EXHIBIT A
RESOLUTION NO. R2024-030

PREANNEXATION DEVELOPMENT AGREEMENT

This PREANNEXATION DEVELOPMENT AGREEMENT ("Agreement"), made and entered into pursuant to Arizona Revised Statutes (A.R.S.) § 9-500.05, is by and between The Ruiz Roesner Trust ("Owner"), as the owners of the real properties located at 3731 W. 5th Street and 3731 ½ W. 5th Street (APN 632-49-143 and 632-49-145), more particularly described and depicted in **Exhibit 1** attached and incorporated by reference (the "Property"), and the City of Yuma ("City"), an Arizona municipal corporation. Owners and City shall be referred to collectively as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, the City adopted its General Plan in 2022, and the use and development of the Property is consistent with and conforms to the goals and objectives of the City of Yuma General Plan, as amended; and,

WHEREAS, the Owners desire to annex the Property into the City limits and seeks certain assurances and commitments from the City following annexation; and,

WHEREAS, the Parties have entered into this Agreement to provide for the annexation and City of Yuma water service upon the terms and conditions described in this Agreement.

NOW THEREFORE, in consideration of the above recitals, the Parties agree as follows:

1. Development Agreement. This Agreement, together with all attached exhibits, is a Development Agreement within the meaning of Arizona Revised Statutes (A.R.S.) § 9-500.05. On the condition that all of the terms and covenants of this Agreement are complied with in a prompt and timely manner, this Agreement shall also constitute a contractual commitment of the City to furnish water service to the Property outside of the City's municipal boundaries pursuant to *Yuma Valley Land Co., LLC. v City of Yuma*, 227 Ariz. 28 (2011).

2. Term. In consideration of the City's commitment to furnish water service and, if sanitary sewer service should become available in the City's normal course of construction, sanitary sewer service to any existing or future buildings on the Property, it is the intent of the Parties that this Agreement will commence and become operative on the date of its execution (the "Effective Date"), and terminate when the obligations of the Parties with respect to annexation are fully complied with, or the Parties mutually provide for termination in writing, whichever occurs first. Normal course of construction shall be interpreted to mean when such sanitary sewer service is available in the City's absolute discretion and on the City's schedule. In accordance with the Parties' intent, the furnishing of water service shall begin on the Effective Date, either prior to or after annexation.

3. Annexation. Owner agrees to petition for and hereby consents to annexation of the Property into the City of Yuma pursuant to A.R.S. § 9-471. Owner's agreement to annex shall operate as a covenant upon the Property, and upon recording this Preannexation Development Agreement, such covenant shall run with the land and with title to the Property until annexation is complete and no longer subject to referendum or appeal.

3.1. Owner and any subsequent owners of the Property agree that within ten (10) days of written request by an authorized representative of the City of Yuma, Owner or any subsequent owners or Owners

successors will sign an annexation petition seeking to annex the entire Property into the City of Yuma municipal boundaries. Upon receipt of the signed annexation petition, the City agrees to proceed with the annexation procedures established in the provisions of A.R.S. § 9-471 *et seq*. and, if determined to be in the best interest of the City, adopt the final ordinance annexing the property into the City of Yuma corporate limits.

3.2. Upon annexation of the Property, City staff will bring forward to City Council a request for rezoning the Property to a zoning district in the City's Zoning Code that is consistent with A.R.S. § 9-471 (L) which will permit densities and uses no greater that those permitted by Yuma County immediately before annexation.

4. Development Standards. The development and use of the Property shall be subject to all City, county, state and federal laws, regulations, rules, policies, fees in effect at the time of development ("Applicable Laws").

