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FILED
2016 MAY 24 AM 11:47
LYNN JACZ
CLERK OF SUPERIOR COURT
YUMA ARIZONA 85364

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA

CITY OF YUMA, ARIZONA, a municipal
corporation of the State of Arizona,

Case No. S1400CV201600142
Division IV

Plaintiff,

vs.

PMG PARTNERSHIP, L.L.C., an Arizona
limited liability company, THE FOOTHILLS
BANK, an Arizona corporation, YUMA
COUNTY; UNKNOWN CLAIMANTS, HEIRS
AND DEVISEES; IF DECEASED; JOHN DOE
1 10; JANE DOE 1-10; BLACK AND WHITE
CORPORATIONS 1 10; SUCCESSORS IN
INTEREST AND ASSIGNS OF BLACK AND
WHITE CORPORATIONS 1-10,

Defendants.

UNDER ADVISEMENT ORDER

**Re: City of Yuma's Application for
Immediate Possession**

(as of May 19, 2016)

On April 27, 2016 and May 10, 2016, the Court conducted an Order to Show Cause hearing in response to the Plaintiff City of Yuma's Application for Immediate Possession with respect to the real property and real property interests (temporary construction easements) sought in its Complaint. The matter having been under advisement, and the Court having now considered the evidence presented, the arguments of counsel, the parties' Bench Memoranda, post-hearing briefs and the parties' proposed findings of fact and conclusions of law, the Court herein enters its findings of fact and conclusions of law and its orders.

1 **FINDINGS OF FACT**

2 **I. Parties and Property at Issue.**

3 1. On March 7, 2016, Plaintiff City of Yuma (the "City") filed this action to
4 condemn real property owned by PMG Partnership, LLC ("PMG") located at the northeast
5 corner of the intersection of 16th Street and 4th Avenue in the city limits of Yuma.
6 [Complaint].

7 2. By its Complaint, the City is seeking to obtain fee title to the only remaining
8 parcels of property needed to allow the City to construct the 16th Street and 4th Avenue
9 Intersection Improvement Phase 1 project (the "Intersection Improvement Project" or
10 "Project"). [Complaint; and Plaintiff's Exhibit 4, Executive Summary, page i].

11 3. PMG owns Yuma County Assessor Parcel Nos. 665-27-042 ("PMG Parcel 1"),
12 665-27-044 ("PMG Parcel 2"), and 665-27-036 ("PMG Parcel 3") (collectively, the "PMG
13 Property"). [Complaint; Exhibit P-1].

14 4. The Foothills Bank is the beneficiary of a Deed of Trust dated January 25, 2011
15 encumbering the PMG Property to secure an indebtedness. [Complaint].

16 5. Pursuant to the express provisions of A.R.S. §12-1116(E, G and H), the City
17 seeks an order granting it immediate possession of certain portions of the PMG Property and
18 a determination of the probable value of and damages to the PMG Property taken for
19 immediate possession purposes only.

20 **II. The City Council's Authorization For The Takings and Legislative**
21 **Determinations of Necessity.**

22 6. Pursuant to City Council Ordinance No. O2015-011 ("Ordinance 1"), adopted
23 on March 4, 2015, Ordinance No. O2015-056, adopted on October 21, 2015 ("Ordinance 2")
24 and Ordinance No. O2015-059, adopted on November 18, 2015 ("Ordinance 3"), the City
25 Council of the City of Yuma determined that the City's acquisition of the therein-described
26

1 parcels of the PMG Property by eminent domain is necessary for the Intersection
2 Improvement Project. [Exhibits P-1, P-2, & P-3; testimony of Joshua Scott].

3 7. Ordinance 1 states that "the City has identified the acquisition of three parcels
4 of real property owned by [PMG], located in the proximity of the northeast corner of 16th
5 Street and 4th Avenue intersection (PMG Exchange Property), together with certain
6 temporary construction easements, as necessary for the 16th Street/4th Avenue intersection
7 public roadway, stormwater and utility improvements." [Exhibit P-1].

8 8. Ordinance 1 further ordains that "[i]t is deemed necessary and essential, as a
9 matter of public necessity and public welfare, that the PMG Exchange Property . . . be
10 acquired by the City . . . as the described PMG Exchange Property is required to extend and
11 improve public roadway, stormwater and utility infrastructure for the public interest of the
12 City and will be of public benefit." [Exhibit P-1].

