

## LICENSE AND RIGHT-OF-WAY USE AGREEMENT

This License and Right-of-Way Use Agreement (the “License”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”) by and between the City of Yuma, an Arizona municipal corporation (“City”) and Cactus State Utility Operating Company, LLC, an Arizona limited liability company (“Licensee”).

### RECITALS

A. City owns, operates and maintains public streets, roads, highways, and alleys; public right-of-way; and public utility easements within the boundaries of the City of Yuma.

B. City is empowered to regulate City-owned right-of-way and to grant, renew, deny, amend, and terminate licenses for, and otherwise regulate the installation, construction, operation, repair, removal and maintenance of utility facilities within, such right-of-way pursuant to the Yuma City Charter and any future amendments thereto (“City Charter”), Yuma City Code and any future amendments thereto (the “City Code”), and by virtue of other applicable law, including without limitation A.R.S. § 9-501 *et seq*, City’s police powers, and its other governmental powers and authority.

C. Licensee provides wastewater utility service to approximately 600 customers in Yuma, Arizona within the area depicted in the map contained in Exhibit A.

D. On November 7, 1994, the Yuma County Board of Supervisors adopted Resolution No. 94-76 granting Licensee’s predecessor, Sweetwater Creek Utilities, Inc. (“Sweetwater”) a 25-year sewer franchise. In 1994, Sweetwater’s service area was outside the City’s municipal boundaries.

E. On December 10, 1996, the Arizona Corporation Commission (“ACC”) issued Decision No. 59916 granting a Certificate of Convenience and Necessity and authorizing Sweetwater “to construct, maintain and operate facilities in order to provide sewer service to the public” within a delineated service area in Yuma County, Arizona.

F. In 1999, Sweetwater’s entire service area was annexed into the City of Yuma.

G. On December 28, 2021, the ACC issued Decision No. 78369 ordering, among other things, as follows:

IT IS FURTHER ORDERED that [Licensee] shall file with [the ACC], as a compliance item in this docket and within two years of this Decision, a copy of the amended county franchise agreement including Sweetwater Creek Utilities, Inc.’s wastewater service transfer area.

Because the Licensee’s entire service area is now in the City and the City prefers to issue a license instead of a franchise, Licensee filed a motion with the ACC, pursuant to A.R.S. § 40-252, to amend the above-quoted ordering paragraph from Decision No. 78369 as follows:

IT IS FURTHER ORDERED that [Licensee] shall file with [the ACC], as a compliance item in this docket by December 31, 2024, a copy of a license agreement with the City of Yuma that includes [Licensee's] service area.

## **AGREEMENT**

NOW THEREFORE, for and in consideration of the foregoing, and the covenants and agreements contained herein to be kept and performed by Licensee, and for other good and valuable consideration, City hereby grants to Licensee a license and permission to use City-owned right-of-way pursuant to the terms and conditions set forth herein.

### **1. LICENSE GRANTED.**

1.1 Grant of License. Subject to the provisions of the City Charter, the City Code, and Arizona law, City grants to Licensee a revocable and non-exclusive license to construct, install, repair, maintain, replace, operate, lease, install, and pipelines and other equipment or property necessary or useful for the business of transmitting wastewater through such pipelines located within City-owned right-of-way (the "City Right-of-Way") within Licensee's service area, as depicted in Exhibit A ("License Area"). The rights granted to Licensee in this License are subject to and conditioned upon Licensee's full, timely, complete, and faithful performance of all obligations to be performed or required hereunder, including compliance with the City Code and all City permits and approvals.

1.2 Limitations of License. Licensee's access to City Right-of-Way under this License is limited to the public street and alley right-of-way and public utility easements that are owned by City within the License Area. The City Right-of-Way will decrease, increase, and otherwise change over time due to abandonments, dedications, annexations, de-annexations, and other events that affect the amount of land included in City public utility right-of-way network inventory. This License shall not allow Licensee to use City Right-of-Way that is abandoned, condemned, removed from City's corporate boundaries, or is otherwise no longer part of City's public utility easement network. The grant of rights in this License is made subject to all easements, restrictions, conditions, covenants, encumbrances, and claims of title which may affect the City Right-of-Way, and it is understood that Licensee, at its own costs and expense, shall obtain such permission as may be necessary consistent with any other existing rights. No reference to City Right-of-Way shall be deemed to be representation or guarantee by the City that its interest or other rights to control the use of such property is sufficient to permit its use for such purposes, and Licensee shall be deemed to gain only those rights to use the property as the City may have the undisputed right and power to give, only to the extent necessary for Licensee and only to the extent such rights do not interfere with the City's needs or uses with the City Right-of-Way, which include without limitation the City's performance of its governmental duties and police powers to manage the City's Right-of-Way and the utilities therein. In the event of any conflict, the use of the City Right-of-Way by Licensee is subordinate to the rights and needs of City. Licensee shall not use or occupy any portion of the City Right-of-Way other than as permitted pursuant to this License. Any use of any other City-owned or City-controlled real or personal property shall require a separate agreement.

## 2 USE OF CITY RIGHT-OF-WAY.

2.1 Compliance with Law. Licensee shall comply with all applicable laws, including all present and future statutes, ordinances, codes, orders, policies, regulations, and encroachment permit requirements and restrictions by state, county, and/or municipal authorities. Licensee's facilities shall be constructed, installed, operated, leased, repaired, replaced, removed, and/or maintained pursuant to this license in accordance with all applicable laws and governmental established practices including, without limitation, the City, the State of Arizona, and any other governmental entity with jurisdiction with respect to public right-of-way and easements. City Right-of-Way shall be used according to plans approved by the City Engineer or designee.

2.2 Minimize Disturbances. Licensee's facilities shall be located or relocated to minimize interference with traffic or other authorized uses within City Right-of-way. Those phases of construction and/or installation relating to traffic control, backfilling, compaction, and paving, as well as the location or relocation of Licensee's facilities shall be subject to regulation by the City Engineer and the permitting, inspection, and acceptance processes of City.

2.3 Permits Required. Prior to the enlargement, replacement, extension, maintenance, relocation, or removal of any portion of Licensee's facilities in City Right-of-Way, Licensee shall apply for and obtain from City all permits and approvals required by the City Code. Licensee shall comply with all permits and approvals, including any conditions of approval. Licensee shall submit permit application(s) together with the details, plans and specifications for City review and approval, and pay all lawful applicable application, review and inspection fees prior to any construction work performed pursuant to the rights granted under this License. Licensee understands and acknowledges that information provided to the City about Licensee's facilities may be: (a) deemed to be a public record subject to disclosure; (b) incorporated into City's geographic information system ("GIS") to show the location of Licensee's facilities; and (c) used by City for any lawful purpose, which includes without limitation coordinating joint trenches and other similar projects among other users.

2.4 City Right-of-Way Regulations. In addition to all terms and conditions of this License, Licensee shall comply with all requirements of Chapter 210 of the Yuma City Code, as may be amended from time to time, and any other ordinances and codes related to the City Right-of-Way.

