



Resolution

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

No. 2013

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA AUTHORIZING AND DIRECTING THE ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SAN LUIS AND THE CITY OF YUMA FOR MUTUAL AID AND ASSISTANCE FOR FIRE, MEDICAL, HAZARDOUS MATERIAL, CBRNE, MASS CASUALTY EMERGENCIES, TECHNICAL RESCUE AND OPERATIONS SUPPORT.

BE IT RESOLVED by the Mayor and City Council of the City of San Luis, Arizona, as follows:

Section 1. That it is deemed in the best interest of City of San Luis and its residents that an Intergovernmental Agreement with the City of Yuma for mutual aid and assistance for fire, medical, hazardous material, CBRNE, mass casualty emergencies, technical rescue and operations support will provide needed or specialized resources in the event of a significant, emergency event.

Section 2. That it is also deemed in the best interest of City of Yuma and its residents that an Intergovernmental Agreement with the City of San Luis for mutual aid and assistance for fire, medical, hazardous material, CBRNE, mass casualty emergencies, technical rescue and operations support will provide needed or specialized resources in the event of a significant, emergency event.

Section 3. That a true copy of said Intergovernmental Agreement is incorporated herein as though fully set forth again in full.

Section 4. That the Mayor or City Manager and/or his designee are hereby authorized and directed to execute this Intergovernmental Agreement on behalf of the City of San Luis and to take any and all actions as may be necessary to put the agreement into effect.

Section 5. That the San Luis City Clerk and/or her designee is authorized and directed to maintain this Intergovernmental Agreement in the official files of the City Clerk and to deliver it to the City of Yuma.

PASSED, ADOPTED and APPROVED by the Mayor and City Council of the City of San Luis, Yuma County, Arizona this 24th day of January, 2018.



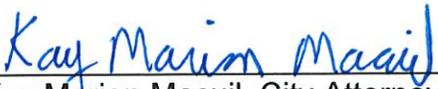
Gerardo Sanchez, Mayor

ATTEST:



Sonia Cornelio, City Clerk

APPROVED AS TO FORM:



Kay Marion Macuil, City Attorney

**INTERGOVERNMENTAL AGREEMENT FOR
MUTUAL AID AND ASSISTANCE FOR FIRE, MEDICAL, HAZARDOUS
MATERIAL, CBRNE, MASS CASUALTY EMERGENCIES, TECHNICAL RESCUE
AND OPERATIONS SUPPORT**

This Intergovernmental Agreement For Mutual Aid and Assistance For Fire, Medical, Hazardous Material, CBRNE, Mass Casualty Emergencies, Technical Rescue And Operations Support (the "Agreement") is made and entered into this 24th day of January, 2018 ("Effective Date"), by and between the City of Yuma, an Arizona municipal corporation ("Yuma") and the City of San Luis, Arizona, an Arizona municipal corporation ("San Luis"). Yuma and San Luis may be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Parties maintain equipment and personnel for the suppression of fires, the provision of emergency medical care, the stabilization and containment of other emergencies within its own jurisdiction and area; and,

WHEREAS, the Parties have had a mutual aid agreement since November of 1993, to provide the highest level of services in conjunction with the most effective use of local fire department resources working collaboratively through intergovernmental cooperation; and,

WHEREAS, the Parties have rendered mutual aid to one another in the past, and anticipate a continuing demand for such mutual aid and cooperation in the use of their personnel and equipment in the future, for the safety, health and welfare of the people of their jurisdictions during a time of emergency; and,

WHEREAS, the Parties desire to augment the fire protection, emergency medical, hazardous material, Chemical, Biological, Radiological, Nuclear, and High Yield Explosive ("CBRNE"), mass casualty response, and technical rescue capabilities available in their various establishments, districts, agencies, and municipalities in the events of emergencies of a magnitude that has developed or appears probable to develop beyond the control of a single Party, which therefore requires the combined forces of the Parties; and,

WHEREAS, the Parties desire to work together regarding the ongoing implementation and use of the Opticom infrared ("IR") traffic preemption system (the "Opticom System"), which provides line-of-sight emergency vehicle preemption of traffic signals and increases the safety of authorized fire and medical emergency vehicles and the traveling public; and,

WHEREAS, the jurisdictional boundaries of the Parties are located such that mutual assistance in a fire or other emergency is feasible; and,

WHEREAS, the Parties desire to render assistance to one another in accordance with the terms of this Agreement.

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

Parties agree as follows:

AGREEMENT

1. **Purpose.** The purpose of this Agreement is to improve the provisions of fire protection and emergency medical services within the respective jurisdictions of the Parties by facilitating mutual aid and assistance.

2. **Definitions.**

2.1. ***“Incident Commander”*** means the individual designated by the Requesting Agency charged with overall management and command of an emergency incident pursuant to the National Incident Management System.

2.2. ***“Mutual Aid”*** means the provision of such apparatus, personnel, and equipment as reasonably necessary and available to assist a Requesting Agency in matters related to the services as needed by a Requesting Agency.

2.3. ***“Requesting Agency”*** means the Party who makes a request for Mutual Aid from the other Party pursuant to the terms and conditions of this Agreement.

2.4. ***“Responding Agency”*** means the Party who agrees to provide Mutual Aid to the other Party pursuant to the terms and conditions of this Agreement.

3. **Request For Assistance.** If confronted with an emergency situation at which the Requesting Agency has need for apparatus, equipment or personnel in excess of that available to the Requesting Agency, the commanding officer of the Requesting Agency or the officer in charge of a fire unit or an emergency medical service unit of the Requesting Agency at the scene of the emergency of either Party is authorized to request assistance from the other Party as follows:

3.1. **Fire or Other Emergencies:** The Parties will respond to structural fires or other emergencies, which may include, but are not limited to, weather related, earthquake related or any other type of emergency condition, within the Parties’ respective jurisdictional limits.