13 9. Exhibit 1 to Ordinance 1 specifies that the City intends to acquire a portion of
14 PMG Parcel 1 for a "new right-of-way for the east side of 4th Avenue." [Exhibit P-1].

15 10. Exhibit 2 to Ordinance 1 specifies that the City intends to acquire a portion of
16 PMG Parcel 2 for a "new right-of-way for the north side of 16th Street." [Exhibit P-1].

17 11. Exhibit 3 to Ordinance 1 specifies that the City intends to acquire a portion of
18 PMG Parcel 3 for a "new retention basin for the south side of 15th Street." [Exhibit P-1].

19 12. Collectively, Ordinance 1, Ordinance 2 and Ordinance 3 confirm the City's
20 Council's findings of necessity and authorizations for acquisition of the legally described
21 portions of all three (3) PMG Parcels that the City seeks to acquire in this action and as to
22 which the City seeks an order for immediate possession in the order to show cause
23 proceedings conducted by this Court. [Testimony of Joshua Scott, City Engineer, Transcript
24 of Hearing Conducted on April 27, 2016 ("April 27 Transcript") at p. 26, lines 17-21].

25 13. In its Complaint, the City confirmed that this condemnation action is authorized
26 by and brought under the provisions of A.R.S. §§ 9-276 and 12-1111, et seq. [Complaint ¶2].

1 14. Consistent with the above-referenced Ordinances, the Complaint states that the
2 City seeks to acquire certain portions of the PMG Property for "the construction and/or
3 expansion of 16th Street and 4th Avenue in Yuma, Arizona, and for providing storm water
4 retention facilities needed in conjunction with the widening/improvement of those two
5 roadways." [Complaint ¶9].

6 15. The Complaint further states that the PMG Property is necessary for the
7 Intersection Improvement Project. [Complaint ¶10].

8 16. The taking the City is seeking in this action includes: (1) 1,828 square feet
9 (0.042 acres) from the western portion of PMG Parcel 1 along 4th Avenue; (2) 10,812 square
10 feet (0.248 acres) from the southern portion of PMG Parcel 2 along 16th Street; and (3)
11 53,676 square feet (1.232 acres) from PMG Parcel 3, for a total of 66,316 square feet.
12 [Complaint; Exhibit P-8; Exhibit P-11].

13 **III. The Legally Described Portions of PMG Parcel Nos. 1, 2 and 3 are "Necessary"**
14 **for Construction of the Intersection Improvement Project.**

15 17. This is the only condemnation case the City was required to file in order to
16 obtain all the real property and interests therein the City needs in order to construct the
17 Intersection Improvement Project. [April 27 Transcript at p. 29, lines 3-12]. All property and
18 property rights needed from other owners of land located within the limits of the Project were
19 acquired by consensual agreement between the City and those property owners. [*Id.*]

20 18. The retention basin taking from PMG Parcel 3 has been designed to
21 accommodate primarily storm water runoff from the widened roadways, rights of way and
22 existing off-site property that currently drains into the roadways. [Exhibits P-9; Exhibit P-10;
23 Transcript of Hearing Conducted on May 10, 2016 ("May 10 Transcript"), Testimony of
24 James Davey, P.E., at p. 34, lines 2-6.] More specifically, nearly 70% of the storm water
25 anticipated to flow into the retention basin originates with the existing rights of way and
26 offsite property that currently drains into those rights of way. [*Id.*]

1 19. The City's drainage plan (as explained in the Final Drainage Report (admitted as
2 Exhibit P-4) and further explained by Exhibits P-9, P-10 and the testimony of James Davey,
3 P.S.) confirms that the retention basin has been designed to accommodate runoff only from
4 properties located within the drainage areas included within the scope of the Intersection
5 Improvement Project. [Exhibit P-4; Exhibit P-9; Testimony of James Davey]. Further, the
6 evidence set forth on the exhibits and in the testimony referenced in the parenthetical in the
7 preceding sentence confirms that runoff from large portions of Drainage Areas G and H is not
8 going to be conveyed to the retention basin that is proposed to be constructed on PMG Parcel
9 3.