2.5 Condition of City Right-of-Way. City Right-of-Way is being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use.

2.6 Blue Stake; As-Built Drawings. Licensee shall maintain accurate maps and shall participate as a member of Arizona Blue Stake Center and other organizations to assist with the proper location and identification of its underground facilities and shall comply with A.R.S. § 40-360.21 *et. seq.* Licensee shall maintain as-built drawings of its facilities located within the City Right-of-Way and furnish a copy of the same to City upon request at no cost to the City. Licensee shall provide City with accurate and current records of Licensee's as-built facilities in City Right-of-Way in an electronic format compatible with City's electronic mapping system at no cost to the City. Licensee shall maintain a local agent within Yuma County

who is familiar with Licensee's facilities and is able to assist City and others using the City Right-of-Way in obtaining accurate information regarding Licensee's facilities.

2.7 Emergency Disruption by City. City may remove, alter, tear out, relocate or damage portions of Licensee's facilities in the event of a natural disaster or other public emergency if the City Administrator or designee deems such action to be reasonably necessary under the circumstances. In such event, City and its agents, contractors or employees shall not be liable to Licensee or its customers or third parties for any harm caused to them or to Licensee's facilities. City shall inform Licensee after such actions as soon as reasonably possible.

2.8 Damage to Right-of-Way Improvements. Licensee shall be responsible for any damage to City street pavements, existing utilities, curbs, gutters, sidewalks, and all other public or private improvements that arises in connection with Licensee's or its contractors', employees', agents', or subcontractors' construction, operation, installation, maintenance, repair, or removal of Licensee's facilities in City Right-of-Way, and shall repair, replace and restore in kind the damage at its sole cost and expense upon City's written notice. Upon completion of construction and prior to the release of any performance bond posted for construction purposes, Licensee shall reimburse City for all reasonable costs arising from any deterioration of surface and subsurface improvements, such as pavement or concrete over Licensee's facilities or the trench or adjacent area, or reduction in the life of the City Right-of-Way as determined by City Engineer, normal wear and tear excepted, which results from Licensee's or its contractors', employees', agents' or subcontractors' acts or omissions shall be the responsibility of Licensee. In the event Licensee fails to repair, replace or restore any damage within the timelines specified in any City notification, City may cause the same to be done at the sole cost and expense of Licensee, and Licensee shall promptly reimburse City for any and all costs and expenses, including but not limited to administrative, legal and consultant costs, within thirty (30) days after receiving an invoice from City.

### **3 COMPENSATION.**

3.1 Annual License Fee. Licensee shall pay City an annual fee of five hundred dollars (\$500.00) to use City Right-of-Way within the License Area under the terms and conditions of this License ("Annual Fee").

3.2 Taxes. Licensee must obtain required business/sales tax licenses and pay any applicable City, county, and state transaction privilege and use tax. The Annual Fee shall not be an offset to the transaction privilege tax due and owing by Licensee.

3.3 Permit Fees and Construction Costs. In addition to the fees and taxes set forth herein above, Licensee must pay those fees and charges for encroachment permit applications, inspection, testing, plan review, and pavement damage fees as set forth in Yuma City Code §210-30 as well as any other fees adopted by City and applicable to persons doing work in the Public Rights-of-Way or on City-owned property.

3.4 Letter of Credit or Cash Bond.

3.4.1 Amount; Purpose. Within thirty (30) Days after the Effective Date of this License, Licensee must deposit with City one of the following: (i) an irrevocable letter of credit ("LOC") in the

amount of \$10,000.00 (“LOC”); or (ii) a cash or surety bond in the amount of \$10,000.00 (“Bond”). The form and substance of the LOC must comply with the form, terms, and conditions as attached in Exhibit B, whereas the form and substance of the Bond must be acceptable to the City. The LOC or Bond will be used to assure: (a) the faithful performance by Licensee of all provisions of this License; (b) compliance with all orders, permits, and directions of any City department having jurisdiction over Licensee’s acts or defaults under this License; and (c) Licensee’s payment of any penalties, liquidated damages, claims, liens, and taxes due to City that arise by reason of the construction, operation, or maintenance of the System, including cost of removal or abandonment of any of Licensee’s property.

3.4.2 Drawing on LOC. The LOC may be drawn upon by City by presentation of a draft at sight on the lending institution, accompanied by a written certificate signed by the City Administrator certifying that Licensee has failed to comply with this License, stating the nature of noncompliance, and stating the amount being drawn. The rights reserved to City with respect to the LOC are in addition to all other rights of City, whether reserved by this License or authorized by law, and no action proceeding against a LOC will affect any other right City may have.

3.4.3 Drawing on Bond. The Bond may be drawn upon by City by presentation of written notice to Licensee as provided in this License, signed by the City Administrator certifying that Licensee has failed to comply with this License, stating the nature of noncompliance, and stating the amount being drawn. The rights reserved to City with respect to the Bond are in addition to all other rights of City, whether reserved by this License or authorized by law, and no action proceeding against the Bond will affect any other right City may have.

3.4.4 Restoration of Deposit Amounts. Within 20 days after notice to Licensee that any amount has been withdrawn by City under Section 3.4, Licensee shall deposit a sum of money sufficient to restore such LOC or Bond to the original amount of \$10,000.00.

3.4.5 Erroneous Withdrawal. Any funds that City erroneously or wrongfully withdraws shall be returned to Licensee, with interest of 1.0% per month, with such interest beginning 30 business days after such determination by agreement between the Parties or a court with competent jurisdiction.

3.5 Damage to Public Property. Whenever the installation, removal, or relocation of any of Licensee’s facilities is required or permitted under this License, and such installation, removal, or relocation causes damage to City Right-of-Way or other City-owned property, Licensee at its sole cost and expense must promptly repair and return City property to a safe and satisfactory condition in accordance with applicable laws and satisfactory to the City Engineer. If Licensee does not repair City property as just described in a reasonable amount of time, then City shall have the option, upon fifteen (15) days prior written notice to Licensee, to perform or cause to be performed such reasonable and necessary work on behalf of Licensee and to charge Licensee for the actual documented costs incurred by City at City’s standard rates, plus an administrative fee of fifteen percent (15%). Upon the receipt of a demand for payment accompanied by explanation of cost and fees incurred by City, Licensee must, within forty-five (45) days, reimburse City for such costs. For any pavement cuts by Licensee, Licensee agrees to restore the pavement and to reimburse City for all costs arising from the reduction in the service life of any public road, in accordance with the provisions of Section 210-30 of the Yuma City Code and the fees established by City pursuant thereto.

Licensee agrees to pay within forty-five (45) days from the date of issuance of an invoice and explanation of costs and fees from City.

**4 TERM OF LICENSE.** The rights, privileges and License granted herein shall continue and exist for a period of five (5) years from the Effective Date and shall automatically be renewed for three (3) additional five-year terms (for a total of twenty (20) years) unless terminated sooner under Section 13 below. Renewal shall not be unreasonably withheld or unreasonably denied by City; provided, however, that City may condition such renewal on Licensee's acceptance of any additional or amended terms and conditions subject to applicable laws.

## **5 RELOCATION.**

5.1 Relocation Costs. When directed by City, Licensee shall relocate or rearrange, at no expense to City, any of Licensee's facilities or other encroachment installed or maintained in, on, or under City Right-of-Way. Licensee shall, by a time specified by City, protect, support, temporarily disconnect, relocate, or remove any of Licensee's property when required by City or any other governmental entity by reason of traffic conditions; public safety; City Right-of-Way construction, maintenance or repair (including, but not limited to, resurfacing or widening); change of City Right-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communication system, public work, or improvement or any government-owned utility; City Right-of-Way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of Licensee's facilities. Such relocations or rearrangements shall be accomplished in accordance with the directions from City and shall be subject to applicable permits and approvals.

