

**INTERGOVERNMENT AGREEMENT  
BETWEEN  
THE COUNTY OF YUMA AND THE GREATER YUMA PORT AUTHORITY  
FOR  
INFRASTRUCTURE IMPROVEMENTS AT MAGRINO INDUSTRIAL PARK**

THIS INTERGOVERNMENT AGREEMENT (“Agreement”) is entered into by and between the COUNTY OF YUMA, a political body in the STATE OF ARIZONA (“COUNTY”), and the GREATER YUMA PORT AUTHORITY, an Arizona nonprofit corporation consisting of governmental and tribal members (“GYPA”).

WHEREAS, the COUNTY is authorized to enter into this Agreement pursuant to A.R.S. §§11-251, 11-254.04, and official action of the Board of Supervisors; and

WHEREAS, the GYPA is authorized to enter into this Agreement pursuant to its bylaws and official action of its Board of Directors; and

WHEREAS, COUNTY has secured American Rescue Plan Act (“ARPA”) funds and will allocate an approximate amount of \$3,373,000 to GYPA for the construction of infrastructure improvements, which include water and wastewater utilities for the Magrino Industrial Park (“MIP”), adjacent to the San Luis II Port of Entry; and

WHEREAS, GYPA is procuring a loan for the additional funds necessary to complete the infrastructure improvements in the MIP that are not eligible under the ARPA requirements which include but are not limited to roadway grading and paving, utilities, signing and striping (“Additional Funding”); and

WHEREAS, the COUNTY and GYPA have agreed to loan terms under separate documents for the Additional Funding, specifically the Payment Agreement, Secured Promissory Note, Deed of Trust, and Guaranties (collectively, the “Loan Documents”); and

WHEREAS, the City of San Luis will be obligated by law to accept and maintain all public infrastructure improvements within the MIP as an industrial subdivision once constructed; and

WHEREAS, GYPA has agreed to design and provide complete plans, specifications and estimate to construct all the infrastructure improvements including utilities for the MIP, delineated upon the map attached hereto and incorporated as **Exhibit A**; and

WHEREAS, the COUNTY, through the Yuma County Engineer, contingent upon GYPA’s ability to secure the Additional Funding, has agreed to manage the construction of the infrastructure improvements for GYPA, including for the COUNTY to bid the construction of infrastructure improvements; and

WHEREAS, it is to the mutual benefit of the COUNTY and the GYPA to enter into an agreement regarding the construction of infrastructure improvements, subject to the terms and conditions herein.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. COUNTY shall manage the construction of infrastructure improvements for MIP, which shall be herein defined as the "Project". Specifically, COUNTY shall cause the Project to be constructed, advertise for bids, award and administer the construction contract for the Project, provide direction, approve all Project requirements and process all construction documents as necessary for the Project.
2. GYPA shall provide all plans, specifications, and estimates for the Project, and to provide City of San Luis approval of plans and authorization to construct for the Project.
3. The parties agree that the scope of the Project shall consist of the following infrastructure improvements for the MIP: water and wastewater utilities; roadway grading and paving; roadway signing and striping.
4. The parties agree that the ARPA funds will be applied to all eligible costs of the Project as defined in the U.S. Treasury Interim Final Rule and subsequent guidance. The parties further agree that such eligible costs shall include reimbursement to the Yuma County Engineer for reasonable and customary construction administration costs.
5. GYPA agrees to reimburse the Yuma County Engineer for all construction administration costs to include project inspection. COUNTY reserves the right to hire a consultant for project inspection services in the event that COUNTY does not have any inspectors available at the time of construction of the Project.
6. GYPA shall be solely responsible for the cost of any and all permits required for the Project.
7. GYPA shall provide the Additional Funding necessary for the Project that are not covered by the ARPA grant funds. The parties agree that COUNTY shall not accept any bid or enter into any third party contracts for the Project until GYPA provides proof of financing for the Additional Funding. GYPA's failure to secure the Additional Funding shall limit the COUNTY's obligations under this Agreement to only those improvements eligible for the ARPA grant funds.
8. As a sub-recipient of the ARPA funds, the GYPA agrees to comply with applicable law and regulations governing Federal funds, to include but not limited to, the following:
  - a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200.
  - b. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25.
  - c. Reporting Sub-award and Executive Compensation Information, 2 C.F.R. Part 170.

