

**OUTSIDE AGENCY AGREEMENT
BETWEEN THE CITY OF YUMA
AND THE YUMA VISITOR'S BUREAU**

THIS Outside Agency Agreement ("Agreement") is entered into by and between the City of Yuma ("City"), an Arizona municipal corporation, and the Yuma Visitor's Bureau ("YVB"), a non-profit organization. The City and YVB are sometimes referred to individually as the "Party" and collectively as the "Parties."

WHEREAS, the City is interested in supporting organizations that promote the City as a destination site and promote the rich diversity of our area and its history; and

WHEREAS, YVB will work with its community partners to enhance the international reputation of the greater Yuma area as a warm and welcoming year-round tourism and meeting destination for visitors of all kinds that offers rich history and authentic experiences amid a unique landscape of mountains, river and desert; and

WHEREAS, the City wants to support YVB.

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

I. YVB RESPONSIBILITIES

YVB shall:

- A. Perform all of the services, and allocate the funds YVB receives from the City, as set forth in Exhibit A, which is attached and incorporated into this Agreement by reference. The City shall only issue payment to YVB for the services set forth in Exhibit A.
- B. Maintain accurate records of all monies received and disbursed from the City. YVB shall maintain an accounting system which complies with generally accepted accounting principles, including, but not limited to, SOP 78-10, FASB 116 and 117 as issued by the American Institute of Certified Public Accountants ("ACIPA"), and with the AICPA Audit Guide for Non-Profit Corporations and shall separately account for all funds provided by the City pursuant to this Agreement.
- C. On or before July 1, 2017, provide the City with names and addresses of the current YVB officers or directors, and a copy of the current YVB bylaws and articles of incorporation and amendments thereto. In the event of any change of officer and/or director, bylaws, or articles of incorporation, YVB shall provide the City written notice of said change and, if applicable, a copy of any changed bylaws or articles of incorporation within thirty (30) days thereafter.
- D. Within thirty (30) days after the end of each quarter (March 31, June 30, September 30, and December 31) of each year this Agreement is in effect, provide the City with a report and records of revenue and disbursements of monies received from the City for the most recent quarter. Such report shall contain analytical memoranda which:

1. Lists travel activities;
2. Lists capital expenditures;
3. Describes results of activities and expected achievements; and
4. Describes program effectiveness.

The program status report documenting activities from July 1, 2017 to December 31, 2017 shall be submitted to the City or before January 15, 2018. The program status report documenting activities from January 1, 2018 to June 30, 2018 on or before July 15, 2018.

- E. Meet with the City of Yuma marketing team on the third Wednesday of each month to discuss current and upcoming projects and collaboration. For purposes of these meetings, Miriam Limon, City Administration, will serve as the point-of-contact for YVB.
- F. The City Administrator may also require YVB to provide a brief monthly statement or status report in an agreed-upon form.

II. CITY RESPONSIBILITIES

The City shall:

- A. Evaluate YVB's performance relative to the performance criteria set forth herein in order to assess the impact of the efforts of YVB. Any additional information desired by the City which is relevant and necessary to the City's evaluation shall be made available by YVB.
- B. Provide funds as directed by the City Council to YVB for the fiscal year, unless terminated as provided herein, in the amount which is stated herein. Such sum is to be disbursed on a monthly basis as set forth in Section III of this Agreement.
- C. As permitted by law, provide YVB with grant funding leads and, each quarter, up to five (5) hours of consultation with the City's grant writer.

III. METHOD OF PAYMENT

- A. YVB shall submit a request for payment monthly to the City's Director of Finance detailing the proposed expenditures for the month and actual expenditures to date.
- B. Upon approval of the request for payment by the City, the City's Director of Finance shall make payments within fifteen (15) days to YVB, except that the City may, at the City's sole discretion, withhold payment, in whole or in part, as may be necessary to protect the City from loss on account of:
 1. YVB's failure to render acceptable services as stated in the performance criteria of Section I of this Agreement. The City Administrator, or designee, shall investigate and monitor the quality of YVB's services in order to determine whether such services are acceptable. Upon determination by the City Administrator that acceptable services are not being rendered, the City Administrator shall notify YVB of the specific deficiencies in performance and provide a reasonable time for YVB to rectify

- said deficiencies, but in no event shall such time to rectify exceed ninety (90) days. Whether or not YVB's services are acceptable will be the City's exclusive decision;
2. YVB's failure to supply information, documents, records or reports as required by this Agreement;
 3. YVB's failure to comply with the accounting procedures set forth in this Agreement;
or
 4. YVB's failure to allocate money received from the City for the purposes described herein.

