

**AGREEMENT**

This agreement (“Agreement”) made this \_\_\_day of July 2024 and is effective as of July 1, 2024, between

Greater Yuma Economic Development Corporation 1351 Redondo Drive Suite 158/159 Yuma, Arizona 85365  an Arizona nonprofit corporation (“GYEDC”) and	City of San Luis City Hall (Physical Address) 1090 East Union Street San Luis, Arizona  P.O. Box 1170 (U.S. Mail Address) San Luis, Arizona 85349  an Arizona municipal corporation (“CITY” or the “City of San Luis.”)
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GYEDC and the CITY 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.

**WHEREAS**, GYEDC is interested in providing such services;

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

**I. GYEDC PERFORMANCE OBLIGATIONS**

1.01 The CITY’s goals for GYEDC are:

- (a) work jointly with the CITY’s Economic Development representative to promote and strengthen regional economic development cooperation and coordination;
- (b) support a strong business climate and promote the image of the City of San Luis for relocation of businesses to the CITY;
- (c) qualify and assist companies to locate in the City of San Luis;
- (d) build a strong and effective regional economic development organization;

- (e) promote increases in private sector financing, support, and participation;
- (f) identify and develop through substantial effort at least ten (10) qualified prospects for location in the City of San Luis;
- (g) encourage jobs for the City of San Luis residents within the City of San Luis; and
- (h) maintain a structured business retention and expansion program, making a minimum of ten (10) completed survey calls annually.

1.02 In furtherance of the foregoing goals, GYEDC agrees to:

- (a) 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. 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.
- (b) Create and Implement a Marketing Plan. 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.
- (c) Promote and strengthen regional economic development cooperation and coordination in Yuma County. GYEDC shall:
  - (i) participate with national, state, and regional economic development organizations involved in national and statewide economic development,
  - (ii) coordinate the Yuma County component of those organizations, and
  - (iii) coordinate and work in conjunction with the CITY's economic development representative(s) to assist with the CITY's participation in state and international economic development initiatives.
- (d) Qualify and assist companies considering locating in the greater Yuma County area. GYEDC shall:
  - (i) use its best efforts to continue to identify and, through substantial efforts, develop at least ten (10) prospects from outside of the City of San Luis for location in the City of San Luis;

- (ii) continue to provide all qualified prospects with coordinated professional services;
  - (iii) update and maintain the database of available properties;
  - (iv) coordinate and work with the CITY's economic development representative(s);
  - (v) provide the CITY'S GYEDC Board representatives and economic development representative(s) every other month activity reports for the prior two (2) months; and
  - (vi) engage the CITY's 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.
- (e) Develop a strong, effective regional development organization. GYEDC shall:
- (i) use its best efforts to secure public and private sector funding to achieve its goals successfully,
  - (ii) professionally develop GYEDC staff,
  - (iii) operate GYEDC under GYEDC articles of incorporation and bylaws and all amendments to them,
  - (iv) uphold and support the 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,
- (f) 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.
- (g) Assist the San Luis Business Incubator. As vacancies arise in the San Luis Business Incubator, GYEDC will assist in recruiting companies and build a waiting list for potential tenants.

1.03 Hire or retain, at GYEDC's discretion, a President/C.E.O. and necessary Staff to carry out the tasks described in this Agreement.

1.04 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:

- (a) visitations and presentations to businesspersons and manufacturers who have indicated an interest in locating in the City of San Luis and
  - (b) 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.
- 1.05 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.
- 1.06 Continue printing, publishing, and distributing 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.
- 1.07 Expend its resources to recruit businesses for relocation and expansion 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's economic development representative(s) and the San Luis City Manager or designee regarding the hazardous material environmental impacts of prospective businesses.
- 1.08 GYEDC will coordinate with the CITY information for potential businesses about the San Luis City Code requirements for a hazardous material impact review.
- 1.09 Cooperate with the greater San Luis community in efforts and activities to expand economic opportunities within the region, downtown, ports of entry, and industrial parks.
1. 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.
1. 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. The GYEDC Board shall review all documentation required hereinafter 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:

- (a) Monthly financial statement as presented to the GYEDC Board.
- (b) 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.

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

## **II. CITY OBLIGATIONS**

2.01 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.

2.02 Pay GYEDC for the Fiscal Year 2024-2025, 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.

2.03 The method of payment shall be as follows:

- (a) GYEDC shall submit a request for payment quarterly to the CITY'S Office of the City Manager, under the approval of GYEDC's annual budget by its GYEDC Board.
- (b) . Upon approval of the request for payment by the CITY, the CITY'S Director of Finance shall make payments within 30 days to GYEDC, except as provided in subsection 2.04.

2.04 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.