5.2 Relocation Permits. Licensee agrees to obtain a permit as required by this License prior to removing, abandoning, relocating, or reconstructing of any portion of Licensee's facilities on public property or City Right-of-Way.

5.3 City Self- Help. If City elects to perform any part of the necessary relocation or removal work (or causes same to be performed) that has not been done by Licensee within the time required by City, the City shall be entitled to seek payment for such relocation costs by drawing upon the LOC or Bond required by this License. Licensee shall promptly reimburse City for any and all expenses, including but not limited to administrative, legal and consultant costs, that are not drawn from the LOC or Bond within thirty (30) days after receiving an invoice from City.

## **6 INSURANCE.**

### 6.1 General.

6.1.1 Insurer Qualifications. Without limiting any obligations or liabilities of Licensee, Licensee shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to A.R.S. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms reasonably

satisfactory to City. Failure to maintain insurance as specified herein may result in termination of this License at City's option.

6.1.2 No Representation of Coverage Adequacy. By requiring insurance herein, City does not represent that coverage and limits will be adequate to protect Licensee. City reserves the right to review any and all of the insurance policies and/or endorsements cited in this License but has no obligation to do so. Notwithstanding the foregoing, Licensee may redact the following information from disclosed policies and/or endorsements in that it is proprietary and is not relevant to the risk assessment to be made on behalf of City: (1) premium amounts including surcharges, taxes and assessments; (2) references to other additional insureds or persons or entities waiving subrogation; (3) any entity specific endorsements relating to other additional insureds; (4) any information identifying a Licensee financial obligation to its insurer or its insurance broker; or (5) any information identifying financial information or obligations of any person or entity which is an insured or additional insured pursuant to the subject insurance policies or which is otherwise subject to said insurance policies. Failure to demand such evidence of full compliance with the insurance requirements set forth in this License or failure to identify any insurance deficiency shall not relieve Licensee from, nor be construed or deemed a waiver of, Licensee's obligation to maintain the required insurance at all times during the performance of this License.

6.1.3 Additional Insured. All insurance coverage except Workers' Compensation and Employers liability insurance and Professional Liability insurance, if applicable, and Builder's Risk insurance shall include, to the fullest extent permitted by law for claims arising out of the performance of this License, City, its representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this License.

6.1.4 Coverage Term. All insurance required herein shall be maintained in full force and effect until all responsibilities or obligations required under the terms of this License are satisfactorily performed, completed and formally accepted by City, unless specified otherwise in this License.

6.1.5 Primary Insurance. Licensee's insurance shall be primary insurance with respect to Licensee's obligations under this License and in the protection of City as an Additional Insured. City's insurance shall be non-contributory until Licensee's insurance coverage is fully exhausted.

6.1.6 Waiver. All policies, except for Professional Liability, including Workers' Compensation and Employers liability insurance, shall contain a waiver of rights of recovery (subrogation) against City, its representatives, officials, officers and employees for any claims arising out of the work or services of Licensee. Licensee shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.

6.1.7 Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Licensee shall be solely responsible for any such deductible or self-insured retention amount.

6.1.8 Use of Subcontractors. If any work under this License is subcontracted in any way, Licensee shall execute written agreements with its subcontractors containing the indemnification

provisions and insurance requirements set forth herein. Licensee shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

6.1.9 Evidence of Insurance. Prior to commencing any work or services under this License, Licensee will provide City with suitable evidence of insurance in the form of certificates of insurance. City also reserves the right to review, upon request, a copy of the declaration page(s) of the insurance policies as required by this License that are issued by Licensee's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this License and that such coverage and provisions are in full force and effect. Notwithstanding the foregoing, Licensee may redact the following types of information from the declaration page in that it is proprietary and is not relevant to the risk assessment to be made on behalf of City: (i) premium amounts including surcharges, taxes and assessments; (ii) references to other additional insureds or persons or entities waiving subrogation; (iii) any entity specific endorsements relating to other additional insureds; (iv) any information identifying a Licensee financial obligation to its insurer or its insurance broker; or (v) or any information identifying financial information or obligations of any person or entity which is an insured or additional insured pursuant to the subject insurance policies or which is otherwise subject to said insurance policies. City shall reasonably rely upon the certificates of insurance as evidence of coverage, but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this License. In the event any insurance policy required by this License is written on a "claims made" basis, coverage shall extend for two years past completion of the responsibilities or obligations and City's acceptance of Licensee's work in City Right-of-Way and as evidenced by annual certificates of insurance. If any of the policies required by this License expire during the life of this License, it shall be Licensee's responsibility to forward renewal certificates to City within 30 days of the expiration date. All certificates of insurance and declarations required by this License shall be identified by referencing this License. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without a reference to this License, as applicable, will be subject to rejection and may be returned or discarded. Certificates of insurance shall specifically include the following provisions:

A. City, its representatives, officers, directors, officials and employees are Additional Insureds as follows:

- (1) Commercial General Liability – Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 9704 13 and CG 20 37 04 13 or substantial equivalent.
- (2) Auto Liability – Under ISO Form CA 20 48 or substantial equivalent.
- (3) Excess Liability – Follow Form to underlying insurance as applicable.

B. Licensee's insurance shall be primary insurance as respect to Licensee's performance of this License.

C. All policies, except for Professional Liability, including Workers' Compensation and Employers liability insurance, waive rights of recovery (subrogation) against City, its



representatives, officers, officials and employees for any claims arising out of work performed by Licensee under this License.

D. ACORD certificate of insurance form 25 (2014/01) or form 25 (2006/03) is preferred.

## 6.2 Required Insurance Coverage.

6.2.1 Commercial General Liability. Licensee shall maintain “occurrence” form Commercial General Liability insurance with a limit of not less than \$1,000,000.00 for each occurrence and \$2,000,000.00 General Aggregate Limit, together with a \$5,000,000 umbrella policy. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and the hazards of explosion, collapse and underground property damage. Coverage under the policy will be at least as broad as ISO policy form CG 01 04 013 or substantial equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this License, City, its representatives, officers, officials and employees shall be included as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 04 13 and CG 20 37 04, or substantial blanket equivalent, and if form CG 20 10 03 04 13 and CG 20 37 04 13 are used, they shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance. The commercial general liability policy maintained by Licensee shall contain a provision that City, although an additional insured, shall nevertheless be entitled to recover under said policies for loss occasioned to it, its servants or employees, by reason of the negligence of Licensee. Licensee shall maintain products-completed operations coverage for a period of 9 years past completion and acceptance of the work or services, and Licensee shall be required to submit certificates of insurance evidencing proper coverage is in effect as required above.

