

**EXHIBIT A**  
**LLT DEVELOPMENT, LLC**  
**DEVELOPMENT AGREEMENT**

This Development Agreement ("Agreement") is made in accordance with Arizona Revised Statutes ("A.R.S.") § 9-500.05, by and between LLT Development, LLC, an Arizona limited liability company ("Owner"), and the City of Yuma, an Arizona municipal corporation ("City"), concerning the interim development of certain vacant parcels of property located in Yuma, Arizona (the "Property"). Owner and City may be referred to individually in this Agreement as a "Party" or collectively as the "Parties."

**RECITALS**

WHEREAS, Owner is the owner of real property, identified as Yuma County Assessor's Parcel No's. 697-27-001, 697-27-002, 697-27-003 and 697-27-004 located within the City limits of the City of Yuma at 4550 and 4560 E. 32<sup>nd</sup> Street; and,

WHEREAS, the Property subject to this Agreement involves 10 acre parcels of land on Yuma County Assessor's Parcel numbers 697-27-001, 697-27-002, 697-27-003 and a portion of 697-27-004 which Owner will use only for the storage of a portable generation system for a utility company (the "Project"); and,

WHEREAS, in connection with the Project, the Owner will provide certain improvements to the Property, including, but not limited to the installation of 1,393 linear feet of a 10" water line; and,

WHEREAS, the City has determined that the Owner's improvements on the Property, the design and installation of 1,393 linear feet of a 10" water line along the frontage represents a significant private capital investment within the City; and,

WHEREAS, the City has determined that the Project is consistent with the General Plan, as amended; and,

WHEREAS, the City believes the development potential of this Project will enhance the economic viability of the City through sales tax revenues, increased business activity, add to the employment base of the City, and increase long-term property tax revenue to 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 hereby acknowledged, the Parties agree as follows:

**AGREEMENT**

1. **Incorporation of Recitals.** The Owner and the City agree the Recitals set forth above are true and accurate and are hereby incorporated by reference.
2. **Development Agreement.** This Agreement, together with any attached exhibits, is a Development Agreement within the meaning of Arizona Revised Statutes § 9-500.05.
3. **Term.** This Agreement will commence upon the date of its execution by both Parties (the "Effective Date") and will terminate five (5) years from the Effective Date, or if the use of the Property



changes from the storage of a portable generation system a utility company, or the Parties mutually provide for termination in writing, whichever occurs first.

4. **Development Rights.** In consideration of the improvements made by Owner, and subject to reasonable restrictions that may be necessary to protect the health and safety of persons using the Property and the City of Yuma Development Standards to be followed for the Project, Owner shall have the following Development Rights with regard to the development and operation of the Property:

- a. **Improvements.** Prior to placing any equipment or vehicles on the Property, Owner will place aggregate base material on the Property and will maintain the Property in accordance with the City's Property Maintenance Code. Owner will provide security lighting and fencing around the entire site of the Property. The security fencing shall consist of chain-link fencing, featuring a mesh screening, along the south property line with no barbed wire. A modular unit for staff, that meets setbacks, shall be permitted through the City of Yuma, on behalf of the State of Arizona. The modular unit shall meet the appropriate sound attenuation of indoor to outdoor noise reduction of 25db. Any future development including fencing shall meet standard setbacks. Owner will design and install 1,393 linear feet of a 10" water line along the frontage of the Property. No other improvements will be required for this Property for the duration of this Agreement as long as the use as described herein for the Project is not expanded or changed in any way and no new improvements or structures are requested or installed on the Property.
- b. **Encroachment and Right-of-Way Permits and Licenses Required.** Owner acknowledges and agrees that any work performed in the public right-of-way, or the construction, installation or maintenance of any facility or other improvement in the public right-of-way requires a permit, license, franchise, or similar authorization issued by the controlling agency (the "Permitting Agency") through the Permitting Agency's normal and customary process for such issuance. Owner shall meet all permitting requirements of the Permitting Agency, and shall obtain all necessary permits prior to commencing such work or improvements in the public rights-of-way.

5. **Owner Representations.** Owner represents and warrants that:

- a. Owner has the full right, power and authorization to enter into and perform this Agreement and the obligations and undertakings of Owner under this Agreement, and the execution, delivery and performance of this Agreement by Owner has been duly authorized, agreed to, and is in compliance with any organizational documents of Owner.
- b. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.
- c. Owner will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.
- d. As of the date of this Agreement, Owner knows of no litigation, proceeding or investigation pending or threatened against or affecting Owner, which could have a material adverse effect on Owner's performance under this Agreement that has not been disclosed in writing to City.



e. This Agreement (and each undertaking of Owner contained herein) constitutes a valid, binding and enforceable obligation of Owner according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

f. The execution, delivery and performance of this Agreement by Owner is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Owner is a party or to which Owner is otherwise subject.

g. Owner has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects.

h. Owner has had an opportunity for independent legal review of this Agreement by counsel of its choosing prior to the execution hereof.