10 20. The retention basin proposed by the City for construction on PMG Parcel 3 is
11 “not one cubic foot larger” because the City’s proposed storm water conveyance system has
12 been designed to accommodate the “bleed off flow” from a small portion of Drainage Area G
13 as depicted on Exhibit P-9. [May 10 Transcript at p. 39, lines 16-25; p. 56, lines 17-21].

14 21. The testimony of James Davey, P.E., the City’s consulting drainage engineer,
15 confirmed that, in his experience, it would be unprecedented, impractical, unduly expensive
16 and inefficient for the City to construct a retention basin that is designed to accommodate
17 only the runoff from the two small parcels of additional right of way the City is seeking to
18 acquire from PMG Parcel 1 and Parcel 2. [May 10 Transcript at p. 56, lines 2-11; p. 34, lines
19 16-17 (“one central basin is always more efficient than several small basins”).

20 22. The testimony of Douglas Nicholls, P.E., the owner of Core Engineering Group,
21 the City’s prime consultant for the Intersection Improvement Project, further confirmed that
22 there are “several reasons” why the engineers recommended and the City Council approved a
23 storm water collection, conveyance and storage design system in which all the runoff is to be
24 retained in a single retention basin, rather than a series of smaller retention basins. [May 10
25 Transcript at p. 65, line 11 thru p. 67, line 3]. Those reasons include: (a) reduced land
26 acquisition costs; (b) reduced construction costs; (c) reduced maintenance costs and (d)

1 enhanced opportunities for development on the land in the area because multiple parcels of
2 the land currently available for development will not be burdened in the future with required
3 storm water retention facilities [*Id.*]

4 23. The retention basin that the City seeks to construct on PMG Parcel 3 is no
5 larger than is necessary to accommodate the runoff anticipated to be generated from a rainfall
6 event equal in volume to the design storm (100-year rainfall) occurring within the four (4)
7 drainage areas included within the limits of the Intersection Improvement Project. [Exhibit
8 P-9; May 10 Transcript, Testimony of James Davey at p. 27, lines 6-9].

9 24. A storm water retention basin is depicted at approximately the same location as
10 the retention basin now planned to be constructed on PMG Parcel 3 on page 51 of the City of
11 Yuma 2013, Yuma North End, 16th Street & 4th Avenue Redevelopment Area
12 Redevelopment Plan ("Redevelopment Plan"). [Defendants' Exhibit 2]. However, the
13 planning and budgeting for the Intersection Improvement Project predated the Redevelopment
14 Plan by at least six (6) years, and the Intersection Improvement Project has been designed and
15 is being constructed as a City of Yuma Capital Improvement Project, not as an improvement
16 project commenced pursuant to the Redevelopment Plan. [May 10 Transcript, Testimony of
17 Douglas Nicholls at p. 75, line 18 – p. 76, line 3; Affidavit of Czarina Gallegos dated May 18,
18 2016, attached as Exhibit "A" hereto ("Gallegos Affidavit"), ¶¶1-8].

19 25. In contrast to the final engineering drawings pursuant to which the City's
20 contractor has recently commenced construction of the Intersection Improvement Project, the
21 sketches set forth in the City's Redevelopment Plan are conceptual in nature, not intended for
22 construction and not reflective of approved plans. [Exhibit D-2 at p. 51; May 10 Transcript,
23 Testimony of Douglas Nicholls at p. 75, lines 11-17].

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1 **IV. The Intersection Improvement Project: Capital Improvement Project versus**
2 **Redevelopment Plan**

3 26. The Intersection Improvement Project has always been and remains today a
4 City of Yuma Capital Improvement Project. Although much of the property that will be
5 benefited by the City's Project lays within a Redevelopment Area, the Intersection
6 Improvement Project was conceived, planned and approved long before the Redevelopment
7 Plan was adopted. ("Gallegos Affidavit")

8 27. The parameters of the 16th Street and 4th Avenue Intersection
9 Improvements Project were included as part of the *16th Street Corridor Study*, CIP No.
10 5.0404. ("Gallegos Affidavit")

11 28. The 16th Street Corridor Study was part of the 2004 through 2009 Capital
12 Improvement Program, which was adopted by Resolution R2004-49 on July 7, 2004 by
13 the Yuma City Council. ("Gallegos Affidavit")