3.2. **Medical Emergencies:** The Parties will respond to emergency medical incidents within the Parties’ respective jurisdictional limits.

3.3. **Hazardous Material Emergencies/CBRNE:**

3.3.1. The Parties will assist in the emergency stabilization, containment, and identification of chemicals and/or substances involved in a spill, release, or leak that pose a serious risk to public health or safety consistent with their level of training and capabilities.

3.3.2. Continuing cleanup action beyond the scope of the emergency response

shall remain the responsibility of the Requesting Agency.

3.4. Technical Rescue: The Parties will respond to technical rescue incidents within the Parties' respective jurisdictional limits. Technical rescues include, but are not limited to, swift water, high angle, trench, confined space, palm tree rescue and collapse rescue.

3.5. Extraordinary Emergency Events:

3.5.1. It is recognized that the Parties to this Agreement may maintain agreements with other emergency response agencies and that both agencies may not hold agreements with the same agencies. If a Party to this Agreement responds to an emergency upon the request of another agency in which both Parties do not have formal agreements, the Party bound by an agreement can request assistance from the other Party for purpose of augmenting its emergency resources needed provide protection within its jurisdiction.

3.5.2. The Requesting Agency must ensure that the jurisdiction with responsibility for the emergency has established an incident command with a minimum of an incident commander. The incident commander will maintain or may delegate the duties of safety officer and accountability officer. If the department with responsible jurisdiction does not meet the minimum incident command requirement it is incumbent on the Requesting Agency to establish an incident command for the purpose of organizing and providing safety functions for the Responding Agency.

3.6. Fire Investigation: The Parties shall maintain trained fire investigation staffs and both Parties agree to assist each other with investigations when requested.

3.7 Availability of Resources: The Parties obligations under this Section 3 are subject to the availability of resources and personnel. Neither Party is required to provide Mutual Aid if the Party's resources personnel are unavailable or the other Party does not request Mutual Aid.

4. Mutual Aid Response To Request.

4.1. Upon request, the commanding officer of the Responding Agency receiving the request (or his or her designee), shall immediately take the following action:

4.1.1. Immediately determine if the Responding Agency has apparatus, equipment, and personnel available to respond to the Requesting Agency.

4.1.2. Determine what apparatus, equipment and personnel should be dispatched.

4.1.3. Determine the mission to be assigned in accordance with the operating plans and procedures established by the Parties to this Agreement.

4.1.4. In the event the needed apparatus, equipment, and personnel are available, forthwith dispatch such apparatus, equipment, and personnel as, in the judgment of the senior officer receiving the request for Mutual Aid, should be sent, with proper operating instructions.

4.1.5. In the event the needed apparatus, equipment, or personnel is not available, the officer shall immediately advise the Requesting Agency of such fact.

4.1.6. The Parties recognize that time is critical during an emergency and diligent efforts will be made to respond to a request for Mutual Aid as rapidly as possible, including any notification(s) that requested resources are not available.

4.2. The rendering of Mutual Aid under the terms of this Agreement shall not be mandatory and is contingent on the number of personnel and equipment available to the Responding Agency, the type and scope of the emergency, and the Responding Agency's prior obligations at the time of a request. The Responding Agency should immediately inform the Requesting Agency if, for any reason, that assistance cannot be rendered.

4.3. The Requesting Agency shall ensure appropriate fire fighter safety and rehabilitation services, including, but not limited to, appropriate medical care, food, water, fuel and other logistical support as necessary, are provided to all personnel, including the personnel of the Responding Agency, involved in the emergency response.

4.4. The Responding Agency shall report to the incident commander of the Requesting Agency to receive orders and direction from such official, provided that the Responding Agency's apparatus, equipment and personnel shall be under the immediate supervision of the officer in charge of the Responding Agency's apparatus, equipment, and personnel.

4.5. Each Party shall ensure that its personnel are properly equipped with all required personal protective equipment. Each Party shall retain ownership of any equipment it brings in performance of this Agreement and shall retain ultimate control of its personnel.

4.6. To ensure communications during emergency operations between fire departments belonging to a Party, interoperable radio frequencies for communications during Mutual Aid responses shall be made available.

4.7. Staff and Line Officers from each Party shall be trained in the Incident Command System ("ICS"), which shall be utilized for all Mutual Aid requests and responses.

4.8. The Responding Agency will be released by the Requesting Agency when the services of the Responding Agency are no longer required or in the event an emergency should occur in the Responding Agency's jurisdiction.

5. Traffic Signal Preemption.

5.1. Each Party owns and operates an Opticom System or other type of traffic signal preemption system within its jurisdiction, and agree to allow the other Party access to and use of its Opticom System for fire and medical emergency vehicles use only.

5.2. The use of Yuma's Opticom System shall be governed by and is subject to Yuma's Department Guideline Emergency Vehicle Signal Preemption System Use ("**Signal Preemption Policy**"), a copy of which is attached hereto as Exhibit "A" and incorporated herein.

5.3. Each Party shall remain responsible for the purchase, installation, maintenance and operation of the Opticom System and its components within the Party's jurisdiction, and nothing in this Agreement shall require either Party to operate or continue the use of the Opticom System.

5.4. Each Party shall provide to the other Party a list of intersections within that Party's jurisdiction on which an Opticom System receiver has been installed.

5.5. Use of the Opticom System DOES NOT GUARANTEE or GRANT the right-of-way to the emergency vehicle. In addition to the indemnity obligations set forth in Section 14 of this Agreement, each Party ("Indemnitor") shall indemnify, defend, and hold harmless the other Party and its agents, employees, officers, and directors (collectively "Indemnitee") from and against all claims, demands, suits, judgments, and costs that arise from the Indemnitor's use of the Indemnitee's Opticom System.

6. Equipment Compatibility. The Parties shall meet at least annually to validate equipment compatibility and ensure interoperability for first responders.

