

AGREEMENT

This agreement (“Agreement”) is made this _____ day of May 2024. This Agreement is between:

Arizona Western College, A Political Subdivision of the State of Arizona. and the Arizona Western College Small Business Development Center (“SBDC”) 2020 South Avenue 8 E Yuma, Arizona 85365	The City of San Luis City Hall 1090 East Union Street (Physical Address) San Luis, Arizona P.O. Box 1170 (Mailing Address) San Luis, Arizona 85349 an Arizona municipal corporation (“City”)
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Arizona Western College and the City may be referred to singularly as the “Party” and collectively as the “Parties.”

In consideration of the mutual benefits and obligations in this Agreement, the Parties agree:

SECTION ONE. ARIZONA WESTERN COLLEGE DUTIES

Arizona Western College shall use the City funds under this agreement solely for the SBDC programs in San Luis, Arizona (“San Luis”) or for San Luis residents of businesses in San Luis in connection with the SBDC program. Arizona Western College shall ensure that SBDC uses the funds:

- (1.1) to conduct well-publicized outreach, free and open to the public in San Luis, Arizona (“San Luis”), to inform the public of the services of SBDC;
- (1.2) to provide its services free of charge; and

[Intentionally left blank. The Agreement continues next page]

(1.3) to take all desirable steps to meet its annual goals ending June 30, 2024, for San Luis set out here showing progress as of January 2024:

Performance Metrics July 2023 - June 2024		
	Established Goals San Luis	Performance as of January 2024
Business Starts	3	3
Capital Formation	\$ 433,681.82	\$ 302,097.00
Full-time Jobs Created	18	14
Full-time Jobs Retained	13	13.5
Sales Growth	\$ 600,000.00	\$ 503,200.00
Customer Count	60	103

SECTION TWO. BOOKS, RECORDS, AND REPORTS

Arizona Western College shall keep accurate and current books showing disbursements and the purpose of disbursements and retain all receipts to account for the City’s funds. Such books shall be kept in a place convenient for the City, and the City shall have access to and the right to examine such books at any and all reasonable times.

Arizona Western College shall cause to be prepared a report for presentation to the City Council, which shall include the activities and services provided benefiting San Luis residents or San Luis businesses and the number of San Luis residents or businesses served. At all times, the privacy of the SBDC clients shall be respected as required under the Small Business Administration Act codified at 15 US 648(a)(7) and 13 C.F.R. Part 130 to the extent permitted by the Arizona Public Records Act.

It is acknowledged that SBDC presented a report to the City Council at its regular meeting on January 10, 2024.

SECTION THREE. CITY’S DUTIES

City shall pay Arizona Western College \$13,630.00 solely for the purposes described in SECTION ONE above. The City shall pay upon Arizona Western College invoice, submitted to the attention of "San Luis Administration" to the Post Office Box in the first paragraph of this Agreement.

SECTION FOUR. INDEPENDENT CONTRACTOR AND OBEY ALL LAWS

4.1 Rights of Arizona Western College as an independent contractor include but are not limited to control of the work, manner, and methods of the work, and the right to contract with others.

4.2 The Parties agree that Arizona Western College, its employees, agents, and subcontractors shall all be independent contractors. Arizona Western College employees, agents, and subcontractors shall not be considered employees or agents of the City for any purpose, except as set forth in Section 4.10. They will not be entitled to the City's employee benefits.

4.5 Employment Law. Arizona Western College shall be responsible for complying with all employment laws and responsible for all obligations owed its employees, including but not limited to safe work conditions, all wages, payroll tax withholding, workers' compensation coverage, and unemployment compensation coverage.

4.6 Employment Eligibility. Under A.R.S. § 41-4401, e-verify:

(a) Arizona Western College warrants its compliance with all federal immigration laws and regulations that relate to its employees and its compliance with A.R.S. § 23-214(A).

(b) That a breach of a warranty under paragraph (a) shall be deemed a material breach of the Agreement subject to penalties, including contract termination.

(c) That the City retains the legal right to inspect the papers of any contractor or subcontractor who works on this Agreement to ensure that the contractor or subcontractor complies with the warranty under paragraph (a).

4.7 Conflict of Interest. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511 due to conflict of interest.

4.8 No forced labor of Uyghurs. By signing this Agreement, Arizona Western College certifies in compliance with A.R.S. § 35-394 that it does not currently, and agrees for the duration of this Agreement that it will not use (1) the forced labor of the ethnic Uyghurs in the People's Republic of China, (2) any goods or services produced by the forced labor of the ethnic Uyghurs in the People's Republic of China, nor (3) any contractors, subcontractor or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

4.9 Obey all Laws. Arizona Western College shall comply with and obey all laws that affect the work of Arizona Western College under this Agreement.

4.10 Workers' Compensation. For purposes of workers' compensation, an employee of a Party to this Agreement, who works under the jurisdiction or control of, or who works within the jurisdictional boundaries of another Party pursuant to this Agreement, is deemed to be an employee of both the Party who is her primary employer and the Party under whose jurisdiction or control or within whose jurisdictional boundaries she is then working, as provided in A.R.S. §23-1022(D). The primary employer of such

employee shall be solely liable for payment of workers' compensation benefits for the purposes of this section. Each Party herein shall comply with the provisions of A.R.S. §23-1022(E) by posting the notice required.

SECTION FIVE. MUTUAL INDEMNIFICATION

To the fullest extent permitted by law, each Party (as "Indemnitor") agrees to defend, indemnify, and hold harmless the other Party and its officers, officials, employees, agents (collectively "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as "Claims") arising out of bodily injury of any person (including death) or property damage, but only to the extent that such Claims that result in liability to the Indemnitee are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

This indemnification provision shall survive the expiration or termination of this Agreement. Each Party shall name the other and its officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by the indemnifying Party or its officers, officials, agents, and employees.