**6. City Representations.** City represents and warrants to Owner that:

a. City has the right, power and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the Yuma City Charter and the Yuma City Code.

b. All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

c. City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

d. City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Owner.

e. This Agreement (and each undertaking of City contained herein), constitutes a valid, binding and enforceable obligation of City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditor's rights and by equitable principles, whether considered at law or in equity.

f. The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject.

g. City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

**7. Notice.** All notices, demands or other communications relative to this Agreement must be in writing and are deemed duly delivered upon personal delivery, or as of the second business day after

A handwritten signature in dark ink, appearing to be 'LLT', is located in the bottom right corner of the page.

mailing by United States mail, postage prepaid, registered or certified, return receipt requested, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this paragraph, or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid:

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

OWNER: LLT Development, LLC  
Gerald Lee and Nancy Thomas  
758 E. Country Club  
Yuma, Arizona 85365

With a copy to:  
City Attorney  
One City Plaza  
Yuma, Arizona 85364-1436

All such notices, demands or other communications will (i) if delivered personally or delivered through a same day delivery/courier service be deemed effective upon delivery or refusal to accept delivery by the addressee, and (ii) if delivered by U.S. mail in the manner described above be deemed effective upon the earlier of receipt or three (3) business days after deposit in a post office operated by the United States or with a United States postal officer (in each case regardless of whether such notice, demand or other communication is received by any other person to whom a copy of such notice, demand or other communication is to be delivered pursuant to this paragraph). Any notice sent by a recognized national overnight delivery service shall be deemed effective one (1) business day after deposit with such service. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee. If either Party changes address, they must give written notice to the other Party. Notice of change of address is deemed effective five (5) days after mailing by the Party changing address.

8. **Waiver.** If either Party fails to require the other Party to perform any provision of this Agreement, that failure does not prevent the other Party from later enforcing that provision. Neither Party is released from any responsibilities or obligations imposed by law or this Agreement if the other Party fails to exercise a right or remedy. No waiver of any provisions of this Agreement shall be binding upon either Party unless in writing signed by both Parties.

9. **Assignment.** Owner shall not transfer or assign all or any part of its rights or obligations under this Agreement without the prior express written consent of City, which approval may be given or withheld in the City's reasonable discretion.

10. **Entire Agreement/Integration.** This Agreement contains the entire agreement between the Parties, and no oral or written statements, promises, or inducements made by either Party or its agents not contained or specifically referred to in this Agreement is valid or binding. All modifications to this Agreement must be in writing, signed and endorsed by the Parties.

11. **Estoppel Certificate.** The Parties agree that, upon not less than twenty one (21) business days prior written request from a Party to this Agreement, a requested Party shall execute, acknowledge and deliver to the Party making such request a written statement certifying the current status of the

Agreement, including whether or not, a Party is in default of any obligation or duty set forth within the Agreement. Any such certificate may be relied on by a prospective lender.

**12. No Partnership; Third-Parties.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the Parties. Except as provided for herein, no term or provision of this Agreement is intended to, or shall, be for the benefit of any person or entity not a Party hereto, and no such other person or entity shall have any right or cause of action hereunder, except for permitted successors in interest to the extent that they assume or succeed to the rights and/or obligations under this Agreement.

**13. Governing Law; Venue.** This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Yuma (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 or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section.

**14. Default.** If either Party defaults (the "Defaulting Party") with respect to any of such Party's obligations, then the other Party (the "Non-Defaulting Party") shall give written notice in the manner described in Section 7 above to the Defaulting Party. The notice shall state the nature of the default claimed and make demand that such default be corrected. The Defaulting Party shall then have:

a. twenty (20) days from the date of receipt of such notice within which to correct such default if it can be reasonably corrected by the payment of money, or

b. sixty (60) days from the date of receipt of such notice to cure such default if action other than payment of money is reasonably required, or

c. if any such non-monetary default cannot reasonably be cured within sixty (60) days for reasons beyond its control (financial inability, construction delays and market conditions excepted), then such longer period as may be reasonably required, provided and so long as such cure is promptly commenced within such period and diligently prosecuted to completion.

**15. Remedies.** If the default is not corrected within the time periods described in Section 14 above, the Non-defaulting Party shall have all remedies available to it at law or in equity, subject to the limitations set forth herein. Owner or City, or any successor-in-interest or assignee, may institute a legal action to cure, correct or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including but not limited to suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages, provided that claims for damages shall be limited to actual damages as of the time of entry of judgment. The Parties hereby waive any right to seek consequential, punitive, multiple, exemplary or any damages other than actual damages.

**16. Delays/Waiver.** Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any default by the other Party shall not be considered as a waiver of rights with respect to any other default or with respect to the particular default except to the extent specifically waived in writing. It is the intent of



the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the default involved.

17. **Rights and Remedies Cumulative.** The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other default by the other Party.

18. **Attorney's Fees, Costs and Expenses.** In the event of commencement of a legal action in an appropriate forum by a Party to enforce any covenant or any of such Party's rights or remedies under this Agreement, including any action for declaratory or equitable relief, the prevailing Party in any such action shall be entitled to reimbursement of its reasonable attorneys' fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the Party and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

19. **A.R.S. § 38-511.** Notice is hereby given of the applicability of A.R.S. § 38-511.

