

**OUTSIDE AGENCY AGREEMENT
GREATER YUMA ECONOMIC DEVELOPMENT CORPORATION**

This agreement ("Agreement") effective July 1, 2019, is entered into by and between the CITY OF SAN LUIS, an Arizona municipal corporation, having its administrative offices at 1090 East Union Street, San Luis, Arizona 85336 and its U.S. Postal Service for mail delivery address at P.O. Box 1170, San Luis, Arizona 85349 ("CITY") and the GREATER YUMA ECONOMIC DEVELOPMENT CORPORATION, an Arizona nonprofit corporation, having its offices at 899 E Plaza Circle Suite 2, Yuma, Arizona 85364 ("GYEDC"). The CITY and GYEDC may be referred to singularly as the "Party" and collectively as the "Parties."

WHEREAS, the CITY is interested in obtaining for its benefit the knowledge and experience of GYEDC to perform special professional services for developing the CITY'S economic base and GYEDC is interested in providing such services.

NOW, THEREFORE, the Parties, in consideration of the above recital and these mutual covenants and stipulations, agree:

I. GYEDC PERFORMANCE:

A. The CITY'S goals for GYEDC:

1. Work jointly with the CITY economic development representative(s) to promote and strengthen regional economic development cooperation and coordination;
2. Support a strong business climate and promote the image of the CITY for relocation of business to the CITY;
3. Qualify and assist companies to locate in the CITY;
4. Build a strong and effective regional economic development organization;
5. Promote increases in private sector financing, support and participation;
6. Identify and develop through substantial effort at least 10 qualified prospects for location in the CITY.

7. Encourage the jobs for CITY residents and targeted socio-economic persons or groups within the CITY.

8. Maintain a structured Business, Retention and Expansion program, making at least 15 completed survey calls annually.

B. To further the foregoing goals, GYEDC agrees:

1. Implement a budget and action plan. GYEDC shall use its best efforts to expend funds and implement the budget and action plan, as adopted by the GYEDC Board of Directors (Board). GYEDC shall inform the CITY of changes in the adopted budget and action plan that will materially affect or alter the priorities established in each.

2. Work in direct partnership with the CITY'S economic development representative(s) on the creation and implementation of a marketing plan. GYEDC shall from time to time solicit the input of CITY representatives on the formulation of future marketing strategies and advertisements.

3. Promote and strengthen regional economic development cooperation and coordination. To promote and strengthen regional economic development cooperation and coordination in Yuma County, GYEDC shall:

a) Participate with national, state and regional economic development organizations involved in national and statewide economic development, and coordinate the Yuma County component thereof; and

b) Coordinate and work in conjunction with the CITY economic development representative(s) to assist with the CITY'S participation in state and international economic development initiatives.

4. Qualify and assist companies considering locating in the greater Yuma area. To qualify and assist new companies, GYEDC shall:

a) Use its best efforts to continue to identify and through substantial efforts develop at least 10 out-of-city prospects for location in the CITY in targeted economic clusters;

b) Continue to provide all qualified prospects with coordinated professional services

- c) Update and maintain the database of available properties;
- d) Coordinate and work with CITY economic development representative(s);
- e) Provide the CITY'S GYEDC Board representative(s), economic development representative(s) and City Manager monthly activity reports, and
- f) Engage the CITY economic development representative(s) in all site visits of companies for location within the CITY, including the need for a predevelopment meeting, prior to any proposal being made.

5. Develop a strong, effective regional development organization. To promote the development of a strong and effective regional economic development organization, GYEDC shall:

- a) *Use its best efforts to secure public and private sector funding to achieve its goals successfully;*
- b) *Professionally develop GYEDC staff;*
- c) *Operate GYEDC under GYEDC articles of incorporation and bylaws, and all amendments thereto, and*
- d) *Uphold and support policies of the CITY with each client of GYEDC and explore economic development solutions that will uphold the goals of CITY policies.*

6. Develop and maintain strong private sector support and participation. To achieve the goals set forth in the marketing of the region, GYEDC shall continue to secure private sector contributions.

7. Continue recruiting startups or expanding manufacturing companies to lease the San Luis Business Incubator as vacancies arise by assisting in building a waiting list as potential tenants.

C. Administrate funding for a regional economic development effort with the CITY and San Luis Rio Colorado, Sonora as a defined binational region.