14 29. In fiscal year 2006 (FY2005-2006), the 16th Street and 4th Avenue
15 Intersection Improvements Project CIP No. 5.0574 was first adopted by the Yuma City
16 Council as part of the 2005 through 2010 Capital Improvement Program by Resolution
17 R2005-55 on July 6, 2005. ("Gallegos Affidavit")

18 30. The 16th Street and 4th Avenue Intersection Improvements Project has
19 subsequently been adopted by the City Council in each of the following fiscal years:
20 fiscal year 2007 (FY2006-2007), fiscal year 2008 (FY2007-2008), fiscal year 2009
21 (FY2008-2009), fiscal year 2010 (FY2009-2010), fiscal year 2011 (FY2010-2011)
22 fiscal year 2012 (FY2011-2012), fiscal year 2013 (FY2012-2013), fiscal year 2014
23 (FY2013-2014), fiscal year 2015 (FY2014-2015), fiscal year 2016 (FY2015-2016), and
24 was recently adopted by City Council for fiscal year 2017 (FY2016-2017). ("Gallegos
25 Affidavit")
26

1 31. The 16th Street and 4th Avenue Intersection Improvements Project
2 precedes the City Council's adoption of the Yuma North End, 16th Street & 4th Avenue
3 Redevelopment Plan (Resolution R2013-10), by several years. ("Gallegos Affidavit")

4 32. In the opinion of Czarina Gallegos, the City's Capital Improvement
5 Program Administrator the 16th Street and 4th Avenue Intersection Improvements
6 Project would be constructed by the City of Yuma regardless whether a Redevelopment
7 Plan helping the surrounding property owners existed. ("Gallegos Affidavit")

8 33. The Intersection Improvement Project is a Capital Improvement Project
9 and not subject to the taking procedures of A.R.S. Title 36.

10 **V. The City has an Immediate Need for Possession of the Three (3) Parcels it Seeks**
11 **to Acquire in this Action.**

12 34. In an effort to complete construction during the period in which traffic volumes
13 in the City of Yuma are lower and to comply with existing contractual requirements related to
14 development of certain properties located within the scope of the Intersection Improvement
15 Project, in late April 2016, the City authorized the contractor to commence construction.
16 [May 10 Transcript, Testimony of Joshua Scott, City Engineer, at p. 12, line 11 thru p. 13,
17 line 13]. Although the contractor is currently working on a segment of the Project located
18 west of the PMG Property, in order to allow the contractor to proceed with construction in an
19 expeditious and minimally disruptive manner, the City needs to obtain the legal right to
20 possession and use of the portions of PMG Parcel 1, PMG Parcel 2 and PMG Parcel 3 which
21 are the subjects of this lawsuit. [*Id.*]

22 **VI. The Amount of the Bond (Probable Damages) that Should be Posted by the City**
23 **in Connection with the Court's Order for Immediate Possession is \$715,725.**

24 35. The only valuation witness who testified during the OSC hearing was John L.
25 Loper, ASA, the independent appraiser who was retained by the City in order to prepare an
26 appraisal of the amount of just compensation (or, in the vernacular of A.R.S. § 12-1116(H),
"probable damages") to which the Defendants are entitled for the City's acquisition of the

1 subject portions of PMG Parcel Nos. 1, 2 and 3, the temporary construction easements, and
2 any damages to the remainder of PMG's property, as reduced by costs to cure. Mr. Loper
3 completed his appraisal report in February of 2016. A copy of that report was admitted into
4 evidence at the OSC hearing as Plaintiff's Exhibit 11. Mr. Loper explained his appraisal
5 investigation and analysis during his testimony at the OSC hearing. [May 10 Transcript,
6 Testimony of John Loper, ASA, beginning on page 78, line 10, and continuing thru page 104,
7 line 8]. Mr. Loper's opinions were not contradicted by any evidence offered by Defendants.
8 Accordingly, the Court finds and establishes the amount of just compensation/probable
9 damages that the City must post as a bond in connection with the Order for Immediate
10 Possession the City is seeking herein is the amount to which Mr. Loper testified, *i.e.*
11 \$715,725.00. [*Id.*]

12 CONCLUSIONS OF LAW

13 The Arizona Constitution and certain Arizona statutes allow governmental entities,
14 including municipal corporations such as the City of Yuma, to exercise its power of eminent
15 domain to take private property for public use if just compensation for the taking and damage
16 to the property is paid to the property owner. Ariz. Const. art. II, § 17; A.R.S. § 12-1111 et
17 seq.; A.R.S. § 9-276(A)(1)