7. Unified Command Structure/Operating Procedures.

7.1. The Parties shall meet annually and establish a unified command structure and draft standard operating procedures/plans for the following: Incident Command, Communications, Fire Ground Operations, Hazardous Material Operation, CBRNE events, Emergency Medical Casualty Responses and Technical Rescues.

7.2. The technical heads of the fire departments and other divisions, units, or shops of the Parties are authorized and directed to meet and draft any detailed plans and procedures of operation necessary to effectively implement this Agreement.

8. Cooperation/Training. The Parties are encouraged to exchange personnel for the purpose of training and learning each other's operations.

8.1. The chief officers and personnel of the fire department of the Parties are invited and encouraged, on a reciprocal basis, to frequently visit each other's facilities for guided familiarization tours consistent with local security requirements and, as feasible, to jointly conduct pre-fire planning inspections and drills.

8.2. The Parties are encouraged to develop and participate in joint training exercises during the year. The Parties may use training facilities and training equipment under the control of either Party as long as said use does not interfere with the jurisdiction controlling the facility and or equipment and subject to the policies and regulations established for such training facilities. The use of the Yuma Public Safety Training Facility ("YPSTF") requires a separate written agreement governing the use and costs associated with the YPSTF. The YPSTF use agreement is attached hereto as Exhibit "B" and incorporated herein.

9. **Emergency Equipment Loans.** The Parties maintain their own fleet of emergency response vehicles and equipment. When mechanical or other break downs occur, which places a Party in a situation where an adequate number of vehicles or equipment is not available to maintain their mission capability, the Parties shall be allowed to borrow/loan vehicles and equipment from each other when said vehicles/equipment is available. Unless otherwise supplemented by a separate Mutual Equipment Sharing Agreement, the borrowing/loaning of equipment shall be subject to the following requirements:

9.1. The Parties shall memorialize the sharing of equipment in writing, which shall state a description of the loaned equipment and its stated value, the term of the loan, noting the commencement and expiration dates, and a statement acknowledging that the loan agreement is being made subject to the terms of this Agreement.

9.2. The Requesting Agency (a.k.a. the "**Borrowing Agency**") shall use the loaned equipment in a careful and proper manner. The Parties shall comply with and conform to all national, state, municipal, and local laws, ordinances and regulations applicable to its performance under this Agreement. Without limiting the foregoing, the Borrowing Agency shall only allow persons properly trained, qualified, and, as applicable, licensed and approved, to operate the loaned equipment.

9.3. The loaned equipment will not be operated by any person under the influence of alcohol, illegal or legal substances or drugs, illness or any other intoxicants or condition which could adversely impair the driver's judgment or ability to safely operate the loaned equipment. No person will be allowed to operate the loaned equipment if he or she has consumed any alcohol within the prior 12 hours.

9.4. The Borrowing Agency will assure that, prior to allowing any person to operate the loaned equipment, each such person, within the immediate past 24 months, (a) has not been convicted of driving while intoxicated or under the influence (DUI/DWI); (b) has not had more than one at-fault accident; (c) has not been convicted of driving recklessly, hit and run, road rage or vehicular homicide; or (d) has not had more than two moving violations or more than two points (if applicable) on his or her driver's license.

9.5. The loaned equipment will not be taken outside of the United States or outside the jurisdictional boundaries of Borrowing Agency without prior written permission from the Responding Agency (a.k.a. the "Lending Agency").

9.6. The loaned equipment will not be used to transport people or property for hire, be subleased, or used for any unauthorized or illegal purpose. This restriction does not apply to the transportation of patients in any loaned ambulance. The Borrowing Agency will not allow any unauthorized or untrained person to occupy or operate the loaned equipment. Each operator of equipment loaned from Yuma must receive Yuma Fire Department approved training in the proper operation of, and safety issues concerning the loaned equipment prior to being permitted to operate the loaned equipment.

9.7. The Borrowing Agency, at its own cost and expense, shall keep and return the loaned equipment clean, in good repair, condition and working order, will ensure that all necessary routine maintenance is performed, and shall furnish any and all parts, fuels, fluids, mechanisms and devices required to keep and return the loaned equipment in good mechanical working order.

9.8. The Borrowing Agency will maintain an accurate and complete log of all loaned equipment use (identifying the drivers, corresponding mileage, reported accidents and/or material damage). The Borrowing Agency will retain such log for one year after return of the loaned equipment. The Lending Agency may at any time up to one year after return of the loaned equipment review all records relating to the Borrowing Agency's use of the equipment. In addition, the Borrowing Agency will track and report all fuel usage (including loaned equipment mileage), all maintenance performed (indicating the location at which maintenance was performed), all safety checks performed and the results thereof, loaned equipment usage, and provide such additional reports as the Lending Agency may from time to time request.

9.9. The Borrowing Agency will not allow, and will promptly cause to have removed at its own expense, any lien or encumbrance on the loaned equipment.

9.10. The Borrowing Agency hereby assumes and shall bear the entire risk of loss and damage to the loaned equipment from any and every cause whatsoever, except for loss or damages attributable to the sole negligence or willful misconduct (acts or omissions) of the Lending Agency. No loss or damage to the loaned equipment or any part thereof shall impair any obligation of the Borrowing Agency under this Agreement. In the event of loss or damage of any kind whatever to the equipment, within 30 days the Borrowing Agency shall, at the Lending Agency's option: (a) place the same in good repair, condition and working order; (b) replace the same with like equipment in good repair, condition and working order; or (c) pay to lending agency the stated valuation of the loaned equipment.

9.11. In the event of an accident, damage, or theft involving the loaned equipment, the Borrowing Agency will immediately notify the appropriate governmental authority (e.g. police department to file an official police report), complete an equipment accident

report and contact the lending agency's contact named in this Agreement. The Borrowing Agency shall have the loaned equipment repaired at the sole cost of the Borrowing Agency and/or its insurer(s), but no repair work may be performed on the Loaned Equipment without the Lending Agency's prior written authorization. Repair of damage to the loaned equipment will remain the responsibility of the Borrowing Agency. The Borrowing Agency and/or its insurers must promptly make available to the Lending Agency all documents and other information relating to the accident, damage or theft.