D. Hire and/or retain, at its discretion, a President/CEO and necessary staff to carry out the tasks described. In this Agreement.

E. Continue the program of identifying, contacting and attracting capital investors and other outreach services for business, commercial, and industrial development within the CITY. This program is to be accomplished through (1) visitations and presentations to business persons and manufacturers who have indicated an interest in locating in the CITY, and (2) providing assistance to all prospects, including local investors and developers, in satisfying the need for information to facilitate the potential expansion and/or location of businesses, commercial and industrial facilities, or projects in the CITY area.

F. Continue to expand the system of collecting demographic statistics and economic indicators needed by manufacturers, distributors, retailers, and developers in deliberations regarding the CITY as a potential site for business, commercial, and industrial development.

G. Continue printing, publishing, and distributing of documented demographics and other information concerning the CITY, as a resource document and sales tool to attract manufacturers, distributors, retailers and developers.

H. Expend its resources to recruit, for relocation and expansion, businesses that will meet or exceed environmental rules and regulations of local, state, regional, and national governments. GYEDC shall consider any actual or potential environmental impact or threat the business may have to the community. GYEDC shall consult with the CITY economic development representative(s) or the City Manager or designee regarding the hazardous material environmental impacts of prospective businesses. GYEDC will coordinate information for potential businesses of the CITY code and ordinance requirements for a hazardous material impact review.

I. Cooperate with the greater San Luis community in efforts and activities to expand economic opportunities within the region, downtown, port of entries and industrial parks

J. Maintain accurate records of CITY monies received and disbursed. GYEDC shall maintain an accounting system which complies with generally accepted accounting principles and with the AICPA Audit Guide for Non-Profit Corporations and which accounts for all funds provided by the CITY under this Agreement.

K. Annually provide the CITY with names and addresses of officers or directors, and copies of bylaws, and articles of incorporation and amendments thereto of, GYEDC. If any change of officer occurs and/or director, bylaws or articles of incorporation, GYEDC shall also provide notice of the change to CITY within 30 days thereafter. All documentation required hereinafter shall be reviewed by the GYEDC Board of Directors prior to submission and shall be filed with the City Manager within thirty (30) days after the end of the period stated. The required reports and records are set forth as follows:

1. Monthly financial statement as presented to the Board of Directors.
2. A semi-annual program status report regarding monies received. This report shall contain analytical memoranda which:
 - a) Describes the results of activities and expected achievements.
 - b) Describes program effectiveness.

L. Provide a brief monthly status report to the CITY's Board representative(s) Economic Development representative(s) at GYEDC's monthly Board meeting.

M. Provide notice of all meetings to the City Manager, and/or his designee, who may attend all meetings of the Board of Directors

N. Make reports at meetings of the City Council no less than twice annually on the progress of its work program.

II. THE CITY SHALL PROVIDE THE FOLLOWING

A. Evaluate GYEDC performance relative to the performance criteria set forth in this Agreement in order to assess the impact of the efforts of GYEDC. Any additional information desired by the CITY which is relevant and necessary to the CITY'S evaluation shall be made available by GYEDC

B. Pay GYEDC for the Fiscal Year 2019-2020, unless terminated as provided in this Agreement that amount stated in this Agreement. Such sum is to be disbursed on a pro-rata quarterly basis.

C. The method of payment:

1. GYEDC shall submit a request for payment quarterly to the CITY'S Director of Finance, under the approval of GYEDC annual budget by its Board of Directors.

2. Upon approval of the request for payment by the CITY, the CITY'S Director of Finance shall make payments within 15 days to GYEDC, except as provided in subsection II, C.

D. The CITY may withhold payment, in whole or in part, as may be necessary to protect it from loss because of:

1. GYEDC's failure to render acceptable services as stated in the performance criteria of Section I. The City Manager, or designee, shall investigate and monitor the quality of GYEDC services to determine whether such services are acceptable. Upon determination by the City Manager that acceptable services are not being rendered, the City Manager shall notify GYEDC of the specific deficiencies in performance and provide a reasonable time for the GYEDC to rectify said deficiencies. In no event shall such time to rectify exceed 90 days. Whether or not GYEDC services are acceptable will be the CITY'S exclusive decision.

