

## **AGREEMENT**

This agreement (“Agreement”) is effective on July 1, 2021. It is entered into on the \_\_\_\_ day of June 2021, by and between the CITY OF SAN LUIS, an Arizona municipal corporation (“CITY”), and the GREATER YUMA ECONOMIC DEVELOPMENT CORPORATION, an Arizona nonprofit corporation (“GYEDC”). The CITY and the 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 the development of the CITY’S economic base and GYEDC is interested in providing such services; and

**WHEREAS**, because of the consequences of the COVID-19 pandemic on businesses and employment, the CITY crucially needs economic development.

**NOW, THEREFORE**, the Parties to this Agreement, in consideration of the above recitals and the following mutual covenants and stipulations, agree as follows:

### **I. GREATER YUMA ECONOMIC DEVELOPMENT CORPORATION AGREES TO PERFORM THE FOLLOWING:**

A. The CITY’S goals for GYEDC shall be as follows:

1. Work jointly with the CITY economic development representative to promote and strengthen regional economic development cooperation and coordination,
2. Support a strong business climate and promote the image of the City of San Luis for relocation of businesses to the CITY,
3. Qualify and assist companies to locate in the City of San Luis,
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 of San Luis,
7. Encourage the jobs for the City of San Luis residents and targeted socio-economic persons or groups within the City of San Luis and
8. Maintain a structured Business, Retention and Expansion program, making a minimum of 15 completed survey calls annually.

B. In furtherance of the foregoing goals, GYEDC agrees as follows:

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 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 of those organizations, 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 County 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 of San Luis 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 Board representatives and economic development representative(s) every other month activity reports for the prior two (2) months; and
  - (f) Engage the City of San Luis economic development representative(s)

in all site visits of companies for location within the City of San Luis, including the need for a predevelopment meeting before any proposal is 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 to it and
    - (d) Uphold and support policies of the City of San Luis with each client of GYEDC and explore economic development solutions that will uphold the goals of the City of San Luis 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. Secure bona fide leads, such as startups or expanding manufacturing companies, to lease the San Luis Business Incubator. A minimum of two manufacturing companies shall be secured for the two larger suites at the business incubator. Continue to assist in recruiting companies as vacancies arise by assisting in building a waiting list for potential tenants.
- C. Hire or retain, at its discretion, a President/CEO and necessary staff to carry out the tasks described in this Agreement.
- D. Continue the program of identifying, contacting and attracting capital investors and other outreach services for business, commercial, and industrial development within the City of San Luis. 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 of San Luis and
  2. aiding 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 of San Luis area.

- E. Continue to expand the system of collecting demographic statistics and economic indicators needed by manufacturers, distributors, retailers, and developers in deliberations regarding the City of San Luis as a potential site for business, commercial, and industrial development.
- F. Continue printing, publishing, and distributing of documented demographics and other information concerning the City of San Luis, as a resource document and sales tool to attract manufacturers, distributors, retailers and developers.
- G. 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 San Luis City Manager or designee regarding the hazardous material environmental impacts of prospective businesses.
- H. 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 that complies with generally accepted accounting principles and with the American Institute of Certified Public Accountants (AICPA) Audit Guide for Nonprofit 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 GYEDC's bylaws, and articles of incorporation and amendments to them. If any change of officer and/or director, bylaws or articles of incorporation, GYEDC shall also provide notice of the said change to CITY within 30 days after that. All documentation required hereinafter shall be reviewed by the Board before submission and shall be filed with the San Luis City Manager within 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.
  - 2. A semi-annual program status report regarding monies received. This report shall contain analytical memoranda which describe:

- (a) the results of activities and expected achievements and
- (b) program effectiveness.

- L. Provide a brief status report to CITY representatives at GYEDC's Board meeting.
- M. Provide notice of all meetings to the San Luis City Manager and/or his designee, who may attend all meetings of the Board.
- N. Make reports at meetings of the San Luis City Council no less than twice annually on the progress of its work program.

## **II. THE CITY SHALL PROVIDE THE FOLLOWING:**

- A. Evaluate GYEDC's performance relative to the performance criteria set forth in this Agreement to assess the impact of the efforts of the 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 2021-2022, unless terminated as provided in this Agreement, that amount which is stated in this Agreement. Such sum is to be disbursed on a pro-rata, quarterly basis.
- C. The method of payment shall be as follows:
  - 1. GYEDC shall submit a request for payment quarterly to the CITY'S Director of Finance, under the approval of the GYEDC's annual budget by its Board.
  - 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 Section II subsection D below.
- D. The CITY may withhold payment, in whole or in part, as may be necessary to protect it from loss on account of GYEDC's failure to render acceptable services, as stated in the performance criteria of Section I. The San Luis City Manager, or designee, shall investigate and monitor the quality of GYEDC services to determine whether such services are acceptable. Upon determination by the San Luis City Manager that acceptable services are not being rendered, the San Luis City Manager shall notify the 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.