6.2.2 Vehicle Liability. Licensee shall maintain Business Automobile Liability insurance with a combined single limit of \$5,000,000.00 each occurrence covering all of Licensee’s owned, hired, and non-owned vehicles assigned to or used in the performance of Licensee’s responsibilities or obligations under this License. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 11 20, or equivalent thereof, or ISO coverage codes 7 “Autos Specified on Schedule”, 8 “Hired Autos” and 9 “Non-Owned Autos”. To the fullest extent allowed by law, for claims arising out of the performance of this License, City, its representatives, officers, directors, officials and employees shall be included as an Additional Insured code “1” “any auto” policy form CA 00 01 11 20 or equivalent thereof, or ISO coverage codes 7 “Autos Specified on Schedule”, 8 “Hired Autos” and 9 “Non-Owned Autos”.

6.2.3 Workers’ Compensation Insurance. Licensee shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Licensee’s employees engaged in the performance of work or services under this License and shall also maintain

Employers Liability Insurance of not less than \$1,00,000.00 for each accident, \$1,00,000.00 disease for each employee and \$1,000,000.00 disease policy limit.

6.2.4 Builder's Risk Insurance. Licensee shall be responsible for purchasing and maintaining insurance to protect Licensee's facilities from perils of physical loss. The insurance shall include as the named insured Licensee and shall insure against loss from the perils of fire and all risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. Licensee shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

6.2.5 Cancellation and Expiration Notice. Upon receipt of notice from its insurer, Licensee shall provide City notice of cancellation of any insurance policy required under this License.

6.2.6 Alternative to Required Forms. The requirements for the use of specific ISO or ACORD insurance forms and/or compliance with their specific provisions set forth in this Section 6 shall be deemed satisfied in the event Licensee provides such certificates and endorsements on published ISO or ACORD forms or their substantial equivalents, and maintains a net worth in excess of \$55,000,000.00 during the term of this License, with evidence of such net worth provided in a form acceptable to the City Administrator.

## **7 INDEMNIFICATION.**

7.1 Generally. Licensee acknowledges that it has liability for any and all of Licensee's facilities installed in the City Right-of-Way and for its use of City Right-of-Way and for its exercise of its rights under this License directly or through its contractor(s), except to the extent of intentional acts or gross negligence on the part of City. To the fullest extent permitted by law, Licensee, jointly and severally for itself, its successors and assigns, shall defend, indemnify, and hold harmless City, or its officials, boards, commissions, agents, or employees, individually and collectively, for, from and against any and all losses, claims, damages, suits, actions, administrative and judicial proceedings and orders, payments, judgments, demands, expenses and costs, remedial actions of any kind, and reasonable attorney's fees and costs of defense incurred through all appeals (collectively, "Claim") arising out of or alleged to have resulted from or related to Licensees' activities, services or facilities and/or the installation, construction, operation maintenance, removal and/or repair of the improvements and equipment thereto; the acts, errors, mistakes, omissions of Licensee, its employees, agents, contractors, subcontractors or any other person for whose acts, errors, mistakes, or omissions Licensee may be legally liable; and from any Claims or amounts arising or recovered under workers compensation laws or any other law, bylaw, or ordinance, order, or decree related to any failure on the part of Licensee, its agents, employees, contractors, subcontractors or representatives to fulfill Licensee's obligations under this License, whether resolution of the above Claim(s) proceeds to judgment or not. This indemnification applies even if the party seeking damages makes a Claim against City or brings a Claim against City based on vicarious liability or non-delegable duty.

7.2 Defense Costs. Licensee further agrees to indemnify, defend and hold harmless City, its officers, agents, officials, boards, commissions and its employees from and against all Claim(s) incurred by or against City, its officers, agents, officials, boards, commissions and its employees in the defense of any

administrative or judicial proceeding brought by third parties challenging the right of City to enter into this License with Licensee under City or other applicable law.

7.3 Tender of Defense. In the event that any notice of Claim is served or Claim commenced, City shall tender the defense of the Claim to Licensee, who shall immediately defend the Claim. Licensee shall have the right to retain counsel reasonably acceptable to City, to settle all or any part of the Claim on terms acceptable to Licensee (and, where such terms directly obligate or affect City, acceptable to City). Licensee agrees to keep the City Attorney's Office informed of the status and progress of all Claims involving City that has been tendered to Licensee or its insurance carrier, and City shall have the right to participate in Licensee's defense of any Claims.

7.3.1 Notice. The Parties shall promptly notify each other in writing of any Claims, demands, or lawsuits which may involve City and provide copies of all relevant accident reports, incident reports, statements or other documents relevant to or which may lead to relevant materials or information, in the possession of the other party, its employees, agents, subcontractors, and/or others, promptly upon request.

7.3.2 Relevant Information. Both Parties agree to make their employees, agents, contractors and subcontractors available to the other party to gather any relevant information relating to an incident in which Claims, demands, or lawsuits arise from.

7.4 Construction of Interpretation. It is the purpose of this section to provide maximum indemnification to City under the terms and conditions expressed and, in the event of a dispute, this section shall be construed (to the greatest extent permitted by law) to provide for the indemnification of City by Licensee against any and all Claims. The sole exception shall be an express determination by a court of competent jurisdiction upon full adjudication of the case that the damages arose only from City's sole gross negligence or intentional acts. Only in this event may Licensee then commence an action against City for damages related to that portion judicially determined to be City's fault.

7.5 Survival. The provisions of this section shall survive this License's revocation, termination or expiration and shall be and remain a binding right and obligation of City and Licensee. It is the intent of Licensee and City upon the Effective Date of this License that this section serves as any such declaration and shall be a binding obligation of and inure to the benefit of Licensee and City and their respective successors and assigns, if any. Any failure by Licensee to indemnify City as required under this section shall be considered a material breach of this License.

7.6 Insurance No Limit. The amount and type of insurance coverage requirements set forth in this License will in no way be construed as limiting the scope of the indemnity in this section.

7.7 Reformation. As a condition to City's executing this License, Licensee specifically agrees that, to the extent any provision of this section is not fully enforceable against Licensee for any reason whatsoever, this section shall be deemed automatically reformed to the minimal extent necessary to cause it to be enforceable to the fullest extent permitted by law.

## **8 LIMITATION OF LIABILITY.**

8.1 Limited to Gross Negligence. City and its officers, agents, elected or appointed officials, employees, departments, boards and commissions, shall not be liable to Licensee or to its affiliates or customers or otherwise be responsible for any interference with or disruption in the operations of Licensee's facilities or the provision of services, downtime, lost revenue or profits, third-party damages, or for any damages (including punitive, consequential, or special damages under any theory of liability) arising out of or related to Licensee's use of City Right-of-Way, except to the extent of intentional misconduct or gross negligence on the part of City its officers, agents, elected or appointed officials, employees, departments, boards and commissions. Licensee expressly acknowledges that City is not responsible or liable to Licensee for any Claims that arise in connection with: (i) acts or omissions by persons or entities using City Right-of-Way or other areas adjoining, adjacent to or connected with any City Right-of-Way; (ii) any utility service interruption; (iii) theft; (iv) burst, stopped or leaking water, gas, sewer, steam, or other pressurized pipes; (v) fires, floods, earthquakes, or other force majeure; (vi) any vehicular collision on or about City property or City Right-of-Way; and (vii) any costs or expenses incurred in connection with any relocation, removal, or restoration rights or obligations under this License; all except to the extent such events are directly caused by City's gross negligence or willful misconduct. Licensee expressly waives and releases all Claims it may now or in the future have against City, whether known or unknown, whether foreseeable or unforeseeable, that arise in connection with the events described in clauses (i)-(vii) as may be related to this License, Licensee's facilities or locations on or about City Right-of-Way. The provisions in this Section 8.1 shall survive this License's revocation, termination or expiration.