2. GYEDC's failure to supply information, records or reports as required.

3. GYEDC's failure to comply with documentation requirements or accounting procedures.

4. GYEDC's failure to allocate money received from the CITY for the purposes described in this Agreement.

III. FINANCIAL SUPPORT AND TERM OF AGREEMENT:

A. The term of this Agreement shall be for one year commencing on July 1, 2019, and ending on June 30, 2020.

B. The CITY agrees to pay GYEDC an amount of \$50,000 for services to be provided by GYEDC under the Agreement during Fiscal Year 2019-2020

C. Funding of this Agreement shall be subject to the annual appropriation of funds for this activity by the City Council under the required budget process of the CITY.

D. Renewal of this Agreement beyond the current agreement will be contingent upon GYEDC performance hereunder. If GYEDC's performance does not, in all material respects, meet the minimum requirements as described in Section I. A. through N. of this Agreement, this Agreement may not be renewed by the City Council.

E. Nothing herein shall preclude the CITY from contracting separately with GYEDC for services to be provided in addition to those to be provided in this agreement, upon terms and conditions to be negotiated by the CITY and GYEDC.

IV. TERMINATION:

This Agreement may be terminated by the CITY before the end of the term set forth herein if any of the following occur:

- A. Without cause at any time with 90 days' notice whenever the CITY determines that such termination is in the best interests of the CITY;
- B. By mutual written consent of both Parties;
- C. For breach or default by GYEDC of any of its obligations set forth in this Agreement.

V. INDEMNIFICATION:

To the fullest extent permitted by law GYEDC shall indemnify and hold harmless the CITY, its agents and employees from and against all claims, damages, losses, expenses, and injury to property or persons (including death), including but not limited to attorney's fees, caused in whole or in part by any negligent act or omission of GYEDC, or anyone directly or indirectly employed by GYEDC for whose acts any of them may be liable, regardless of whether or not it is caused by a Party indemnified hereunder, whether authorized by GYEDC or not, including theft by GYEDC or any of its officers, agents, employees, guests, patrons, invitees or trespassers, arising out of or resulting from this Agreement. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

VI. INSURANCE:

GYEDC shall, at its own expense, secure and maintain during the term of this Agreement commercial general liability insurance including bodily injury, property damage, contractual, personal injury, and products/completed operations. Liability limits shall be no less than \$2,000,000 per occurrence combined single limit and shall be primary and not contributory to any other coverage available to the CITY or its employees. The CITY shall be named as an additional insured, and certificates of insurance with endorsements for the requirements herein shall be delivered to the CITY prior to the commencement of this Agreement. Failure to provide required coverage and compliance with the terms and conditions of this Agreement shall not waive the contractual obligations herein. If the policy or policies are canceled by the insurance company or GYEDC during the term of this Agreement, GYEDC and insurance company shall provide ninety (90) days' written notice prior to the effective date of such cancellation or termination to the CITY.

VII GENERAL CONDITIONS:

A. **Nondiscrimination**. GYEDC shall not discriminate against any person on the basis of race, religion, color, age, sex, disability, or national origin in the performance of this Agreement, and shall comply with the terms and intent of Title VII of the Civil Rights Act of 1964, P.L. 88-354 (1964), and with the Americans with Disabilities Act of 1990. In addition, GYEDC shall include similar requirements of subcontractors in any contracts entered into for the performance of GYEDC obligations under this Agreement.

B. **Financial Review**.

1. GYEDC shall make its financial records available for inspection by the CITY, or its designee, upon reasonable notice during normal business hours of the CITY.

2. If the CITY desires a financial audit by a certified public accountant of GYEDC financial records to verify the use of the funds of the organization according to the terms and conditions of this Agreement, GYEDC shall cooperate fully in performing such audit. GYEDC shall not be responsible for the cost of such an audit if requested by the CITY and shall be entitled to a copy of any resulting reports received by the CITY

C. **Compliance with Law**. GYEDC shall comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. In addition, GYEDC shall include similar requirements of subcontractors in any contracts entered into for the performance of GYEDC obligations under this contract

D. **Binding on Successors**. The covenants and conditions herein contained apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties.

E. **Attorney Fees and Costs**. If 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.

F. **Laws Governing**. This Agreement shall be governed by the laws of the State of Arizona.

G. **Venue**. 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 the Superior Court in Yuma County, Arizona.

H. **Waiver**. 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 exercising any rights or remedies, shall not release either Party 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.