- (a) GYEDC's failure to supply information, records, or reports as required.
- (b) GYEDC's failure to comply with documentation requirements or accounting procedures.
- (c) GYEDC's failure to allocate money received from the CITY for the purposes described in this Agreement.

### **III. FINANCIAL SUPPORT AND TERM OF AGREEMENT**

- 3.01 The term of this Agreement shall be for one (1) year, commencing on July 1, 2024, and ending on June 30, 2025.
- 3.02 The CITY agrees to pay GYEDC an amount of \$63,750 for services to be provided by GYEDC under this Agreement during the CITY's Fiscal Year 2024-2025.
- 3.03 Funding for this Agreement shall be subject to the San Luis City Council's annual appropriation of funds for this activity under the CITY's required budget process.
- 3.04 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 of this Agreement, the San Luis City Council has the option not to renew this Agreement.
- 3.05 GYEDC shall submit to the Office of the City Manager a report of GYEDC's third (3<sup>rd</sup>) Quarter compliance by April 9, 2025. GYEDC may make a request to the Office of the City Manager for the 2025-2026 fiscal year by April 9, 2025, so that the request can be included in the budget calculations and budget meeting for the end of April.
- 3.06 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 of this Agreement in any of the following circumstances:

- 4.01 without cause at any time with ninety (90) days' notice whenever the CITY determines that such termination is in the best interests of the CITY,
- 4.02 by mutual written consent of both Parties to this Agreement, or
- 4.03 for breach or default by GYEDC of any of its obligations set forth in this Agreement.

**V. INDEMNIFICATION**

GYEDC agrees to indemnify, hold harmless, and defend the City, its employees, officers, directors, agents, and elected officials from and against all claims, suits, damages, losses, liabilities, debt, judgments, settlements, costs, and expenses including reasonable attorneys' fees, incurred by the City arising from, attributable to or caused by acts or omissions of GYEDC (or its employees, officers, directors, shareholders or agents) in the performance of or related to the performance of the duties of any GYEDC employee (including, but not limited to injuries to GYEDC employees that may or may not be covered by workers compensation insurance); except to the extent that such claims, suits, damages, losses, liabilities, debt, judgments, settlements, costs, and expenses are caused by the negligence, omission, or intentional misconduct of the City

**VI. INSURANCE**

Without in any way limiting GYEDC's liability under the indemnification described below, GYEDC shall maintain, during the term of this Agreement, the following insurance:

	<u>Coverage</u>	<u>Minimum Limits</u>
<u>Commercial General Liability, including:</u>		
Premises and Operations		\$1,000,000 Combined Single Limit
Contractual Liability		per occurrence and \$2,000,000
Personal-Injury Liability		general aggregate
Independent Contractors Liability		
<u>Comprehensive Automobile Liability</u> (including owned, non-owned and hired autos)		\$1,000,000 Combined Single Limit, per Occurrence

Notwithstanding the foregoing, the parties acknowledge that the minimum insurance coverage required under this Agreement is not a guarantee that the coverage amount will be sufficient to cover any particular liability that may arise.

Additional Insured. The City of San Luis, its elected officials, officers, employees, and agents shall be named as an additional insured with respect to liability arising out of the activities performed by or on behalf of GYEDC. Except for Workers' Compensation and Professional Liability Insurance coverage, such insurance shall include additional endorsements naming the City and its employees, agents, officers, and elected officials as additional insured for claims caused in whole or in part by GYEDC's negligent acts or omissions arising from GYEDC's performance of this Agreement. GYEDC shall provide the City with certificates of insurance documenting that GYEDC has obtained the above coverages. Such certificates shall include the required provisions and endorsements required by this Agreement. Such Certificates shall include a statement that insurance may not be canceled without thirty (30) days prior written notice to the City by first class mail, postage prepaid, and ten (10) days of notice if cancellation is due to nonpayment of premium.

Primary Insurance Requirement. Each GYEDC policy, including primary, umbrella, and excess policies, shall state that the insurance provided to the additional Insureds is primary and non-contributory to any other insurance (primary, umbrella, excess, self-insurance, or any other basis) available to the additional insured. Any insurance or self-insurance maintained by the City shall be in excess of GYEDC's insurance and shall not contribute to it.

Waiver of Subrogation. GYEDC waives all rights of recovery against the City of San Luis and its employees, agents, officers, and elected officials for losses arising from work performed by or on behalf of GYEDC.

## **VII. COMPLIANCE WITH THE LAWS.**

Each Party agrees to comply in all material respects with applicable laws, rules, regulations, and orders, including, without limitation, promptly obtaining and maintaining all governmental approvals necessary to conduct business and pay all taxes. GYEDC shall include similar requirements of subcontractors in any contracts entered into for the performance of GYEDC obligations under this Agreement.