20. **Good Standing; Authority.** Each of the Parties represents and warrants to the other that it is duly formed and validly existing under the laws of Arizona or registered with the Arizona Corporation Commission as a foreign corporation and that the individual(s) executing this Agreement on behalf of their respective Party is authorized and empowered to bind the Party on whose behalf each such individual is signing.

21. **Individual Nonliability/Damagers.** No City Council member, official, representative, agent, attorney or employee shall be personally liable to any of the other Parties hereto, or to any successor in interest to such Parties, in the event of any default or breach by City or for any amount which may become due to a Party or its successor, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Owner shall be limited to the Property and any improvements thereon, and shall not extend to or be enforceable against the individual assets of any member, officer, or trustee of Owner.

22. **Headings and Counterparts.** 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. This Agreement may be executed in any number of counterparts, and when each Party has executed a copy thereof, such copies, taken together, shall be deemed to be a full and complete original contract between the Parties. An electronic transmission or other facsimile of this Agreement shall be effective and binding upon the Parties as if such signatures were originals, and shall be admissible as evidence of the document and the signer's execution thereof; provided that such Party shall upon request of any other Party, immediately provide an original signature to such other Party.

23. **Construction.** This Agreement and the documents to be executed pursuant to this Agreement are the result of negotiations between the Parties. Accordingly, neither Party shall be deemed to be the author of this Agreement nor the resulting documents, and there shall be no presumption that this Agreement or any of such documents are to be construed for or against any such Party on the basis of the authorship of the documents. Words importing the singular number only shall include the plural and vice-versa, and words importing gender shall include all genders. Use of the word "including" shall mean "including without limitation."



24. **Severability.** If any provision of this Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses City or Owner from undertaking any contractual commitment to perform under any provision hereunder, the remaining portions of this Agreement shall remain in full force and effect, and the Parties will negotiate diligently in good faith for such amendments of this Agreement as may be necessary to achieve the original intent of this Agreement, notwithstanding such invalidity or unenforceability.

25. **Recordation.** Upon receipt of the recording fee from Owner, the City shall record a copy of this Agreement no later than ten (10) days from date of entering into this Agreement pursuant to A.R.S. § 9-500.05.

26. **Amendment.** No change or addition is to be made to this Agreement except by written amendment executed by City and Owner. Within ten (10) days after any amendment to this Agreement, such amendment shall be recorded in the Official Records of Yuma County, Arizona.

27. **Exhibits.** Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof.

28. **Further Acts.** Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (i) this Agreement as in full force and effect, and (ii) the performance of the obligations hereunder at any time.

29. **Time is of the Essence.** Time is of the essence in implementing the terms of this Agreement.

30. **Business Days.** If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement shall fall on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

31. **Successor Laws.** Each reference in this Agreement to a particular City Ordinance, Arizona statute or other Applicable Laws shall include any successor City ordinance, successor Arizona statute or successor Applicable Laws.

32. **Proposition 207 Waiver.** Owner hereby waive and release City from any and all claims under Arizona Revised Statutes § 12-1134, et seq., including any right to compensation for reduction to the fair market value of the Property or any portion thereof, as a result of City's approval or failure to approve this Agreement, or adoption or failure to adopt the zoning designation, and all related zoning, land use, building and development matters arising from, relating to, or reasonably inferable from this Agreement, including the approval, rejection or imposition of conditions or stipulations upon the approval of the zoning designation. The terms of this waiver shall run with the land and shall be binding upon all subsequent landowner, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.



Dated this 27 day of Aug, 2020.

APPROVED:

CITY OF YUMA

LLT DEVELOPMENT, LLC, an Arizona limited liability company

By \_\_\_\_\_  
Philip A. Rodriguez  
City Administrator

By Gerald Thomas  
Gerald Thomas  
Member

By Nancy Thomas  
Nancy Thomas  
Member

ATTEST:

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

APPROVED AS TO FORM:

By \_\_\_\_\_  
Richard W. Files  
City Attorney



**ACKNOWLEDGEMENTS**

State of Arizona                     )  
  ) ss  
County of Yuma                     )

The foregoing instrument was acknowledged before me this 27 of August, 2020 by Gerald Thomas, member, LLT DEVELOPMENT, LLC, an Arizona limited liability company, on behalf of the company.

My commission expires: 1-30-2023

By: Lynette Hamilton  
Notary Public



State of Arizona                     )  
  ) ss  
County of Yuma                     )

The foregoing instrument was acknowledged before me this 27 of August, 2020 by Nancy Thomas, member, LLT DEVELOPMENT, LLC, an Arizona limited liability company, on behalf of the company.

My commission expires: 1-30-2023

By: Lynette Hamilton  
Notary Public



State of Arizona                     )  
  ) ss  
County of Yuma                     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ of \_\_\_\_\_, 2020 by Philip A. Rodriguez, City Administrator, on behalf of the CITY OF YUMA, an Arizona municipal corporation.

My commission expires:

By: \_\_\_\_\_  
Notary Public

*GA*