IV. FINANCIAL SUPPORT AND TERM OF AGREEMENT

- A. The term of this Agreement shall be for one year commencing on July 1, 2017, and ending on June 30, 2018.
- B. The City agrees to pay to YVB the amount of \$600,000.00 for services to be provided by YVB pursuant to this Agreement during Fiscal Year 2017-2018.
- C. Funding of this Agreement shall be subject to the annual appropriation of funds for this activity by the City Council pursuant to the required budget process of the City.
- D. If YVB's performance does not, in all material respects, meet the minimum requirements as described in Section I of this Agreement, this Agreement may not be renewed by the City Council.
- E. Nothing herein shall preclude the City from contracting separately with YVB for services to be provided in addition to those to be provided hereunder, upon terms and conditions to be negotiated by the City and YVB.
- F. In no event shall YVB use any monies received from the City under this Agreement to increase the compensation of any YVB employee or officer. "Compensation" as used herein includes salary, commissions, bonuses or other monies, but does not include reimbursements for expenses, such as travel, materials or supplies if expenses are incurred in the course of furthering the objectives of this Agreement.

V. TERMINATION

This Agreement may be terminated by the City at any time if any of the following occur:

- A. At the City's sole discretion, without cause, in which case the City shall provide thirty (30) days written notice;
- B. YVB breaches this Agreement or defaults on any of its obligations set forth herein, by providing ninety (90) day notice to YVB. Prior to such termination, the City shall notify YVB of the specific grounds for termination and provide a reasonable time for remedial action by YVB. In no event shall such time to remedy exceed ninety (90) days; or
- C. By mutual written consent of both Parties.

VI. INDEMNIFICATION

To the fullest extent permitted by law, YVB shall defend, indemnify and hold harmless the City, and the City's agents, representatives, officers, directors, officials, volunteers, and employees from and against all claims, liabilities, demands, damages, losses, injuries to property or persons (including death), and expenses (including attorney fees and litigation expenses, and the cost of appellate proceedings) (collectively "Claims") to the extent that such Claims result from and/or arise out of YVB's intentional, reckless, or negligent acts, errors, mistakes, directives, or omissions, in performance of this Agreement. This includes any intentional, reckless, or negligent acts, errors, mistakes, directives, or omissions of YVB's employees, agents, advertisers, contractors, subcontractors, or any other person for which YVB may be legally liable, in the performance of 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. The indemnity requirements set forth in this Agreement will in no way be construed as limiting the insurance required in this Agreement.

VII. INSURANCE

A. General.

1. *Insurer Qualifications.* Without limiting any obligations or liabilities of YVB, YVB shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to Arizona Revised Statutes ("A.R.S.") § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.
2. *No Representation of Coverage Adequacy.* The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve YVB from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
3. *Additional Insured.* All insurance coverage and self-insured retention or deductible portions, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name and endorse, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement.
4. *Waiver.* All policies, except for Professional Liability, shall contain an endorsed waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of

YVB. YVB shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement.

5. *Coverage Term.* All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.
6. *Primary Insurance.* YVB's insurance shall be primary, non-contributory insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.
7. *Claims Made.* In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
8. *Policy Deductibles and/or Self-Insured Retentions.* The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. YVB shall be solely responsible for any such deductible or self-insured retention amount.
9. *Use of Subcontractors.* If any work under this Agreement is subcontracted in any way, YVB shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the City and YVB. YVB shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.
10. *Evidence of Insurance.* Prior to receiving any funds, or commencing any work or services under this Agreement, YVB will provide the City with suitable evidence of insurance in the form of certificates of insurance, endorsements, and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by YVB's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. The City may reasonably rely upon the certificates of insurance, endorsements, and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, YVB] shall forward renewal certificates and declaration page(s) to the City thirty (30) days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing the title or this Agreement. Certificates

of insurance and declaration page(s) shall specifically include the following provisions:

- a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds for commercial general liability under Insurance Services Office, Inc., ("ISO") Form CG 20 10 03 97 or equivalent.
- b. YVB's insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.
- c. All policies, except for Professional Liability, including Workers' Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by YVB under this Agreement.