1. GYEDC's failure to supply information, records or reports as required
2. GYEDC's failure to comply with documentation requirements or accounting procedures.
3. 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 (1) year commencing on July 1, 2021, and ending on June 30, 2022.
- B. The CITY agrees to pay GYEDC an amount of \$57,508 for services to be provided by GYEDC under the Agreement during the CITY's Fiscal Year 2021-2022.
- C. Funding of this Agreement shall be subject to the annual appropriation of funds for this activity by the San Luis City Council under the required budget process of the CITY.
- D. Renewal of this Agreement beyond the current Agreement will be contingent upon GYEDC's performance of the Agreement. If GYEDC's performance does not, in all material respects, meet the minimum requirements as described in Section I. Subsections A. through N. of this Agreement, this Agreement may not be renewed by the San Luis City Council.
- E. Nothing in this Agreement 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:**

The CITY may terminate this Agreement before the end of the term in this Agreement in any of the following circumstances:

- 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 to this Agreement, or
- 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 a party indemnified under this Agreement, whether GYEDC authorized it 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 in this Agreement 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 additionally insured, and certificates of insurance with endorsements for the requirements in this Agreement shall be delivered to the CITY before 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 in this Agreement. If the insurance company or GYEDC cancels the policy or policies during the term of this Agreement, GYEDC and the insurance company shall provide 90 days' written notice before 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, PL 88-354 (1964), and with the Americans with Disabilities Act of 1990 as they are amended. 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. GYEDC shall make its financial records available for inspection by the CITY, or its designee, upon reasonable notice during regular business hours of the CITY.

C. If the CITY desires a financial audit by a certified public accountant of GYEDC's 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 the

performance of such audit. GYEDC shall not be responsible for the cost of such an audit if requested by the CITY, and GYEDC shall be entitled to a copy of any resulting reports the CITY receives.

D. 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 Agreement.

E. Binding on Successors. The covenants and conditions in this Agreement contained apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties.

F. Attorney's 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.

G. Laws Governing. The laws of the State of Arizona shall govern this Agreement, including but not limited to validity, interpretation, and performance.

H. 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 Superior Court in Yuma County, Arizona.

I. 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 the exercise of 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 the strict performance of this Agreement.

J. 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. 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.

K. Integration. This Agreement contains the entire agreement between the Parties. 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 and binding; and this Agreement may not be enlarged, modified, or altered except in writing signed by the Parties and endorsed

hereon or attached to this Agreement.

L. 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.

M. 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 apply only to the particular transaction to which it relates, and it shall not apply to any other obligation or transaction.

N. 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 the breach of it 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.

O. Conflict of Interest. This Agreement shall be subject to cancellation under the Conflict of Interest provisions of ARS § 38-511, as amended.

P. Environmental Conditions. GYEDC shall take all steps necessary to ensure its compliance with all applicable federal, state, and local environmental laws, regulations and ordinances. GYEDC 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.

Q. 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 or 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.

R. Under ARS § 41-4401, the GYEDC warrants its compliance with all federal immigration laws and regulations that relate to its employees and its compliance with ARS § 23-214, subsection A. A breach of the warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of the Agreement. The CITY retains the legal right to inspect the papers of any contractor or subcontractor employee who works on the Agreement to ensure that the contractor or subcontractor is complying with the warranty.

S. Notices. All notices, demands or other communications given under this Agreement shall be in writing and shall be deemed to have been duly delivered or refused delivery upon personal delivery, or mailing by United States mail, postage prepaid, registered or certified, return receipt, addressed as follows:

City of San Luis  
Attn: City  
Manager PO.  
Box 1170  
San Luis, Arizona 85349

Greater Yuma Economic Development  
Corporation Attn: Chair  
899 Plaza Circle, Suite 2  
Yuma, Arizona 85365

**IN WITNESS WHEREOF**, the Parties have executed this Agreement in Yuma County, Arizona, the day and year set forth above which the date the last Party signed this Agreement.

**City of San Luis, Arizona**

\_\_\_\_\_  
Gerardo Sanchez, Mayor

APPROVED AS TO FORM:

ATTEST:

\_\_\_\_\_  
Sonia Cornelio, City Clerk

\_\_\_\_\_  
Kay Marion Macuil, City  
Attorney

**Greater Yuma  
Economic Development Corporation.**

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Signature

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Print Name

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Title