents and the State of Arizona, its department's agencies, boards, commissions, universities, and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of YCNHAC.

### **B. Business Automobile Liability**

The policy shall include bodily injury and property damage for any owned, hired, and/or non-owned vehicles used in the performance of this Agreement.

• Combined Single Limit (CSL)	\$1,000,000
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The policy shall be endorsed to include the following additional insured language: "The City of Yuma its officials, officers, employees, and agents and the State of Arizona and Arizona State Parks officers, officials, agents and employees are additional insureds with respect to liability arising out of the activities performed by or on behalf YCNHAC involving automobiles owned, leased, hired, or borrowed by YCNHAC".

The policy shall contain an endorsed waiver of subrogation against the City, its officials, officers, employees, and agents and the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of YCNHAC.

C. Worker's Compensation and Employers' Liability

• Workers' Compensation:	Statutory
• Employers Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

All policies shall contain an endorsed waiver of subrogation against the City, its officials, officers, employees, and agents and the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of YCNHAC.

The insurance requirements are minimum requirements and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect the City or the State of Arizona or YCNHAC and YCNHAC is free to purchase additional insurance.

Failure to provide required coverage and compliance with the terms and conditions of this Agreement shall not waive the contractual obligations herein. If any policy is cancelled by the insurance company or YCNHAC during the term of this Agreement, YCNHAC and insurance company shall provide thirty (30) days written notice prior to the effective date of such cancellation or termination to the City. Notice of cancellation shall be sent to the City as required in Section VII(P) of this Agreement and to the Arizona State Parks, 1300 W. Washington Room 220, Phoenix, AZ 85007.

Insurance shall be placed with a duly licensed or approved non-admitted insurer in the State of Arizona with an "A.M. Best" rating of not less than A-VII.

Certificates of Insurance with required endorsements shall be delivered to the City and Arizona State Parks prior to commencement of this Agreement. All insurance policy requirements contained in the QMD IGA not specifically listed in this section are incorporated by reference and shall apply as if written herein.

## VIII. GENERAL CONDITIONS:

A. Nondiscrimination. YCNHAC shall not discriminate against any person on the basis of race, religion, color, age, sex, disability, or national origin in the performance of this Agreement, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964), and with the Americans with Disability Act of 1990. In addition, YCNHAC shall include similar requirements of subcontractors in any contracts entered into for performance of YCNHAC's obligations under this Agreement.

B. Financial Review. YCNHAC shall make their financial records available for inspection by the City, or its designee, upon reasonable notice during normal business hours of the City. If the City desires a financial audit by a certified public accountant of the YCNHAC's financial records to verify use of City funds according to the terms and conditions of this Agreement, YCNHAC shall cooperate fully in the performance of such audit. YCNHAC shall be responsible for the cost of such an audit if requested by the City and is entitled to a copy of any resulting reports that are received by the City.

C. Compliance with Law. YCNHAC shall comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. In addition, YCNHAC shall include similar requirements of subcontractors in any contracts entered into for performance of YCNHAC's obligations under this Agreement.

D. Successors and Assigns. This Agreement is not assignable unless both Parties mutually consent otherwise in writing and signed by both Parties. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.

E. 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 collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney fees.

F. Laws Governing/Venue. This Agreement shall be governed by the laws of the State of Arizona, as to validity, interpretation, and performance. Any and all suits for any and every breach of this Agreement, or other judicial proceeding for the enforcement or interpretation of this Agreement shall be instituted and maintained in the Superior Court in Yuma County, Arizona.

G. Non-Waiver. The failure or delay of either Party to insist upon strict performance of any of the provisions of this Agreement, or to exercise any of the rights or remedies provided by this Agreement, 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.

H. Severability. If any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Arizona, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

I. Entire Agreement and Amendments. This instrument contains the entire Agreement between the Parties, and no oral or written statement, promises, or inducements made by either Party or agent of either Party that is not contained in this written Agreement, or specifically referred to in this written Agreement shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing signed by the Parties and endorsed hereon.

J. Relationship of Parties. The Parties understand and expressly agree YCNHAC is an independent contractor and is not an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. 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.

K. 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.

L. Time 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 of YCNHAC 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.

M. Dispute Resolution. Claims, disputes, or other matters in question between the Parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Arizona Uniform Rules of Procedure for Arbitration currently in effect unless the Parties mutually agree otherwise. Request for arbitration shall be filed in writing with the other Party to this Agreement.

N. Conflict of Interest. This Agreement shall be subject to the Conflict of Interest provisions of A.R.S. § 38-511, as amended.

O. Environmental Conditions. YCNHAC shall take all steps necessary to ensure YCNHAC's compliance with all applicable federal, state, and local environmental laws, regulation and ordinances, and shall indemnify and hold the City harmless for any remediation required and from and against any and all liabilities, losses, suits, claims,

judgments, fines or demands arising by reason of injury or death to any person or damage to any property or the environment of any nature whatsoever arising out of violations of such laws, regulations and ordinances.

P. Political Activities. Employees, directors, board members, officers, and volunteers of YCNHAC are prohibited from engaging in any political activity with respect to candidates for political office beyond the private expression of personal opinion, registering as a member of a political party, signing petitions and voting in any special, general, or primary election. No employee, director, board member, officer, or volunteer shall solicit any contribution in cash or service from any YCNHAC employee, director, board member, officer, or volunteer to support any candidate for public office. No employee, director, board member, officer, or volunteer shall use the name of YCNHAC, or use their affiliation with YCNHAC, to engage in any political activity of any kind or to solicit any contribution in cash or services to support any candidate for public office. If an employee, director, board member, officer, or volunteer should engage in said activities, they shall make it clear that they are doing so in their personal and private capacity, and are not associated with YCNHAC in any way while engaging in said activity. Employees, directors, board members, officers, and volunteers will refrain from engaging in any political activity while attending or participating in any YCNHAC function or event.

Q. Notices. All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered upon personal delivery, or mailing by United States mail, postage prepaid, registered or certified, return receipt, addressed as follows:

To: City:  
City of Yuma  
Attn: City Administrator  
One City Plaza  
Yuma, Arizona 85364-1436

To: YCNHAC:  
Yuma Crossing National Heritage  
Area Corporation  
Attn: Chairman and Executive Director  
180 W. 1<sup>st</sup> Street, Suite E  
Yuma, Arizona 85364

R. Compliance with Federal and State Laws. To the extent applicable under A.R.S. § 41-4401, YCNHAC warrants, and shall require its contractors and subcontractors to warrant, that it is in compliance with all federal immigration laws and regulations that relate to its employees and with A.R.S. § 23-214 relating to verification of employment eligibility. A breach of this clause shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of this Agreement.

The City retains the legal right to inspect the papers of any YCNHAC contractor or subcontractor employee who works on this Agreement to ensure that YCNHAC or subcontractor is complying with this warranty.

S. Provisions Required by Law. Each and every provision of law and any clause required by to be in this 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, this Agreement will promptly be physically amended to make such insertion or correction.

[signatures on next page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2016.

CITY OF YUMA, a municipal corporation

YUMA CROSSING NATIONAL HERITAGE AREA  
CORPORATION, INC., an Arizona non-profit  
corporation

\_\_\_\_\_  
Gregory K. Wilkinson  
City Administrator

\_\_\_\_\_  
Thomas Rushin  
Chairperson

ATTEST:

\_\_\_\_\_  
Lynda L. Bushong  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven W. Moore  
City Attorney