9.12. At all times during which the loaned equipment is used by the Borrowing Agency, the Borrowing Agency shall continuously maintain and pay for all risk insurance coverage against loss of and damage to the loaned equipment for not less than the stated value of the loaned equipment. The Lending Agency shall be listed as "loss Payee" on the Borrowing Agency's auto physical damage insurance. During the period in which the loaned equipment is loaned to the Borrowing Agency, the Borrowing Agency shall continuously maintain and pay for automobile liability insurance coverage and other general liability insurance coverage as provided for herein.

9.13. In addition to the indemnity obligations set forth in Section 14 of this Agreement, the Borrowing Agency will defend, indemnify, and hold harmless the Lending Agency, its officers, employees, and agents from and against all claims, liabilities, losses, damages, demands, costs, expenses, penalties, liens, judgments, settlements, other legal proceedings, and any defense costs, including without limitation, reasonable attorneys or other professional fees, in connection with, allegedly or actually resulting from, caused by, or arising out of damage to property (including that to the loaned equipment), or bodily injury including death to any person resulting from:

9.13.1. any act, including but not limited to, criminal, willful, intentional, negligent or other act, error or omission of the Borrowing Agency or the Borrowing Agency's employees, officers, directors, agents, contractors or any drivers of the loaned equipment;

9.13.2. the possession, care, use, maintenance, operation or failure to operate the loaned equipment that is provided to the Borrowing Agency under this Agreement;

9.13.3. performance or failure to perform services or obligations as provided within this Agreement;

9.13.4. the failure of the Borrowing Agency to comply with all applicable federal or state laws, rules and regulations in performing its duties or discharging its responsibilities under this Agreement; or

9.13.5. breach of this Agreement by the Borrowing Agency, including misrepresentation.

Notwithstanding the above, the Borrowing Agency will not be obligated to indemnify, hold harmless or defend the Lending Agency for claims, liabilities, losses, damages, demands, costs, expenses, penalties, liens, judgments, settlements, other legal proceedings, and any defense costs, including, without limitation, reasonable attorneys or other professional fees, that result from or arise out of product defects in the design or manufacture of the loaned equipment.

9.14. The Borrowing Agency will be responsible for payment of any fines, penalties, citations, parking tickets, towing charges, impoundment charges or taxes incurred while the loaned equipment is in the custody, care or use of the Borrowing Agency.

9.15. Prior to receiving loaned equipment, the Borrowing Agency must present to and obtain approval from the Lending Agency of the Borrowing Agency's intended use plan for each type of loaned equipment; certificates of insurance, and all required or necessary endorsements.

9.16. The Borrowing Agency's obligations under Section 9 of this Agreement will survive termination, expiration, cancellation or non-renewal of this Agreement.

10. **Term of Agreement.** This Agreement shall become effective upon the Effective Date and continue in full force and effect for a period of five (5) years. This Agreement will be reviewed by the Parties ninety (90) days prior to its expiration, unless cancelled or amended by the Parties, this Agreement will automatically renew for an additional five (5) year period. This Agreement may be cancelled by either Party, by giving thirty (30) days written notice of said cancellation to other Party.

11. **Local Obligations.** It is mutually understood and agreed that this Agreement does not relieve any of the Parties from the necessary obligation of providing adequate fire protection and emergency services within its own jurisdiction. Each Party agrees that it shall use reasonable diligence in keeping its firefighting equipment in its possession up to adequate standards.

12. **Employees/Volunteers.**

12.1. In connection with this Agreement, no employee or volunteer of a Responding Agency shall be deemed to be a loaned servant, employee, agent or volunteer of the Requesting Agency or any other Party. No Party shall assume any liability for the direct payment of any salary, wage, compensation, stipend or other payment to any of the other Party's personnel performing services hereunder or for any other liability not expressly assumed herein.

12.2. No agent, employee, or other representative of the Parties shall be deemed an agent, employee, or other representative of the other Parties for any reason.

13. **Compensation/Expenses/Liability.**

13.1. Each Party agrees that it will not seek compensation for services rendered under

this Agreement from the other Party; provided, however, that the Party requesting assistance shall attempt to obtain financial assistance from federal and state agencies where financial assistance is available to reimburse the assisting Party for losses or damages incurred in supplying Mutual Aid under this Agreement. Nothing in this Agreement shall prohibit any Party from seeking civil damages from any individual or entity which may have been responsible for the emergency conditions for which aid was requested.

13.2. Except as expressly provided herein, the Requesting Agency shall not be obligated to pay the Responding Agency for any damage to or destruction of any apparatus or equipment used in Mutual Aid. This provision shall not apply to the extent this provision would void applicable casualty insurance available to provide payment for the damage or loss of such apparatus or equipment. It is the intent of the Parties that the risk of loss to apparatus or equipment will be addressed by each Party through the purchase of casualty insurance as opposed to seeking reimbursement from other Party.

13.3. Materials used by the Responding Agency in the support of hazardous materials emergency responses shall be replaced in kind by the Requesting Agency.

13.4. Direct expenses and losses, which are additional firefighting costs over and above normal operating costs, incurred while fighting a fire on property which is under the jurisdiction of the United States, may be reimbursed in accordance with the Federal Fire Prevention and Control Act of 1974 (Public Law No. 93-498, 15 U.S.C. 2201 et. seq.) and its implementing regulation (44 C.F.R. 151).