[Intentionally left blank. The Agreement continues to the next pages.]

Each Party shall provide a Certificate of Insurance to the other showing the additional insureds required above.

Type of Coverage	Coverages	Limits
Commercial General Liability – Occurrence Form	Each Occurrence Limit	\$1,000,000
a) Policy shall include bodily injury, property damage, personal injury, broad form contractual liability	Personal Injury/Advertising Injury Limit	\$1,000,000
	General Aggregate Limit	\$2,000,000
Workers’ Compensation and Employer’s Liability	Workers’ Compensation	Statutory

SECTION SIX. TERMINATION

6.1 Without Cause. Either Party may terminate this Agreement and the services to be rendered, with written notice to the other Party at least 30 days before the termination.

6.2 With Cause. Either Party may terminate this Agreement immediately for cause. For this purpose, “cause” means a material breach of this Agreement that the breaching Party does not cure within ten (10) days of receiving notice of the alleged breach from the non-breaching.

6.3 Expiration. The agreement expires on June 30, 2024.

SECTION SEVEN. MISCELLANEOUS PROVISIONS

7.01 Notices. Notice required in this Agreement shall be in writing and delivered personally to the other Party or sent by any commercially reasonable means of receipted delivery addressed to that Party at the address most recently provided in writing. Either Party may change the address to which notice is to be sent by written notice to the other under any provision of this paragraph.

7.02 No Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof. No waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement. No waiver and no modification shall be effective unless it is in writing and signed by the Parties and then only to the extent expressly set forth in such writing.

7.03 Amendment. Neither Party shall change or add to this Agreement except by written amendment executed by the Parties.

7.04 Severability. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction or by operation of legislation, such provision shall be severed from this Agreement. The remainder of this Agreement will not be affected by that invalidity or unenforceability. Each remaining provision of this Agreement will be valid and enforced to the extent permitted by the law.

7.05 Governing law. The laws of Arizona shall govern the interpretation and enforcement of this Agreement.

7.06 Venue. Venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction in Yuma County, Arizona. In such legal action, the Parties shall waive any right to object to such venue. Nothing in this paragraph shall be deemed to have authorized the bringing of any legal action in a court without jurisdiction to adjudicate it.

7.07 Attorney Fees and Costs. If either Party finds it necessary to bring any action at law, arbitration, or other proceedings against the other Party to enforce any of the terms, covenants, or conditions in this Agreement, to the fullest extent permitted by law, the non-prevailing Party shall pay all reasonable costs, reasonable financial services fees, and reasonable attorney's fees. If the prevailing Party secures a judgment, all such costs and fees shall be included in the judgment, set by the court and not by jury.

7.08 No Assignment. Arizona Western College shall not assign the benefits nor delegate the obligations under this Agreement to any person or entity.

7.09 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement. No person or entity not a Party shall have any right or cause of action under this Agreement.

7.10 No Agency Created. Nothing in this Agreement shall create any agency, partnership, joint venture, or other similar arrangements between the Parties.

7.11 No Personal Liability. In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them by this Agreement, there shall be no personal liability on the City, its agents, elected officials, officers, and employees. The Parties understand that they act as agents and representatives of the City in such matters.

7.12 Time is of the Essence. Time is of the essence in this Agreement. Arizona Western College shall use the utmost diligence to provide the services in this Agreement before June 30, 2024.

7.13 Further Acts. The Parties shall execute and deliver all documents and perform all acts as reasonably necessary to carry out the matters contemplated by this Agreement.

7.14 Force Majeure. If either Party or both Parties are prevented or materially restricted from performing any of their obligations under this Agreement due to an event of *force majeure*, then the obligations of both Parties shall be suspended or reduced to the extent made necessary by the event. As used in this subsection, “*force majeure*” means any act or cause not reasonably within the control of the Party whose ability to perform is impaired if that Party could not have prevented the cause by the exercise of reasonable diligence. In this Agreement, *force majeure* includes, but is not limited to, natural or man-made disasters, epidemics, pandemics, public health orders, emergency orders, material changes in the law or regulation; or any other legitimate condition beyond the City’s or Arizona Western College control.

7.15 Headings. The headings in this Agreement are inserted for convenience only. They shall not control or affect the meaning or construction of this Agreement.

7.16 Authority. The undersigned represent to each other that they:

- have full power and authority to enter into this Agreement and
- have ensured that all necessary actions have been taken to give full force and effect to this Agreement.

7.18 Entire Agreement. This Agreement, including its incorporated Exhibit A, constitutes the entire Agreement between the Parties. All prior and contemporaneous agreements, representations, and understanding of the Parties, oral or written, are superseded and merged in this Agreement.

7.19 Counterparts. This Agreement may be executed in 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. Such signature pages may all be attached to a single instrument so that the signatures of all Parties may be physically attached to a single document.

[Intentionally left blank. The signature page follows.]

The Parties have executed this Agreement in Yuma County, Arizona, on the day and year first set forth above, which is the date of the signature of the last Party to sign.

City of San Luis, Arizona

Nieves Riedel, Mayor

ATTEST:

Sonia Cornelio, City Clerk

Under A.R.S. § 11-952(D), I certify that I have determined that this Agreement is in proper form, and it is within the powers and authority granted to the City of San Luis under the laws of Arizona.

Kay Marion Macuil, City Attorney

Arizona Western College

Signature of the authorized representative

Print Name and Title

Under A.R.S. § 11-952(D), I certify that I have determined that this Agreement is in proper form, and it is within the powers and authority granted to Arizona Western College under the laws of Arizona.

Arizona Western College's Attorney

Print Name