5. City of Yuma Development Fees and Water and Sewer Capacity Charges. A material consideration for the Parties' willingness to enter into this Agreement is to make City utility service available to the Property on the same terms and conditions as any other development within the City. To accomplish this, beginning on the Effective Date, any development and use of the Property shall require the payment to the City of all City of Yuma Development Fees for any new construction (defined as any building construction commenced within two years prior to or any time after the Effective Date), including the streets facilities development fee, the police facilities development fee, the fire facilities development fee, the general government facilities development fee, water and sanitary sewer capacity and connection charges, water system development charges, sanitary sewer interceptor charge, any water or sewer payback amounts, and a payment to the City in lieu of tax ("PILOT") on any new construction that would otherwise have been due to the City if the building permit had been issued and the construction had occurred after annexation, equivalent to 1.7% of 65% of the total construction cost. Payment of all capacity, PILOT and development fees to the City under this Section 5 shall be made prior to City issuance of any water meter, connection to City water and/or sewer, or issuance of a City building permit. In order to calculate the PILOT, Owner shall require each contractor and subcontractor having taxable activities in connection with development of the Property furnish the City with a worksheet showing all gross income received by them for the construction. If Owner provides satisfactory documentation showing that the City tax on construction has already been paid, no payment in lieu of City taxes on construction shall be due. Until such time as annexation is complete, Owner and City acknowledge that Sanitation (solid waste), Emergency Medical Service, Police, and Emergency Fire Response to the Property shall be through a Yuma County provider, but that upon annexation, such services shall be provided by the City of Yuma in accordance with Applicable Laws. Upon Owner's execution of this Agreement, prior to or upon annexation of the Property, water service to the Property shall be available in accordance with Applicable Laws and the terms of this Agreement. Monthly water and any sanitary sewer service charges shall be paid in accordance with and governed by the City of Yuma Utility Regulations.

6. Additional Requirements. Prior to conveyance or transfer of any portion of the Property to a third party or the issuance of any water meter, fire service (water) connection, sewer connection, or any other permit for the Property, Owner shall record against title to the Property, utilizing the City's standard forms for such matters:

6.1 5th Street Right-of-Way Dedication. Owner shall dedicate to the City by delivery of a warranty deed, right-of-way along the Property's 5th Street Road frontage to meet the requirements of a Local Road.

6.2 Avigation and Range Disclosure, Easement and Waiver. As a covenant and condition to entering into this Agreement, before conveying or transferring any portion of the Property, Owner agrees to disclose that the subject property is located in the vicinity of Yuma County International Airport and the U.S. Marine Air Station, both of which may result in aircraft overflight, vibrations and related noise as may be inherent in the operation of aircraft now known or used for flying within navigable airspace. This disclosure obligation shall survive the termination of this agreement, shall run with the land, and shall be binding on all successors, assigns and future owners of the Property.

6.3 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 further acknowledges and agrees that City approval of any Site Plan or Plat over all or any portion of the Property does not constitute authorization for work or improvements in the public rights-of-way or any grant or waiver of any permitting requirements of the Permitting Agency. 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.

7. Construction and Dedication of Improvements. Any public improvements required for development of the Property shall be designed, constructed, and dedicated in accordance with Applicable Laws, including, without limitation, City's normal plan submittal, review and approval processes, day-to-day inspection requirements, insurance requirements, and financial assurance requirements. Owner's construction and installation of public improvements shall occur within the time-frames specified under Applicable Laws.

8. Utility Services. The City acknowledges that the property is within the City of Yuma potable water service area, as approved by Yuma County. Upon application to the State of Arizona, Department of Environmental Quality, for a Notice of Intent, the City will issue the appropriate "Authorization to Connect to Public Water Service" letters for water service provided that Subsection 8.3 is complied with.

8.1 Assignment of Water Rights. Owner and any subsequent owners shall sign an application or otherwise fully cooperate with the City to convert, transfer or assign any water or water delivery entitlements associated with the Property to the City.

8.2 Non-Potable Water. Nothing contained in this Agreement shall be construed as obligating Owner to accept City water services for any non-potable water demand on the Property, provided that such non-potable water demand is served by the appropriate irrigation district.

8.3 Septic System. If Owner has obtained permitting and installed a septic system pursuant to County of Yuma regulations and requirements this Agreement shall not be interpreted to require the Property to connect to City sanitary sewer service until such time as Sanitary Sewer Service is available (at the City's absolute and discretionary schedule) and the existing septic tank system is declared unserviceable as defined in City of Yuma Utility Regulations, as amended, or the Parties agree that such a connection shall be made. Any such connection to a future City of Yuma Sanitary Sewer Service line shall be at Owner's sole cost for design, permitting, capacity charges and construction, and shall require City approval prior to permitting.

9. City and Owner Cooperation.

9.1 Cooperation in Development Approvals. Subject to the terms of this Agreement and

compliance with Applicable Laws including without limitation City's compliance with all required notice and public hearing requirements, City and Owner will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats or other development approvals requested by Owner in connection with development of the Property. If developed in Yuma County, written City approval of all such permits, plans, specifications, plats or other development approvals shall be required.