14. Indemnification/Insurance.

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

14.3. Each Party shall secure and maintain in force during the life of this Agreement employer's liability insurance, commercial general liability, public liability and property damage and commercial automobile liability insurance, including contractual liability, with limits of not less than \$5,000,000.00 combined single limit per occurrence, together with statutory worker's compensation insurance, with limits not

less than \$1,000,000 each accident/\$1,000,000 disease policy limit/\$1,000,000 disease each employee. All of the Party's policies required under this Agreement, except workers compensation, shall name and endorse the other Party as an additional insured, and all of the Party's policies required under this Agreement shall include an endorsed waiver of subrogation in favor of the other Party. The policies provided hereunder shall: (i) contain a provision whereby the insurance company agrees to give the other Party thirty (30) days' written notice before the insurance is cancelled; (ii) be written on an occurrence basis; (iii) provide an endorsement indicating the coverage is primary, without right of contribution from any insurance of the other Party; and (iv) be maintained with companies either rated no less than A- in the most recent edition of "Best's Insurance Guide" or otherwise reasonably acceptable to the other Party. Failure to provide required coverage and failure to comply with the terms and conditions of this Agreement shall not waive the contractual obligations herein. The amount of insurance required in this Section does not operate to limit the liability or indemnification responsibilities of the Parties as set forth in this Agreement.

Each Party shall retain the option of discharging this obligation by means of funded self-insurance. Should coverage be provided on a claims-made basis, the reporting period for claims shall be written so that it can be extended for three years after this Agreement is terminated for any reason.

15. **Funding**. This Agreement shall be subject to available funding for each Party, and nothing in this Agreement shall bind any Party to expenditures in excess of funds appropriated and allotted for the purposes outlined in this Agreement.

16. **Administration**. Unless the Parties otherwise agree, there shall be no lead agency responsible for the administration of this Agreement. This Agreement shall be administered jointly by the chief officers of the respective Parties.

17. **Property Ownership**. This Agreement does not provide for jointly owned property. All property presently owned or hereafter acquired by any Party to enable it to perform the services required under this Agreement, shall remain the property of that Party.

18. **Assignment**. Neither Party may assign any of its duties, rights or responsibilities under this Agreement without the express written consent of the other Party.

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

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

authorities of the Parties.

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

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

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

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

SAN LUIS: City of San Luis
Attn: City Manager
P.O. Box 1170
San Luis, Arizona 85349

If either Party changes address, they must give written notice to the other Party. Notice of change of address is deemed effective five (5) days after mailing by the Party changing its address.

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

25. **Authority.**

25.1. The Yuma City Council enters into this agreement pursuant to its power to adopt intergovernmental agreements as granted in Article III, Section 13 of the City of Yuma Charter and A.R.S. § 11-952.

25.2. The San Luis City Council enters into this Agreement pursuant to its power to adopt intergovernmental agreements and as granted in San Luis City Code Section 33.08 and A.R.S. § 11-952.

27. **Anti-Deficiency Act.** Nothing herein shall be construed as requiring the Parties to act in violation of any applicable state, federal, or local statute, rule, or regulation including, but not limited to, the Anti-Deficiency Act.

28. **Jurisdiction/Venue/Applicable Law.** The Parties must institute and maintain any legal actions or other judicial proceedings arising from this Agreement in an Arizona court of competent jurisdiction in Yuma County, Arizona. This Agreement shall be governed by and

construed in accordance with the laws of the State of Arizona.

29. Workers Compensation. The employees, agents, officials or representatives of the Parties will not for any purpose be considered employees, agents, officials or representatives of the other. Each Party assumes full responsibility for the actions of its personnel while performing services under this Agreement, and shall be solely responsible for their supervision, daily direction and control, and payment of salary (including withholding income taxes and social security).

Solely for the purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws, an employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue.

Each Party shall post a notice pursuant to the provisions of A.R.S. § 23-1022 in substantially the following form:

"All employees are hereby further notified that they may be required to work under the jurisdiction or control or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purpose of worker's compensation."

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

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

32. Independent Contractor/No Partnership. It is clearly understood that each Party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. Nothing in this Agreement constitutes a partnership or joint venture between the Parties and neither Party is the principal or agent of the other.

33. E-Verify. To the extent applicable under A.R.S. § 41-4401, the Parties warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). Failure by any Party to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement. To the extent authorized under A.R.S. § 44-4401, each Party shall have the right to inspect the papers of each of the others or any employee of either who performs work hereunder for the purpose of ensuring that the other Party is in compliance with the warranty set forth in this provision.

34. **Compliance with All Laws.** Each Party shall comply with all applicable federal, state, and local laws, rules, regulations, and Executive Orders. The laws and regulations of the State of Arizona will govern the rights of the Parties, the performance of the Agreement and any disputes hereunder. Any changes in the governing laws, rules and regulations during the terms of this Agreement will apply but do not require an amendment of this Agreement.

35. **Boycott of Israel.** To the extent applicable, the Parties certify that they are not currently engaged in, and agree for the duration of this Agreement that they will not engage in a "boycott," as that term is defined in A.R.S. § 35-393, of Israel.

36. **Provisions Required by Law.** Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.

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

CITY OF YUMA

Gregory K. Wilkinson
City Administrator

ATTEST:

Lynda L. Bushong
City Clerk

APPROVED AS TO FORM:

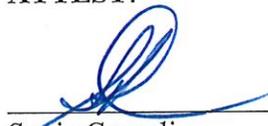
Richard W. Files
City Attorney

CITY OF SAN LUIS



Tadeo A. De La Hoya
City Manager

ATTEST:



Sonia Cornelio
City Clerk

APPROVED AS TO FORM:



Kay Marion Macuil
City Attorney

Exhibit "A"

**CITY OF YUMA
Fire Department**

Guidelines

Subject: Opticom Use during Emergency Vehicle Response	Effective Date: 10/7/2017	D.G. # 301.02
Applies To: All Personnel		Page 1 of 1

PURPOSE:

The following is intended as a directional tool to insure appropriate use of the Opticom by Apparatus Operators and Company Officers.