8.2 No Liability for License Enforcement. Licensee also agrees that it shall have no recourse whatsoever against City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damages arising out of or materially related to any provision or requirement of City because of the enforcement of this License.

8.3 Licensee Assumption of Risk. Licensee shall assume the risk of, and hereby relinquishes any claim against City in connection with any final, non-appealable determination by a court of competent jurisdiction that City lacked the current statutory authority under Arizona law to issue this license.

**9 RISK OF LOSS.** City is not required to carry any insurance covering or affecting Licensee's use of City's property related to this License. Licensee assumes the risk of any and all loss, damage, or claims related to Licensee's use of the License Area or City's or Licensee's property throughout the term hereof, except as expressly sets forth in this License. Nothing herein shall be construed to waive any of Licensee's rights to pursue claims against third parties.

**10 NON-EXCLUSIVE LICENSE.** This License is not exclusive and shall not be construed to prevent City from granting other like or similar licenses, grants or privilege to any other person, firm or corporation, or to deny or lessen the powers and privileges granted City under the Constitution and laws of the State of Arizona.

## **11 TRANSFERABILITY OF LICENSE AND AGREEMENT.**

11.1 Transfer. Any transfer or assignment of this License shall require City's prior, written consent, which shall not be unreasonably withheld, conditioned, or delayed; Licensee agrees that it will

provide sufficient documentation about the proposed transfer or assignment to enable City to properly evaluate the proposed transfer in a timely manner.

11.2 Acceptance by Assignee. No application for a transfer of a license shall be granted unless the proposed transferee or assignee agrees in writing that it will abide by and accept all terms of this License and City Code, and that transferee or assignee will assume all obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of Licensee under this License for all purposes, including renewal.

11.3 Approval not Waiver. Approval by City of a transfer or assignment of this License does not constitute a waiver or release of any of the rights of City, whether arising before or after the date of the transfer or assignment.

11.4 Transfer Remedies. Any transfer without City's consent shall be void and shall not result in the transferee obtaining any rights or interests in, under or related to this License. City may, in its sole discretion and in addition to all other lawful remedies available to City under this License or otherwise, and in any combination, terminate this License, collect any fees owed from Licensee and/or declare the transfer to be void, all without prejudicing any other right or remedy of City under this License. No cure or grace periods shall apply to transfers or assignments prohibited by this License or to enforcement of any provision of this License against an assignee who did not receive City's consent.

11.5 Transfer Fee. Licensee shall pay to City in advance the sum of \$500.00 as a nonrefundable fee for legal, administrative and other expenses related to every transfer (other than the sale of publicly traded stock) or to any request for a consent to transfer, whether or not City grants such request.

## **12 LIQUIDATED DAMAGES.**

12.1 No Reduction of Indemnity or Insurance. Licensee's obligation to pay liquidated damages does not in any way detract from Licensee's indemnity and insurance obligations under this License, which shall apply according to their terms in addition to Licensee's obligation to pay liquidated damages.

12.2 Liquidated Damages Calculated. Licensee understands and agrees that failure to comply with any time and performance requirements in this License or the requirements of the City Code will result in damage to City, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the Parties hereby agree to the liquidated damages specified below. The following amounts per day or part thereof may be chargeable to the LOC or Bond for the following concerns:

12.2.1 City Right-of-Way Restoration. Each failure to properly restore the City Right-of-Way or to correct related violations of specifications, code ordinance or standards within 15 business days of having been notified by City to correct such defects – \$50 per day. Such amount is in addition to any cost City may incur to restore City Right-of-Way or correct the violation.

12.2.2 Records Availability. Each failure to make Licensee's books and records available as required by this License and such failure continues for 15 business days after receipt of notice of failure to provide from City – \$50 per day.

12.2.3 Unauthorized Transfer. Any unauthorized partial or total transfer of this License – \$1,000 per transfer.

12.2.4 Material Action. Each material instance of any action or non-action by Licensee contrary to the terms of this License that is not cured after 30 days' notice –\$100 per day.

12.2.5 Insurance Certificate. Failure to provide a valid Certificate of Insurance as required by Section 6 that is not cured after five days' notice –\$50 per day.

12.2.6 Assessment. If City concludes that Licensee may be liable for liquidated damages, City shall issue to Licensee a Notice of Intention to Assess Liquidated Damages and allow Licensee an opportunity to cure within thirty (30) days. The Notice shall set forth the nature of the violation and the amount of the proposed assessment. Licensee shall pay the liquidated damage immediately upon expiration of the thirty (30) day cure period or City shall deduct the amount from the LOC or Bond.

### **13 TERMINATION/REVOCAION.**

13.1 Early Termination. This License may be revoked and/or terminated prior to its date of expiration by City for the following reasons:

13.1.1 6-Month Notice of Nonrenewal. For any reason, City provides written notice of its intent not to renew this License prior to six (6) months before the end of the then current five-year term.

13.1.2 Material Failure. Licensee fails to comply with the material terms and conditions of this License or applicable law, including but not limited to failing to maintain any insurance, LOC, and/or Bond.

13.1.3 Failure to Pay. Licensee fails to make payments in the amounts and at the time specified in this License after a final determination that the payments were owed.

13.1.4 Cessation of Business. Licensee ceases doing business in City.

13.1.5 Map Failures. Licensee fails to provide current, accurate as-built plans and maps showing the location of all of Licensee's facilities installed or constructed in City.

13.1.6 Bankruptcy. Licensee is or becomes insolvent or is a party to a voluntary or involuntary bankruptcy, reorganization, or receivership case or proceeding, makes an assignment for the benefit of creditors, is subject to other actions by creditors that, in the reasonable, good faith opinion of City, threaten the financial viability of Licensee as a going concern, or if there is any similar action that affects Licensee's capability to perform its obligations under this License.

13.1.7 Lack of License. Licensee fails to obtain or maintain any licenses, permits, or other governmental approvals pertaining to City Right-of-Way or timely pay any taxes pertaining to City Right-of-Way or that arise from or in connection with Licensee's use thereof.

13.1.8 Court Order. A court has issued an injunction that in any way prevents or restrains Licensee's use of any portion of City Right-of-Way and remaining in force for a period of at least 30 consecutive days.

13.2 Cure Period. Except where expressly prohibited by this License and Section 13.3 below, City Administrator or a designee, shall give prior written notice to Licensee of the defect in performance and give Licensee 60 days within which to cure the defect in performance before terminating the License.

13.3 Cure Period Waived for Misconduct. City need not provide a 60-day cure period prior to termination if City finds that the defect in performance under the License is due to intentional misconduct, is a violation of criminal law, or is a part of a pattern of repeated and persistent violations where Licensee has already had notice and opportunity to cure.

13.4 Administrator Authority. The City Administrator has the authority to terminate this License, subject to Licensee's right to notice and cure where provided.