9.2 Annexation requests. City agrees that City staff will support any annexation request by Owner for the Property that is consistent with this Agreement, the General Plan, and Applicable Laws.

10. Notice. Except as otherwise required by law, any notice, demand or other communication given under this Agreement shall be in writing and shall be given by personal delivery or be sent by certified or registered U.S. Mail, 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 electronic mail, facsimile machine or by any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), with all postage and other delivery charges prepaid:

To City:	To Owners:
City Administrator	The Ruiz Roesner Trust
One City Plaza	17195 S. Avenue A 1/2
Yuma, Arizona 85364-1436	Somerton, AZ 8535064

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. Any notice sent by email or facsimile machine shall be deemed effective upon confirmation of the successful transmission by the sender's electronic mail system or facsimile machine. Notwithstanding the foregoing, no payment shall be deemed to be made until actually received in good and available funds by the intended payee.

11. 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 10 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.

11.1 Remedies. If the default is not corrected within the time periods described in Section 11 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.

11.2 Delays; Waivers. 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 by the Non-Defaulting Party 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.

11.3 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.

12. 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 opportunity for independent legal review of this Agreement by counsel of its choosing prior to the execution hereof.

13. 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.

14. Rights of Lenders. Financing or refinancing for acquisition, development and/or construction of the Property and/or improvements may be provided, in whole or in part, from time to time, by one or more Third Parties (individually a "Lender", and collectively the "Lenders"). If a Lender is permitted, under the terms of a non-disturbance agreement with City to cure the event of default and/or to assume Owner's position with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Owner under this Agreement.

15. Successors and Assigns. All of the provisions of this Agreement shall inure to the benefit of and be binding upon the successors in interest and assigns of each of the Parties pursuant to A.R.S. § 9-500.05D, and will run with the land during the Term of the Agreement as defined in Section 2.

16. Attorneys' Fees. 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.

17. Miscellaneous.

17.1 Governing Law; Choice of Forum. 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 at the John M. Roll United States Courthouse, 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 17.1.

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

17.3 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.

17.4 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.

17.5 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 to the current status of the Agreement, including whether or not, the requested Party has actual knowledge that any Party is in default of any obligation or duty set forth in this Agreement. Any such certificate may be relied on by a prospective purchaser of any lot within the Property, or any prospective Lender.

17.6 Counterparts. This Agreement 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.

17.7 Headings. The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning of construction of any of the provisions hereof.

17.8 Exhibits and Recitals. Any exhibit attached to this Agreement shall be deemed to have been incorporated into this Agreement by this reference with the same force and effect as if fully set forth in the body of the Agreement. The Recitals set forth at the beginning of this Agreement are acknowledged and incorporated and the Parties confirm the accuracy each Recital.

17.9 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.

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

17.11 No Partnerships; 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. 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 under this Agreement, except for transferees or assignees to the extent that they assume or succeed to the rights and/or obligations of Owner under this Agreement or such rights and duties described as running with title to the land.

17.12 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.

17.13 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.

17.14 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.

17.15 Individual Nonliability/Damages. 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.

17.16 Proposition 207 Waiver. Owner hereby waives and releases 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, the Annexation Ordinance, or adoption or failure to adopt the zoning designation, and all related annexation, 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 landowners, 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_____day of_____, 2024.

CITY:
CITY OF YUMA

By_____
John D. Simonton
Acting City Administrator

OWNERS:
The Ruiz Roesner Trust

By _____
Martin Ruiz Sarasua
Trustee

By _____
Alma Ruiz
Trustee

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___day of _____, 2024, by Martin Ruiz Sarasua, Trustee, on behalf of the Ruiz Roesner Trust.

_____
NOTARY PUBLIC

COMMISSION EXPIRATION:

_____

State of Arizona)
) ss
County of Yuma)

The foregoing instrument was acknowledged before me this___day of , 2024, by Alma Ruiz, Trustee, on behalf of the Ruiz Roesner Trust.