GENERAL:

The Opticom is installed on all department vehicles capable of an "Emergency" response. Emergency response is defined as responding with all visual, audible and opticom devices in operating mode. The Opticom is an electronic device that transmits an infrared signal to receiving devices installed on directional traffic lights installed at high traffic intersections. The device will capture the signal of an approaching apparatus responding in emergency traffic mode. The opticom receivers will change the directional lights at the intersection, stopping traffic in all directions except for direction of traveling emergency apparatus. The opticom will automatically activate when the Emergency Master switch is activated for visual warning devices on apparatus.

Use of Opticom:

1. The Opticom shall be used for emergency response only.

(The Company Officer has access to to a manual Opticom switch that may be used with discretion when responding to a Priority 03 incident, when excessively delayed by traffic, and emergency response is not warranted.)

Abuse of the Opticom system may lead to disciplinary action.

2. Upon approaching an intersection, if the signal remains red, the vehicle must come to a complete stop, and then use extreme caution when entering the intersection. A red light is due to one of the following:

- a. The signal is not equipped with an Opticom receiver
- b. Another responding apparatus has pre-empted or captured the signal
- c. The Opticom has failed.
- d. The signal is operating in "Pedestrian" mode which has priority.
- e. Insufficient time or distance for the Opticom to respond.

3. Always watch for pedestrians when traversing intersections or making right or left turn movements. Some controllers only allow a short green and yellow light for pedestrians which may not be enough time for them to clear the intersection.

Exhibit "B"

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF YUMA AND THE CITY OF SAN LUIS
FOR USE OF THE CITY OF YUMA PUBLIC SAFETY TRAINING FACILITY**

This Intergovernmental Agreement ("Agreement") is entered into on _____, 20__ ("Effective Date"), between the City of San Luis ("User Agency") and the City of Yuma, through the Yuma Fire Department (the "City" or "YFD"). The User Agency and YFD are may be referred to herein individually as the "Party" and collectively as the "Parties".

RECITALS

WHEREAS, the City owns a Public Safety Training Facility (the "PSTF") that is available to other governmental agencies for training of personnel and related activities; and

WHEREAS, User Agency wants to use the City's PSTF for training its personnel and related activities.

NOW THEREFORE, in consideration of the mutual promises set forth herein, the Parties hereby agree to the following terms and conditions:

- I. USE OF THE PSTF.** User Agency may use the PSTF for training of sworn peace officers, fire fighters, civilian personnel, and volunteers, or such other uses as deemed appropriate by mutual written agreement of the Parties. User Agency shall schedule its use of the PSTF at least thirty (30) days before the planned use in the manner and in the form prescribed by the City.
- II. AUTHORITY.** The Parties are authorized to enter into this Agreement pursuant to Arizona Revised Statutes ("A.R.S.") § 11-951, et. seq, Article III, Section 13 of the Charter of the City of Yuma, and A.R.S. § 13-3872.
- III. TERM; TERMINATION.** This Agreement shall be for a term of five (5) years starting on the Effective Date ("Initial Term"). This Agreement may be renewed for one (1) additional five (5) year period upon written request by the User Agency to the City no less than sixty (60) days prior to the date of expiration of the Initial Term. The decision to renew shall be in the sole discretion of the City.

This Agreement may be terminated by either Party, with or without cause, upon thirty (30) days notice to the other Party. Within ten (10) days following termination or non-renewal of this Agreement, the User Agency shall return any and all property of City unless otherwise agreed in writing by the Parties.

- IV. USE FEES AND OTHER CHARGES.** The User Agency agrees to pay fees to the City for the use of the PSTF pursuant to this Agreement in such amounts as may from time to time be established by the City and incorporated into a written schedule of use fees. The User Agency also agrees to pay for any and all consumable product replacement, repair and/or replacement of property and/or loaned equipment at the PSTF that is or may be damaged, destroyed or rendered inoperable, in part or in whole, as a result of the User Agency's use of the PSTF pursuant to this Agreement. Use fees

and other charges as provided herein shall be due and payable within thirty (30) days' after receipt of the City's written invoice itemizing said fees and charges.

V. **EQUIPMENT REQUIREMENTS.** Prior to use of the PSTF pursuant to this Agreement, the City shall provide to the User Agency a written list of supplies and equipment that specifies the equipment and materials that will be necessary for the User Agency's personnel to properly use the PSTF. The User Agency shall, at its sole cost, obtain all listed equipment and supplies prior to its use of the PSTF.

VI. **SUPERVISION AND CONTROL.** The City may assign a monitor to ensure User Agency uses the PSTF appropriately. User Agency shall supply all instructors or support personnel. The City reserves the right to immediately terminate User Agency's any of the PSTF if, in the City's sole discretion, it is determined that such use has resulted or may result in damage to the PSTF or if such use otherwise presents a threat to the safety of persons or property.

VII. **WORKERS' COMPENSATION/POSTING OF NOTICES.** An employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for the purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits, which may accrue.

Pursuant to A.R.S. § 23-1011, each Party shall post a notice in substantially the following form:

"All employees are hereby further notified that they may be required to work under jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona, to be employees of both public agencies for the purposes of workers' compensation."

VIII. **NON-DISCRIMINATION.** The parties shall comply with the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, and State Executive Order No. 2009-09 which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. The Parties shall comply with the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap, and the Americans with Disabilities Act.

IX. **INDEMNIFICATION**

- a. **Assumption of Risk; Indemnity.** User Agency agrees to conduct its activities on the PSTF in a careful and safe manner. As a material part of the consideration to the City, User Agency agrees to assume all risk of damage to and loss or theft of User Agency's property or the property of persons attending or participating in User Agency's activities while such property is stored or used on the PSTF, damage to the PSTF, and injury or death to persons arising from or related to User Agency's use or occupancy of the PSTF in, upon, or about the PSTF from any cause, and User Agency waives all claims against the City.