13.5 Termination by Mutual Agreement. This License may be terminated prior to its date of expiration by Licensee by providing City with 90 days written notice and only upon making arrangements satisfactory with the City Administrator to remove all Licensee's facilities from City Right-of-Way, unless the City Administrator agrees in writing to allow Licensee to abandon part or all of Licensee's facilities in place. If the City Engineer agrees to allow Licensee to abandon Licensee's facilities in place, the ownership of such facilities, including everything permitted by City to be abandoned in place, shall transfer to City and Licensee shall cooperate to execute any documents necessary to accomplish such transfer within 30 days of such allowance of abandonment.

13.6 Equipment Removal. Notwithstanding anything in this License, upon termination of this License, (1) Licensee shall, at its sole cost and expense, remove all of Licensee's facilities within 90 days; or (2) at City's sole discretion and upon written approval, Licensee may abandon in place some or all of Licensee's facilities pursuant to Section 14.

## **14 NON-USE/ABANDONMENT OF LICENSEE'S FACILITIES**

14.1 Removal on Abandonment. If Licensee ceases to provide services or abandons use of any of its facilities, upon cancellation or termination of the License, Licensee shall notify City and may, subject to City's approval, permanently abandon the facilities in place. In such event, City, at its option, may acquire ownership of the facilities. In lieu of permanent abandonment, City may require Licensee, to the reasonable satisfaction of City and without cost or expense to City, to promptly remove Licensee's facilities and to restore City Right-of-Way to a safe and satisfactory condition comparable or better to the condition of the Right-of-Way prior to the start of such removal work subject to the supervision of City. If Licensee fails to remove an abandoned facility within ninety (90) days of receiving notice from City and City has not approved abandonment in place, City may (but shall not be obligated to) remove the facility at the sole

expense of Licensee, and Licensee shall promptly reimburse City for any and all expenses, including but not limited to administrative, legal and consultant costs, within ten (10) business days after receiving an invoice from City.

14.2 City Property. Upon permanent abandonment, if City does not require removal, Licensee shall submit to City a proposal and instruments for transferring ownership to City. Any such facility, which are not removed as required by City within 90 days of either such date of termination or cancellation or of the date City issued a permit authorizing removal, whichever is later, may, at City’s sole discretion, become the property of City or shall be removed. Licensee will notify the Arizona Blue Stake Center to record Licensee’s facilities that have been abandoned.

**15 ACCEPTANCE OF LICENSE TERMS AND CONDITIONS; NOTICES.**

15.1 Acceptance of License Terms and Conditions. This License shall become effective as of the Effective Date. Licensee covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the City Code and this License.

15.2 Project Manager. Licensee designates the person(s) listed below as its project manager(s) to coordinate Licensee’s engineering, installation, construction, operation and maintenance, and serve as Licensee’s primary contact person for all such issues that may arise between the parties in connection with this License. If no person is designated by Licensee prior to the Effective Date, then Licensee shall designate a person through a written notice promptly following City’s written request to do so. The project manager(s) will have no obligation to personally perform any term or covenant to be performed under this License.

Licensee’s Project Manager(s):

Fred Kriess, Regional Director  
Cactus State Utility Operating Company, LLC  
1630 Des Peres Road, STE 140  
Des Peres, MO 63131  
(602) 698-9786  
fkriess@cswrgroup.com

15.3 Notices. All notices given or which may be given pursuant to this License shall be in writing and transmitted by U.S. mail or by nationally-recognized overnight delivery service as follows:

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

WITH COPIES TO: City Attorney  
City of Yuma  
One City Plaza



Yuma, Arizona 85364

City Engineer  
City of Yuma  
155 W. 14<sup>th</sup> Street  
Yuma, Arizona 85364

IF TO LICENSEE: Fred Kriess, Regional Director  
Cactus State Utility Operating Company, LLC  
1630 Des Peres Road, STE 140  
Des Peres, MO 63131  
(602) 698-9786  
fkriess@cswrgroup.com

WITH A COPY TO: Patrick Black, Esq.  
Fennemore Craig, P.C.  
2394 E. Camelback Road, STE 600  
Phoenix, Arizona 85016  
(602) 916-5400  
[pblack@fennemorelaw.com](mailto:pblack@fennemorelaw.com)

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day or (D) the date an attempt to make delivery fails if a party changes its address without proper notice or refuses to accept delivery after an attempt. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

## 16 MISCELLANEOUS

16.1 Complete Agreement. This License, including all Exhibits, are hereby incorporated into this License and all of which constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous agreements whether written or oral. This License cannot be modified or amended except in writing signed by both Parties.

16.2 Validity. Licensee acknowledges that as a condition of acceptance of this License, Licensee had the opportunity for representation throughout the negotiations of this License by Licensee's own attorneys and consult with its own attorneys about its rights and obligations regarding this License. Licensee

has reviewed City's authority to execute and enforce this License and has reviewed all applicable law, both federal and state, and, after considering same, Licensee acknowledges and accepts the right and authority of City to execute this License and to enforce the terms herein.

16.3 Severability. If any section, paragraph, subdivision, clause, phrase, or provision of this License shall be adjudged invalid or unenforceable or is preempted by federal or state laws or regulations, the same shall not affect the validity of this License as a whole or any part of the provisions of this License other than the part adjudged to be invalid, unenforceable, or preempted except to the extent that such invalidity, unenforceability, or preemption would be manifestly unreasonable or inequitable under the circumstances or undermine one or both Parties' fundamental purpose in entering this License. The Parties may agree in writing to amend this License to address such invalid or unenforceable provisions; however, if the Parties disagree as to the validity or enforceability of such provisions, the License will not be affected to the extent of such disagreement until a court of competent jurisdiction determines otherwise or the Parties later agree in writing. In the event either Party seeks such judicial declaration or interpretation of any provision herein, neither Party will be liable for the other Party's attorney's fees, regardless of which Party is deemed the successful party.

16.4 Invalidity. Parties agree if a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that City did not have the authority to issue a license to Licensee, then this License shall be considered a revocable permit with a mutual right in either Party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such revocable permit shall be the same requirements and conditions as set forth in this License except for conditions relating to the term of the License and the right of termination. If this License shall be considered a revocable permit as provided herein, Licensee acknowledges the authority of the City Council to issue a revocable permit and the power to revoke as provided therein.

16.5 Time of Essence. Time is of the essence in each and every provision of this License except as modified in this Section 16.5. References in this License to "days" mean calendar days, unless specifically provided otherwise. A "business day" means a day other than a Saturday, Sunday or a bank or City holiday. If the last day in any period to give notice, reply to a notice, or to undertake any other action occurs on a day that is not a business day, then the last day for giving notice, replying to the notice or undertaking any other action will be the next business day.

16.6 Headings. The headings contained herein are for convenience only and not intended to define or limit the scope of any provision of this License.

16.7 No Partnership. Each party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other under this License.

16.8 No Third-Party Beneficiaries. Only City or Licensee may seek enforcement of this License. No person or entity shall be a third-party beneficiary to this License or shall have any (a) right, title or interest in this License or the real or personal property that may be affected by this License or (b) cause of action hereunder. City shall have no liability to third parties for any approval of plans, Licensee's construction of improvements, Licensee's negligence, Licensee's failure to comply with the provisions of this License

(including any absence or inadequacy of insurance required to be carried by Licensee), or otherwise as a result of the existence of this License.