- d. OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement), 2 C.R.R. Part 180.
- e. Drug-Free Workplace, 31 C.F.R. Part 20.
- f. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- g. Title VI of the Civil Rights Act of 1964.
- h. The Fair Housing Act, Title VIII of the Civil Rights Act of 1968.
- i. Section 504 of the Rehabilitation Act of 1973.
- j. The Age Discrimination Act of 1975, as amended.
- k. Title II of the Americans with Disabilities Act of 1990, as amended.
- l. Protections for Whistleblowers in accordance with 41 U.S.C. § 4712.

9. The GYPA shall provide to the COUNTY all necessary information pertaining to the Project for reporting purposes to the U.S. Department of Treasury. The GYPA agrees to grant access to representatives of the COUNTY and U.S. Department of Treasury to review records pertaining to the Project upon request.

10. GYPA shall assist and provide all necessary information for 36 months after the completion of the Project to complete the Outcome Reports required by the ARPA Funds.

11. Neither COUNTY nor any officer or employee thereof is responsible for any damage or liability occurring by reason of any negligent act or omission committed by the employees of COUNTY acting within the scope of their employment under or in connection with any work, authority or jurisdiction delegated to COUNTY under this Agreement.

12. Provided that the GYPA secures the Additional Funding, this Agreement shall terminate upon completion of the Project.

13. This Agreement is governed by the laws of the State of Arizona.

14. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.

15. This Agreement shall remain in full force and effect until completion of the Project and all financial obligations created as a result of this Project has been fully satisfied.

16. All notices or demand upon any party to this Agreement shall be in writing and all shall be delivered in person or sent by mail addressed as follows:

Greater Yuma Port Authority  
 Chairman and Executive Director  
 P.O. Box 4601  
 Yuma, Arizona 85366-4601

County of Yuma  
 County Engineer  
 2351 W. 26th Street  
 Yuma, Arizona 85364

17. This Agreement contains the entire agreement between the parties, and no oral or written statements, promises, or inducements made by either party or its agents not contained or specifically referred to in this Agreement are valid or binding. All modifications to this Agreement must be in writing, signed and endorsed by the parties.

18. 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 attorney fees and costs.

19. The GYPA agrees to defend, indemnify, and hold harmless the COUNTY from all losses, liability, claims or expenses (including reasonable attorney's fees) arising from bodily injury, including death or property damage, to any person or persons caused in whole or in part by the negligence or misconduct of the GYPA, except to the extent same are caused by the negligence or willful misconduct of the COUNTY. It is the intent of this section to require the GYPA to indemnify the COUNTY to the extent permitted under Arizona law.

20. The COUNTY agrees to defend, indemnify, and hold harmless the GYPA from all losses, liability, claims or expenses (including reasonable attorney's fees) arising from bodily injury, including death or property damage, to any person or persons caused in whole or in part by the negligence or misconduct of the COUNTY, except to the extent same are caused by the negligence or willful misconduct of the GYPA. It is the intent of this section to require the COUNTY to indemnify the GYPA to the extent permitted under Arizona law.

21. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

**IN WITNESS WHEREOF**, the governing body of each party hereto has approved and executed this Agreement in accordance with governing law.

**COUNTY OF YUMA, ARIZONA**

**GREATER YUMA PORT AUTHORITY**

\_\_\_\_\_  
Marcos "Tony" Reyes, Chairman  
Board of Supervisors

\_\_\_\_\_  
Matias Rosales  
Chairman

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Susan K. Thorpe  
County Administrator/Clerk of the Board

## ATTORNEY CERTIFICATION

The foregoing Intergovernmental Agreement between Yuma County and the Greater Yuma Port Authority has been reviewed pursuant to Arizona Revised Statutes § 11-951 through 11-954 and has declared this Agreement to be in proper form and within the powers and authority granted under the laws of the State of Arizona to those parties to the Agreement.

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Edward P. Fehleley  
Deputy County Attorney

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Wayne C. Benesch  
Attorney for Greater Yuma Port Authority

Exhibit "A"