I. **Severability**. If any part, term or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Arizona, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

J. **Integration**. This Agreement contains the entire agreement between the Parties, and no oral or written statement, promises, or inducements made by either Party or agent of either Party that is not contained in this written Agreement, or specifically referred to in this written Agreement shall be valid or binding; and this contract may not be enlarged, modified, or altered except in writing signed by the Parties and endorsed.

K. **No Partnership**. Nothing in the Agreement is intended or shall be construed to constitute a partnership or joint venture between the Parties, and neither Party shall be deemed the principal, agent, officer, or member of the other.

L. **Time of the Essence.** Time is of the essence in this Agreement. Unless otherwise specifically provided in this Agreement, any consent to delay in the performance of GYEDC of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not be applicable to any other obligation or transaction

M. **Dispute Resolution.** If the Parties mutually agree, claims, disputes or other matters in question between the Parties to this Agreement arising out of or relating to this Agreement or breach of this Agreement may be subject to and decided by arbitration under the Arizona Uniform Rules of Procedure for Arbitration currently in effect. Request for arbitration shall be filed in writing with the other Party to this Agreement.

N. **Conflict of Interest.** This contract shall be subject to the Conflict of Interest provisions of A.R.S. § 38-511, as amended.

O. **Environmental Conditions.** GYEDC shall take all steps necessary to ensure its compliance with all applicable federal, state, and local environmental laws, regulations, and ordinances, and shall indemnify and hold the CITY harmless for any remediation required and from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death to any person or damage to any property or the environment of any nature whatsoever arising out of violations of such laws, regulations and ordinances.

P. **Notices.** Any business communications in connection with this Agreement may be provided by email. All legal notices or demands related to this Agreement must be provided in writing and sent to the receiving Party for the CITY to the City Manager and for GYEDC to the Chairman at the address in the first paragraph of this Agreement or such other addresses as either Party may from time to time designate in writing and deliver in the same manner as a legal notice or demand. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. All notices to be given under this Agreement by either Party to the other shall be considered validly given and fully received when made in writing and delivered or refused delivery by major commercial delivery courier service or mailed in a manner that requires signature by the recipient or by process service.

Q. **Compliance with Federal and State Laws.** GYEDC 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. § 23-214 relating to verification of employment eligibility (e-verify).

A breach of this clause shall be deemed a material breach of the Agreement and is subject to penalties up to and including termination of this Agreement.

The CITY retains the legal right to inspect the papers of any GYEDC or subcontractor employee who works on this Agreement to ensure that GYEDC or subcontractor is complying with this warranty.

R. **Political Activity Prohibition**. Employees, directors, board members, officers, and volunteers of the GYEDC are prohibited from engaging in any political activity with respect to candidates for political office beyond the private expression of personal opinion, registering as a member of a political party, signing petitions and voting in any special, general, or primary election. No employee, director, board member, officer, or volunteer shall solicit any contribution in cash or service from any GYEDC employee, director, board members, officer, or volunteer to support any candidate for public office. No employee, director, board member, officer, or volunteer shall use the name of the GYEDC, or use their affiliation with the GYEDC, to engage in any political activity of any kind or to solicit any contribution in cash or services to support any candidate for public office. If an employee, director, board member, officer, or volunteer should engage in said activities, they shall make it clear that they are doing so in their personal and private capacity, and are not associated with the GYEDC in any way while engaging in said activity. Employees, directors, board members, officers, and volunteers will refrain from engaging in any political activity while attending or participating in the GYEDC function or event.

S. **No Personal Liability**. No member, official or employee of the CITY shall be personally liable to GYEDC, or any successor or assignee, (a) if any default occurs or breach by the CITY, (b) for any amount which may become due to GYEDC or its successor or assign, or (c) under any obligation of the CITY under this Agreement.

T. **Headings**. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of the provisions of this Agreement.

U. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all Parties may be physically attached to a single document.

V. **Ratification**. Acts, taken pursuant to this contract, but prior to its execution are hereby ratified and confirmed.

IN WITNESS WHEREOF, the Parties have executed this Agreement in Yuma County, Arizona which is the day the last Party approved this Agreement.

City of San Luis, Arizona

Gerardo Sanchez, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM:

Sonia Cornelio, City Clerk

Kay Marion Macuil, City Attorney

Greater Yuma Economic Development Corporation

Signature

Print Name

Title

Date: _____