7.01 Conflict of Interest. This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

7.02 Employment Eligibility. GYEDC warrants that it complies 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. A breach of

this warranty shall be deemed a material breach of this Agreement. The City retains the legal right to inspect GYEDC's papers to ensure that GYEDC complies with this warranty.

7.03 Uyghurs Forced Labor. Under A.R.S. § 35-394, GYEDC certifies by signing this Agreement, to the extent permitted by law, that it does not currently, and agrees for the duration of the Agreement that it will not, use:

- (a) The forced labor of ethnic Uyghurs in the People's Republic of China.
- (b) Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- (c) Any contractors, subcontractors, 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.

GYEDC certifies that if GYEDC becomes aware during the term of the Agreement that GYEDC is not in compliance with the written certification, GYEDC shall notify the City within five (5) business days after becoming aware of the noncompliance. If GYEDC does not provide the City with a written certification that GYEDC has remedied the noncompliance within one hundred eighty days after notifying the City of the noncompliance, the Agreement terminates, except that if the Agreement termination date occurs before the end of the remedy period, the Agreement terminates on the Agreement termination date.

## **VIII. GENERAL PROVISIONS**

8.01 Notices. All notices, approvals, and communications provided for herein, or given in connection, shall be validly given, made, delivered, or served if in writing and delivered personally by a process server or sent by a nationally recognized courier (e.g., Federal Express, Airborne, U.P.S.) or by United States Postal Service certified with return receipt requested and postage prepaid to the addresses in the first paragraph of this Agreement. If to the CITY, make to the attention of the City Manager a copy to the City Attorney. If to GYEDC, make to the attention of the C.E.O.

8.02 Financial Review. GYEDC shall make its financial records available for inspection by the CITY or its designee upon reasonable notice during GYEDC's regular business hours.

8.03 Audit. If the CITY desires a financial audit of GYEDC's financial records by a certified public accountant to verify the organization's use of funds according to the terms and conditions of this Agreement, GYEDC shall cooperate fully in the performance of such an audit. GYEDC shall not be

responsible for the cost of such an audit if requested by the CITY. GYEDC shall be entitled to a copy of any resulting report the CITY receives.

- 8.04 Binding on Successors. The covenants and conditions in this Agreement apply to and bind the heirs, successors, executors, administrators, and assigns of all the Parties.
- 8.05 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, expert fees, witness fees, court costs, and reasonable attorney fees.
- 8.06 Law Governing. The laws of the State of Arizona shall govern this Agreement, including but not limited to choice of law, conflicts of law, validity, interpretation, and performance.
- 8.07 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.
- 8.08 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.
- 8.09 Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only. Headings shall not control or affect the meaning or construction of the provisions of this Agreement.
8. Severability. If a court of competent jurisdiction or controlling legislation makes any part, term, or provision of this Agreement illegal or invalid, 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.
8. No Partnership. Nothing in the Agreement is intended nor shall be construed to constitute a partnership, joint venture, agency, or similar arrangement between the Parties.

8. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no person or entity, not a Party, shall have any right or cause of action.
8. No Assignment nor Assumption. GYEDC shall not assign the benefits of or delegate the obligations arising under this Agreement to any person or entity
8. Amendment. This Agreement may be amended, in whole or in part, only with the mutual written consent of the Parties to this Agreement or by their successor in interest.
8. No Personal Liability. No employee, officer, or elected official of the City shall be personally liable to GYEDC or any successor (a) if any default occurs or breach by the City, (b) for any amount which may become due to GYEDC or its successor, or (c) under any obligation of the City under this Agreement.
8. Force Majeure. No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the impacted Party's reasonable control, including, without limitation, the following *force majeure* events that frustrate the purpose of this Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or regulation; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; (i) epidemic or pandemic; (j) state of emergency; (k) shortage of power or transportation facilities; and (l) other similar events beyond the reasonable control of the Impacted Party that frustrate the purpose of this Agreement.
8. Time is of the essence. In this Agreement, time is of the essence, and GYEDC agrees to use the utmost diligence to perform its obligations.
8. Entire Agreement. 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. This Agreement may not be enlarged, modified, or altered except in writing, signed by the Parties, and attached to this Agreement.
8. Counterparts. This Contract may be executed in counterparts, any of which shall be deemed to be an original.

8. Authority. The undersigned represent to each other that each has full power and authority to enter into this Agreement and that all necessary actions have been taken to give full force and effect to this Agreement. GYEDC represents and warrants it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under state laws. GYEDC and the City warrant to each other that the individuals executing this Agreement on behalf of their respective Parties are authorized and empowered to bind the Party on whose behalf each individual is signing.

*[Intentionally left blank. Signature page follows]*