To the fullest extent permitted by law, User Agency shall indemnify, hold harmless and defend the City and its officers, council members, managers, agents and employees (collectively referred to as the "City") for, from, and against all claims, losses, suits, liabilities, fines, judgments, costs, damages and expenses (including reasonable attorney's fees) related to, arising out or alleged to arise out of, or in connection with: (i) User Agency's use or occupancy of the PSTF, or any activity or thing done, performed or suffered by User Agency, its agents, its contractors, its employees, volunteers, licensees, invitees, or persons attending or participating in User Agency's activities in or about the PSTF by reason of any act, direction, omission or negligence of User Agency, any of its agents, its contractors, its employees, volunteers, licensees, invitees, or persons attending or participating in User Agency's activities; (ii) any loss, injury, death or damage to persons or the PSTF on or about the PSTF by reason of any act, direction, omission or negligence of User Agency, or any of its agents, its contractors, its employees, volunteers, licensees, invitees, or persons attending or participating in User Agency's activities; or (iii) any breach or default in the performance of any obligation on User Agency's part to be performed under the terms of this Agreement.

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

- b. Limitation on Negligence of the City; PSTF Accepted "As Is". User Agency acknowledges and agrees that the City has given User Agency full prior access to all portions of the PSTF for inspection of the PSTF to determine its suitability for the intended use, including the right to inspection of the PSTF prior to any scheduled use. User Agency acknowledges that User Agency's personnel who conducted such inspections have all the relevant structural, materials, electrical and other expertise necessary to make such a determination, and that any failure of User Agency's said personnel to locate any such defect whatsoever which might lead to any of the losses, damage or liability indemnified against under paragraph (a) above, or User Agencies' failure to inspect, will constitute negligence on the part of the User Agency and its inspectors, and will not be considered negligence on the part of the City. The City is providing User Agency with the use of the PSTF solely on an "As Is" basis, and User Agency agrees not to conduct any activities on any portion of the PSTF which User Agency and its qualified employees have not fully inspected and found to be suitable and safe for the intended use at the time such use is undertaken. User Agency hereby represents and warrants to the City that the foregoing provisions are not in violation of any limitation on any certificate insurance which User Agency has provided to the City hereunder, and that nothing in this Agreement will cause any such insurance or certificate of insurance to be invalid.

X. INSURANCE.

- a. General.
 1. No Representation of Coverage Adequacy. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve User Agency from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of

- this Agreement.
2. Additional Insured. All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.
 3. Coverage Term. All insurance required herein shall be maintained in full force and effect until this Agreement is terminated.
 4. Primary Insurance. User Agency's insurance shall be endorsed to indicate its primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured. Such coverage shall be at least as broad as ISO CG 20 01 04 13.
 5. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
 6. Waiver. All policies, except for Professional Liability, including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of User Agency. User Agency shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.
 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. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. User Agency shall be solely responsible for any such deductible or self-insured retention amount.
 8. Evidence of Insurance. Prior to using the PSTF under this Agreement, User Agency will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by User Agency's insurance 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 Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, User Agency shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the title of this Agreement. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

- A. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:
 - i. Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.
 - ii. Auto Liability – Under ISO Form CA 20 48 or equivalent.
 - iii. Excess Liability – Follow Form to underlying insurance.
- B. User Agency’s insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
- C. All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by User Agency under this Agreement.

b. Required Insurance Coverage.

1. Commercial General Liability. User Agency shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$3,000,000 for each occurrence, \$3,000,000 Products and Completed Operations Annual Aggregate and a \$5,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations; personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or 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 Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which 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.
2. Vehicle Liability. If User Agency drives any vehicles as part of its use of the PSTF, User Agency shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on User Agency’s owned, hired and non-owned vehicles assigned to or used in the performance of the User Agency’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be endorsed as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. 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.
3. Workers’ Compensation Insurance. User Agency shall maintain Workers’

Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over User Agency's employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$1,000,000 for each accident, \$1,000,000 disease for each employee and \$1,000,000 disease policy limit.

- c. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.

XI. WAIVER. No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of either party to insist upon strict performance of any of the provisions of this Agreement, or to exercise any of the rights or remedies provided by this Agreement, or any delay in the exercise of any rights or remedies, shall not release either Agreement from any of the responsibilities or obligations imposed by law or by this Agreement, and shall not be deemed a waiver of any right of either party to insist upon strict performance of this Agreement.

XII. INSTITUTIONAL REVIEW PROCESS. Prior to the use of the PSTF, User Agency shall deliver to the City written descriptions of the User Agency's training program and specific details as to the use of the PSTF and specific activities, including without limitation any special devices used in the training experience. User Agency agrees that the City may request that any individual such activities not be undertaken, in the City's discretion. The foregoing notwithstanding, the City's failure to object to any such activities so disclosed shall not constitute negligence on the part of the City under any circumstances, and User Agency shall remain fully responsible for the safe conduct of all such activities. User Agency hereby acknowledges and agrees that no explosive charges will be detonated without the prior written consent of the City and that no live firearms will be discharged in the course of any of the use of the PSTF.

XIII. ENVIRONMENTAL REGULATIONS. User Agency will not permit any Hazardous Substance to be used, stored, generated or disposed of on, in or about, or transported to or from, the PSTF, by User Agency, User Agency's officers, employees, contractors, invitees, agents, or persons attending or participating in User Agency's activities without first obtaining the City's written consent, which the City may give or withhold in its sole discretion, or revoke at any time. If the City consents, all Hazardous Substances must be handled at User Agency's sole costs and expense, in compliance with all applicable state, federal or local governmental requirements, using all necessary and appropriate precautions. If User Agency breaches these obligations or if the presence of Hazardous Substances on, in or about the PSTF caused or permitted by User Agency results in contamination of any part of the PSTF, or if contamination of any part of the PSTF, or if contamination by Hazardous Substance otherwise occurs in a manner for which User Agency is legally liable, then User Agency will indemnify and hold harmless the City from and against any and all claims, actions, damages, fines, judgments, penalties, costs, liabilities, losses and expenses (including without limitation, any sums paid for settlement of claims, court costs, attorneys' fees, consultant and expert fees) arising during or after the expiration or termination of this Agreement as a result of any breach or contamination. Without limitation, if User Agency causes or permits the presence of any Hazardous Substance on, in or about the PSTF and this results in contamination

of any part of the PSTF, User Agency will promptly, at its sole cost and expense, take all necessary actions to return the PSTF and any adjacent facility to the condition existing prior to the presence of any Hazardous Substance; provided, however, User Agency shall first obtain the City's approval for any such remedial action. "Hazardous Waste" or a "Hazardous Substance" as used herein are defined terms pursuant to state, federal or local government law. "Hazardous Substance" includes but is not restricted to asbestos, polychlorobiphenyls and petroleum.