18 The City's Intersection Improvement Project is a public use, authorized by law, for
19 which private property may be acquired pursuant to the exercise of the City's power of
20 eminent domain. *Id.*

21 Upon application by certain condemning authorities, including cities, A.R.S. § 12-1116
22 authorizes the court to enter an order for immediate possession ("OIP"). Specifically,
23 A.R.S. § 12-1116 (H) provides that and OIP may be entered if, "[O]n the day of the hearing, .
24 . . . it appears that the use for which the property is sought to be condemned is a **necessary use**
25 For the reasons set forth herein, and as confirmed by the record established during the
26 Order to Show Cause Hearing the Court conducted on April 27, 2016 and May 10, 2016, the
Court finds that the subject portions of the three (3) PMG Parcels the City of Yuma seeks to
acquire herein are "necessary" for the City's Intersection Improvement Project.

Arizona law provides that "once the question of the public purpose has been decided,
the amount and character of the land to be taken for the project and the need for a particular

1 tract to complete the integrated plan rests in the discretion of the legislative branch.” *City of*
2 *Phoenix*, 137 Ariz. at 416, 671 P.2d at 394 (emphasis added). Further, Arizona courts have
3 confirmed that “a legislative declaration of necessity should be given weight,” *id.* at 411, 671
4 P.2d at 389, and “should not be disturbed on judicial review in the absence of fraud or
5 arbitrary and capricious conduct.” *Id.* at 412, 671 P.2d at 390 (quoting *City of Phoenix v.*
6 *McCullough*, 24 Ariz. App. 109, 114, 536 P.2d 230, 235 (1975)) (emphasis added). Even the
7 availability of other means to accomplish the same public purpose, without more, is
8 insufficient to overturn a legislative finding of necessity. *See Catalina Foothills Unified Sch.*
9 *Dist. No. 16 v. La Paloma Prop. Owners Ass’n, Inc.*, 238 Ariz. 510, 515 ¶ 18, 363 P.3d 127,
10 132 (App. 2015).

11 In addition to the principals set forth in the preceding paragraph, it is well-established
12 that, although a condemnor bears the initial burden of demonstrating necessity, “upon the
13 demonstration of supporting evidence, the burden shifts to the condemnee” to prove the
14 condemnor acted improperly. *See, e.g.*, 5 Nichols on Eminent Domain § 18.04 (3d ed. 2013).
15 In that regard, a legislative pronouncement that the property is necessary “establishes *prima*
16 *facie* necessity, and the burden of proof shifts to the landowner to prove otherwise.” 6 Nichols
17 on Eminent Domain § 26C.02[1] (3d ed. 2013). “Since all presumptions favor the city’s
18 determination of ‘necessity,’ the burden of proving fraud or arbitrariness is on the party
19 opposing that determination” *McCullough*, 24 Ariz. App. at 117, 536 P.2d at 238
20 (Eubank, J., concurring in part and dissenting in part).

21 At the OSC hearing in this case, the City offered evidence sufficient to satisfy its initial
22 burden (*see* Plaintiff’s Exhibits 1-3 and testimony of Joshua Scott, City Engineer).
23 Defendants called no witnesses to testify at the OSC hearing and offered no evidence
24 sufficient to establish that the City Council’s determinations of necessity were influenced by
25 fraud, or were made in an arbitrary or capricious manner.

26 The preceding conclusion is reinforced by the applying the definition of “arbitrary and
capricious” as set forth by the State of Washington Supreme Court.¹ Specifically, the
Washington Supreme Court has defined what a condemnee must prove to demonstrate
“arbitrary and capricious” conduct by a condemning authority:

1 Arbitrary and capricious conduct is **willful and unreasoning**
2 **action**, without consideration and regard for facts or
3 circumstances. **Action, when exercised honestly, fairly, and**
4 **upon due consideration is not arbitrary and capricious**, even
5 though there be room for a difference of opinion upon the course to
6 follow, or a belief by the reviewing authority that an erroneous
7 conclusion has been reached.

8 *City of Tacoma v. Welcker*, 399 P.2d 330, 335 (Wash. 1965) (emphasis added) (internal
9 citations omitted).