16.9 Public Records. Notwithstanding any provisions of this License, Licensee acknowledges that all documents provided to City may be subject to disclosure by laws related to Arizona public records law. This provision will survive the termination of this License.

16.10 Force Majeure. With respect to any provision of this License, the violation or non-compliance of which could result in the imposition of a financial penalty, liquidated damages, forfeiture, or other sanction upon Licensee, the time for performance of the obligations of Licensee shall be extended on a day-for-day basis when the delay is the result of acts of God; war; terrorist attack; civil disturbance, strike or other labor unrest; plague; pandemics; epidemics; quarantine orders or directives by a governmental entity; outbreaks of infectious disease or other public health crisis, including without limitation, quarantine or other employee restrictions; or other events, the occurrence of which was not reasonably foreseeable by Licensee and is beyond its reasonable control. To assert the right to extend the time for performance under this section, Licensee shall, within thirty (30) days after Licensee knows or should know of any such force majeure event, notify City of the basis for extending the time for performance; provided, however, that in no event shall any extension exceed ninety (90) days.

16.11 Attorneys' Fees. Except as described in 16.4 or elsewhere herein, in the event a Party brings any action for any relief, declaratory or otherwise, arising out of this License or on account of any breach or default hereof, the prevailing Party is entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which will accrue on the commencement of such action and will be enforced whether or not such action is prosecuted through judgment.

16.12 Choice of Law; Venue. This License shall be governed by and construed in accordance with the laws of the State of Arizona. Any action to enforce any provision of this License or to obtain any remedy with respect this License 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, and 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.

16.13 Non-Waiver. Licensee shall not be excused from complying with any of the terms and conditions of this License by any failure of City upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions.

16.14 Exhibits and Recitals. 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. The Recitals set forth at the beginning of this License are hereby acknowledged and incorporated herein, and the Parties hereby confirm the accuracy thereof.

16.15 Rights and Remedies are Cumulative. Except as otherwise expressly stated in this License, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of such

rights or remedies will not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by such defaulting Party.

16.16 Conflict of Interests. No member, official or employee of City may have any direct or indirect interest in this License, nor participated in any decision relating to the License that is prohibited by law. All parties hereto acknowledge that this License is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

16.17 No Boycott of Israel. Licensee certifies that it is not engaged in a boycott of Israel as of the Effective Date and agrees for the duration of this License to not engage in a boycott of Israel.

16.18 Counterparts. This License may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute 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.

16.19 Survival. All terms, provisions, covenants, conditions and obligations in this License will survive this License’s expiration or termination when, by their sense or context, such provisions, covenants, conditions or obligations: (i) cannot be observed or performed until this License’s expiration or earlier termination; (ii) expressly so survive; or (iii) reasonably should survive this License’s expiration or earlier termination. Notwithstanding any other provision in this License, the Parties’ rights to enforce any and all indemnities, representations and warranties given or made to the other party under this License or any provision in this License will not be affected by this License’s expiration or termination.

**IN WITNESS WHEREOF**, the parties have entered into this License effective as of the date first above written.

**City of Yuma:**

**Cactus State Utility Operating Company,  
LLC:**

By: \_\_\_\_\_  
John D. Simonton  
City Administrator

By: \_\_\_\_\_  
Name:  
Its:

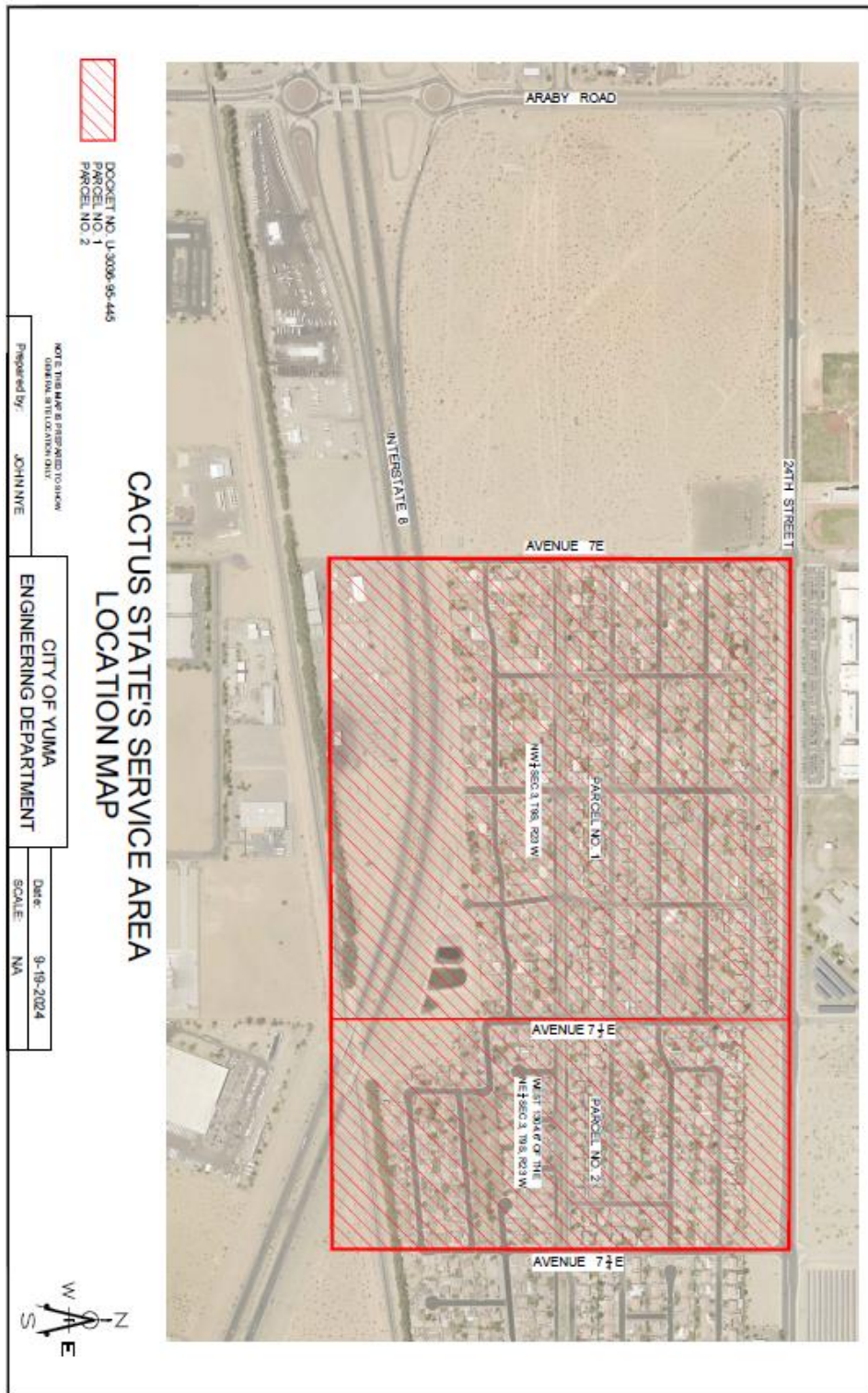
ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Lynda Bushong  
City Clerk