_____
NOTARY PUBLIC

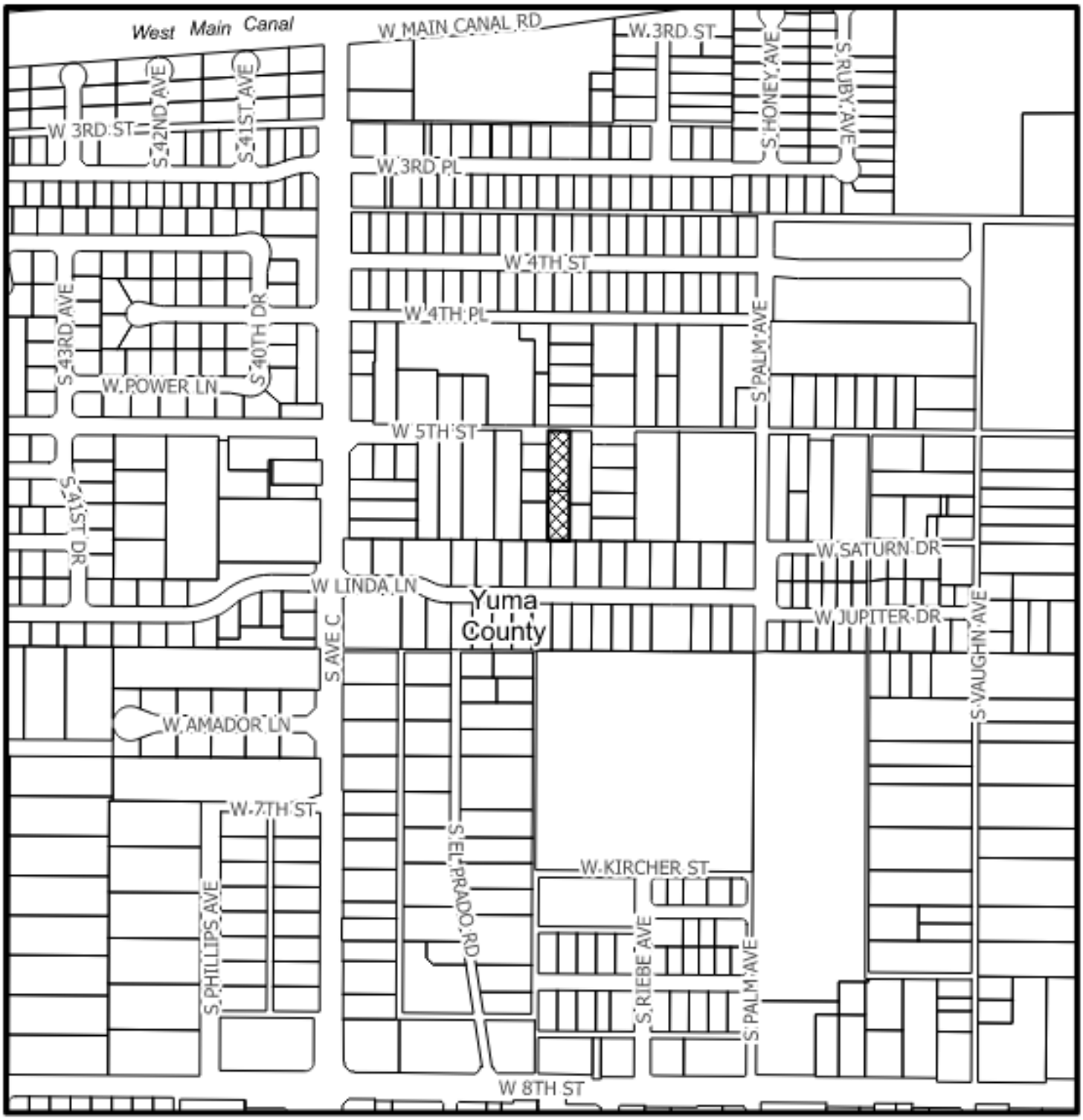
COMMISSION EXPIRATION:

_____

EXHIBIT 1

Legal Description and Depiction of Property

The West 66 feet of the North half of the Southeast quarter of the Northwest quarter of the Southwest quarter (N½SE¼NW¼SW¼) of Section 19, Township 8 South, Range 23 West of the Gila and Salt River Base and Meridian, Yuma County, Arizona.



LOCATION MAP

LOCATION OF SUBJECT PROPERTY

N	Prepared by: DG Checked by: EP	Yuma Community Planning and Neighborhood Services GIS	Date: 4/24/2024 Revised: Revised:	Case #: AGR-42660-2024