10 When viewed as a whole, the evidence presented at the OSC hearing, including the
11 testimony of the witnesses and the information set forth in the exhibits, confirms that the City
12 Council of the City of Yuma exercised honest, informed judgment, as guided by expertise
13 offered by experienced engineers, when it made its findings of “necessity” with regard to the
14 portions of PMG Parcel Nos. 1, 2 and 3 that are designated for acquisition in this lawsuit. In
15 addition, the evidence established that the City has an immediate need for possession and use
16 of the subject properties.

17 The only evidence the Court heard regarding “probable damages” was the testimony of
18 the independent fee appraiser who was retained by the City in this case, John L. Loper, ASA.
19 Based on Mr. Loper’s testimony and his written appraisal report (a copy of which was
20 admitted as Plaintiff’s Exhibit 11 at the OSC hearing), the amount of probable damages
21 caused by the City’s taking in this matter is \$715,725.00. It is hereby ordered that the amount
22 of the bond to be posted by the City in this case, in accordance with the terms and provisions
23 of A.R.S. § 12-1116, is \$715,725.00.

24 **IT IS ORDERED** that upon the posting of the bond in the amount of \$715,725.00, in
25 the form specified in A.R.S. §12-1116, the City of Yuma shall be entitled to take immediate
26 possession and full use of the portions of PMG Parcel Nos. 1, 2 and 3, including the
 temporary construction easements, which are legally described in the City’s Complaint. If the

1 City desires that the Court issue a separate Order for Immediate Possession in a form suitable
2 for recording, the City shall submit a proposed form of OIP within ten (10) calendar days of
3 the date hereof. The order set forth herein is not, however, delayed or stayed pending
4 submittal of any such proposed form of OIP; but, rather, this order is effective immediately
5 upon the City's posting of the required bond in the form and manner specified and permitted
6 by A.R.S. § 12-1116.

7 Therefore, as a result of the findings and conclusions entered by this Court,

8 **IT IS ORDERED** granting Plaintiff City of Yuma's Application for Immediate
9 Possession of the Real Property as described in the Complaint;

10 **DATED** this 24th day May, 2016.

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DAVID M. HAWS

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Honorable David M. Haws
ASSOCIATE PRESIDING JUDGE

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1 Copy of the foregoing placed
2 In the box(es) of/mailed to the
3 Following this _____ day of _____, 2016:

4 Richard W. Files
5 Deputy City Attorney
6 Yuma City Attorney's Office
7 One City Plaza
8 Yuma, AZ 85364
9 Attorneys for Plaintiff City of Yuma

10 James T. Braselton
11 Dickinson Wright PLLC
12 1850 N. Central Ave., #1400
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15 Steven A. Hirsch
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18 Two North Central Avenue
19 Phoenix, Arizona 85004-2391
20 Attorneys for PMG Partnership, L.L.C.

21 Barry Olsen
22 Law Offices of Larry W. Suci, PLC
23 101 East Second Street
24 Yuma, Arizona 85364
25 Attorneys for The Foothills Bank

26 LYNN FAZZ, CLERK OF THE SUPERIOR COURT

By: _____

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LYNN L. HAZ
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA

CITY OF YUMA, ARIZONA, a municipal
corporation of the State of Arizona,

Case No. S1400CV201600142
Division IV

Plaintiff,

vs.

PMG PARTNERSHIP, L.L.C., an Arizona
limited liability company, THE FOOTHILLS
BANK, an Arizona corporation, YUMA
COUNTY; UNKNOWN CLAIMANTS, HEIRS
AND DEVISEES; IF DECEASED; JOHN DOE
1 10; JANE DOE 1-10; BLACK AND WHITE
CORPORATIONS 1 10; SUCCESSORS IN
INTEREST AND ASSIGNS OF BLACK AND
WHITE CORPORATIONS 1-10,

Defendants.

ORDER
Denying Motion to Strike

The Court having considered the Motion to Strike filed May 19, 2016 as well as
Plaintiff City of Yuma's Response to Defendants' Motion to Strike also filed May 19, 2016
hereby rules as follows:

IT IS ORDERED denying defendant's Motion to Strike.

DATED this 24th day May, 2016.

DAVID M. HAWS

Honorable David M. Haws
ASSOCIATE PRESIDING JUDGE

1 Copy of the foregoing placed
2 In the box(es) of/mailed to the
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4 Richard W. Files
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By: _____