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

# Exhibit A



**EXHIBIT B**  
**STANDARDS FOR LETTER OF CREDIT**

In addition to any other requirements imposed upon a letter of credit (the “Letter of Credit”) issued pursuant to this Agreement, the Letter of Credit shall meet and be governed by the following additional standards and requirements:

- 1. Letter of Credit Requirements.** The Letter of Credit shall be printed on Bank Safety Paper. The following terms and no others shall be stated on the face of the Letter of Credit:
  - 1.1** The Letter of Credit is clean, unconditional, irrevocable, independent, and standby.
  - 1.2** The Letter of Credit is payable to City upon presentation of City’s draft.
  - 1.3** City may make partial draws upon the Letter of Credit.
  - 1.4** The Letter of Credit is for payment solely upon presentation of a sight draft and a copy of the Letter of Credit.
  - 1.5** Within ten (10) days after City’s draft on the Letter of Credit is honored, City must make the original of the Letter of Credit available to the issuer in Yuma County, Arizona upon which the issuer may endorse its payments.
  - 1.6** The issuer specifies a telefax number, email address, and street address at which City may present drafts on the Letter of Credit.
  - 1.7** The Letter of Credit is valid until a specified date.
  - 1.8** The Letter of Credit will be automatically renewed for successive one (1) year periods, unless at least 30 days prior to expiration the issuer notifies City in writing, by either registered or certified mail, that issuer elects not to renew the Letter of Credit for the additional period. In the event of such notification, any then unused portion of the Letter of Credit shall be available by draft on or before the then current expiration date.
  - 1.9** The Letter of Credit is otherwise subject to the most recent edition of the Uniform Customs and Practices for Documentary Credits, published by the International Chamber of Commerce including, but not limited to, International Standby Practices 1998 (ISP98) (International Chamber of Commerce Publication No. 590; ISP98 Model Government Standby (U.S.) Form 11.1 and annexes (2017)).
  - 1.10** The Letter of Credit need not be transferable.
  
- 2. Approved Forms.** The form of the Letter of Credit and of drafts upon the Letter of Credit shall be as follows:
  - 2.1** Except as approved in writing by City’s City Administrator, the form of the Letter of Credit shall be in the form set out below.
  - 2.2** Except as approved in writing by City’s City Administrator, the form of drafts upon the Letter of Credit shall be in the form set out below.
  
- 3. Issuer Requirements.** The issuer of the Letter of Credit shall meet all of the following requirements:
  - 3.1** The issuer shall be a federally insured financial institution with offices in Yuma County, Arizona, at which drafts upon the Letter of Credit may be presented.
  - 3.2** The issuer shall be a member of the New York Clearing House Association or a commercial bank or trust Company satisfactory to City.
  - 3.3** The issuer shall have a net worth of not less than \$1 billion.

**FORM OF LETTER OF CREDIT**  
**(ISP98 Model Government Standby (U.S.) Form 11.1)**

Date \_\_\_\_\_, 20

Letter of Credit No.: \_\_\_\_\_

Development Services Department  
City of Chandler  
P.O. Box 4008  
Mail Stop 405  
Chandler, AZ 85244-4008

Dear Sir or Madam:

Issuance. At the request and for the account of [*name and address of applicant*] ("Applicant"), we [*name and address of issuer at place of issuance*] ("Issuer") issue the irrevocable independent standby letter of credit number [*reference number*] ("Standby") in favor of [*name and address of beneficiary*] ("Beneficiary") in the maximum aggregate amount of USD [*amount*].

Undertaking. Issuer undertakes to Beneficiary to pay Beneficiary's demand for payment for an amount available under the Standby and in the form of Annex A (Payment Demand) [or *Annex B (Payment Demand after Notice of Non-Extension)*] completed as indicated and presented to Issuer at the following place for presentation: in Yuma County, Arizona at or before the close of business on the expiration date.

Overdrawing. If a demand exceeds the amount available, but the presentation otherwise complies, Issuer undertakes to pay the amount available.

Expiration. The expiration date of this Standby is valid until \_\_\_\_\_ 20\_\_.

Automatic Extension. The expiration date of this Standby shall be automatically extended for successive one-year periods, unless [30] or more calendar days before the then current expiration date Issuer gives written notice to Beneficiary that Issuer elects not to extend the expiration date. Issuer's written notice must be sent by *registered, certified, or priority express mail or nationally recognized overnight courier* to Beneficiary's above-stated address [*and to the attention of [office, officer, or other attention party] or, alternatively, be received by Beneficiary's attention party*] [30] or more calendar days before the then current expiration date.

Payment. Payment against a complying presentation shall be made within three business days after presentation at the place for presentation or by wire transfer to a duly requested account of Beneficiary.

ISP98. This Standby is issued subject to the International Standby Practices 1998 (ISP98) (International Chamber of Commerce Publication No. 590). This Letter of Credit is not assignable.

Issuer's Charges and Fees. Issuer's charges and fees for issuing, amending, or honoring this Standby are for Applicant's account and shall not be deducted from any payment Issuer makes under this Standby. *[Issuer undertakes to Beneficiary to pay the charges and fees of any bank nominated in this Standby to advise [and confirm] this Standby for acting on such nomination.]*

*[Communications. Communications other than demands may be made to Issuer in the manner and at the place for presentation and also as follows: [address for mailed, couriered, telephone, telefax, or electronic communications]. Communications other than for notices of non-extension may be made to Beneficiary at Beneficiary's above-stated address and also as follows: addresses for mailed, couriered, telephone, telefax, or electronic communications].]*

[Issuer's name]  
[signature]

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_ [bank name] \_\_\_\_, a \_\_\_\_\_  
By \_\_\_\_\_ [bank officer's signature] \_\_\_\_\_  
\_\_\_\_\_ [bank officer's name printed] \_\_\_\_\_  
Its \_\_\_\_\_ [bank officer's title] \_\_\_\_\_  
Phone: \_\_\_\_ [bank officer's phone number] \_\_\_\_\_



**ANNEX A: PAYMENT DEMAND**

**(ISP98 Model Government Standby (U.S.)  
Form 11.1**

To: *[Issuer name and address]*

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

Date: \_\_\_\_\_, 20\_\_

Re: Standby Letter of Credit No. *[reference number]*, dated *[date]*, issued by *[issuers name]* ("Standby").

Ladies and Gentlemen:

The undersigned beneficiary demands payment of USD *[insert amount]* under the Standby. Beneficiary states that Applicant is obligated to pay to Beneficiary the amount demanded as provided in *[the contract, regulation, or other document that identifies the underlying obligations to the government beneficiary]*. Beneficiary requests that payment be made by wire transfer to an account of Beneficiary as follows: *[Insert name, address, and routing number of beneficiary's bank, and name and number of beneficiary's account]*.

*[Beneficiary's name and  
address]* By its authorized  
officer:

*[Insert original signature]*

*[Insert typed/printed name and title]*

If such deposit cannot be accomplished immediately for any reason, please make your payment in the form of a cashier's check issued by your institution and delivered to me at the address listed above.

I certify that I am the City Administrator or Acting City Administrator of the City of Yuma.

If there is any imperfection or defect in this draft or its presentation, please inform me immediately at (928) 373-5018 so that I can correct it. Also, please immediately notify the City Attorney at (928) 373-5050.

Thank you.

---

City of Yuma, City Administrator