XIV. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter thereof. Any amendment or modification of this Agreement shall be made only by a written instrument executed by authorized representatives of the Parties.

XV. SEVERABILITY. The Parties agree that should any part of this Agreement be held to be invalid or void, the remainder of the Agreement shall remain in full force and effect and shall be binding upon the Parties.

XVI. GOVERNING LAW AND VENUE. This Agreement shall be governed by the laws of the State of Arizona, as to validity, interpretation and performance. Any and all suits for any and every breach of this Agreement, or other judicial proceeding for the enforcement or interpretation of this Agreement shall be instituted and maintained in Superior Court in Yuma County, Arizona. Any action to enforce any provision of this Agreement or to obtain any remedy with respect this Agreement shall be brought exclusively in the Superior Court, Yuma County, Arizona (or, as may be appropriate, 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.

XVII. CONFLICT OF INTEREST. This Agreement is subject to cancellation pursuant to A.R.S. §38-511, the pertinent provisions of which are incorporated herein.

XVIII. NOTICES. All notices, requests for payment, or other correspondence between the Parties regarding this Agreement shall be mailed or delivered to the respective Parties at the addresses set forth below or at such alternate addresses as may be specified in writing:

[USER AGENCY]
Attn: [INSERT TITLE]
[INSERT ADDRESS]

Fire Chief
City of Yuma Fire Department
One City Plaza
Yuma, AZ 85364

with a copy to

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

- XIX. ASSIGNMENT.** This contract is not assignable unless both parties mutually consent otherwise in writing. The requirements of this contract are binding upon the heirs, executors, administrators, successors and assigns of both Parties.
- XX. NO PARTNERSHIP.** Nothing in this Agreement constitutes a partnership or joint venture between the parties, and neither party is the principal or agent of the other.
- XXI. EMPLOYMENT ELIGIBILITY.** Each party warrants, and shall require its subcontractors to warrant, that it is in compliance with all federal immigration laws and regulations that relate to its employees and with A.R.S. §§ 41-4401 and 23-214 relating to verification of employment eligibility. A breach of this warranty shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of this Agreement. The parties retain the legal right to inspect the papers of any party or subcontractor employee who works on this Agreement to ensure that the other party or its subcontractors are complying with this warranty.
- XXII. DEFAULT.** If User Agency fails to comply with or observe any provision of this Agreement, in addition to any other remedy that may be available to the City, whether at law or in equity, the City may immediately terminate this Agreement and any and all rights of User Agency.
- XXIII. RIGHTS/OBLIGATIONS OF PARTIES ONLY.** The terms of this Agreement are intended only to define the respective rights and obligations of the Parties. This Agreement shall not create any rights or duties in favor of any potential third-party beneficiary or other person, agency or organization.
- XXIV. ATTORNEY'S FEES.** In the event any action, suit or proceeding is brought for failure to observe any of the terms, covenants, or provisions of this Agreement, the prevailing party shall be entitled to recover as part of such action or proceeding, all litigation, arbitration and collection expenses, including, but not limited to, witness fees, court costs, and reasonable attorney fees.
- XXV. PROVISIONS REQUIRED BY LAW.** Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, the Agreement will promptly be physically amended to make such insertion or correction.

[Signatures on the Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date first written above.

City of Yuma

[USER AGENCY]

Gregory K. Wilkinson
City Administrator

By: [INSERT NAME]
[INSERT TITLE]

Steve Irr,
Fire Chief

ATTEST:

Lynda L. Bushong
City Clerk

In accordance with the requirements of A.R.S. § 11-952(D), each of the undersigned attorneys acknowledge: (1) that they have reviewed the above Agreement on behalf of their respective clients; and, (2) that, as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

City of Yuma

[INSERT USER AGENCY TITLE] ¹

Richard W. Files, City Attorney

[INSERT NAME], [USER AGENCY] Attorney

¹ Agency counsel is not required to approve the form of this agreement. Per A.R.S. § 11-952(E), "A federal department or agency or public agency of another state that is a party to an agreement or contract made pursuant to this article is not required to submit the agreement or contract to the attorney for the department or agency unless required under federal law or the law of the other state."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date first written above.

City of Yuma

Gregory K. Wilkinson
City Administrator

Steve Irr,
Fire Chief

ATTEST:

Lynda L. Bushong
City Clerk

City of San Luis



Tadeo De La Hoya
City Manager



Hank Green,
Fire Chief

ATTEST:



Sonia Cornelio, CMC
City Clerk

In accordance with the requirements of A.R.S. § 11-952(D), each of the undersigned attorneys acknowledge: (1) that they have reviewed the above Agreement on behalf of their respective clients; and, (2) that, as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

City of Yuma

Richard W. Files, City Attorney

City of San Luis ¹



Kay Marion Macuil, City Attorney

¹ Agency counsel is not required to approve the form of this agreement. Per A.R.S. § 11-952(E), "A federal department or agency or public agency of another state that is a party to an agreement or contract made pursuant to this article is not required to submit the agreement or contract to the attorney for the department or agency unless required under federal law or the law of the other state."