B. Required Insurance Coverage.

1. *Commercial General Liability.* YVB shall maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be endorsed as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.
2. *Professional Liability.* If this Agreement is the subject of any professional services or work, or if the YVB engages in any professional services or work adjunct or residual to performing the work under this Agreement, the YVB shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the YVB, or anyone employed by the YVB, or anyone for whose negligent acts, mistakes, errors and omissions the YVB is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

C. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without thirty (30) days' prior written notice to the City.

D. Workers Compensation: YVB understands and agrees that YVB's employees, agents, contractors, volunteers, and directors, are not serving as an employee of the City in any manner and therefore are not entitled to any of the City's industrial benefit coverages, including Workers' Compensation coverages. YVB acknowledges that any injury its employees sustain in the performance of this Agreement will be not be eligible for industrial benefits and any necessary treatment will be YVB, or YVB's insurer's, sole responsibility.

VIII. GENERAL CONDITIONS

- A. Non-Discrimination Laws. YVB 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, as amended, State Executive Order 2009-09, the Rehabilitation Act of 1973, as amended, which prohibits discrimination in the employment or advancement in employment of qualified persons because of physical or mental disability, and with the Americans with Disability Act of 1990. In addition, YVB shall include similar requirements of subcontractors in any contracts entered into for performance of YVB's obligations under this Agreement.
- B. Financial Review. YVB shall make their financial records available for inspection by the City, or its designee, upon reasonable notice during normal business hours of the City. If the City desires a financial audit by a certified public accountant of the YVB's financial records to verify use of City funds according to the terms and conditions of this Agreement, YVB shall cooperate fully in the performance of such audit. YVB shall be responsible for the cost of such an audit if requested by the City and are entitled to a copy of any resulting reports that are received by the City.
- C. Compliance with Laws. YVB shall comply with all federal, state, and local laws and ordinances applicable to its performance under this Agreement. In addition, YVB shall include similar requirements of subcontractors in any contracts entered into for performance of YVB obligations under this contract.
- D. Successors and Assigns. This Agreement is not assignable unless both Parties mutually consent otherwise in writing and signed by both Parties. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors, and assigns of both Parties.
- E. Attorney Fees and Costs. In the event 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/Venue. This Agreement shall be governed by the laws of the State of Arizona, as to validity, interpretation and performance. 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.
- G. Non-Waiver. The failure or delay 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, 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.

- H. 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.
- I. Entire Agreement and Amendments. This instrument 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 Agreement may not be enlarged, modified, or altered except in writing signed by both Parties and endorsed hereon.
- J. Relationship of Parties. The Parties understand and expressly agree that YVB is an independent contractor and is not an employee of the City. Nothing in this Agreement constitutes a partnership or joint venture between the Parties and neither Party is the principal or agent of the other.
- K. Rights/Obligations of Parties Only. The terms of this Agreement are intended only to define the respective rights and obligations of the Parties. Nothing expressed herein shall create any rights or duties in favor of any potential third-party beneficiary or other person, agency or organization.
- 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 YVB 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. Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Arizona Uniform Rules of Procedure for Arbitration currently in effect unless the parties mutually agree otherwise. 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. YVB shall take all steps necessary to ensure YVB compliance with all applicable federal, state, and local environmental laws, regulation 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. E-verify Requirements. To the extent applicable under A.R.S. § 41-4401, YVB and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). YVB's or its subcontractor's failure to comply with such warranty

shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

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

- Q. Political Activities. Employees, directors, board members, officers, and volunteers of YVB 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 YVB employee, director, board member, officer, or volunteer to support any candidate for public office. No employee, director, board member, officer, or volunteer shall use the name of YVB, or use their affiliation with YVB, 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 YVB 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 any YVB function or event.
- R. Boycott of Israel. Pursuant to A.R.S. § 35-393.01, YVB certifies that YVB is not engaged in a boycott of Israel as of the effective date of this Agreement, and agrees for the duration of this Agreement to not engage in a boycott of Israel.
- S. Notices. Unless otherwise provided in this Agreement, all notices, demands, requests, consents, approvals and other communications (collectively "Notices") required or permitted hereunder shall be in writing and delivered by registered or certified U.S. mail, postage prepaid, or personally delivered, at the address shown below. Notices shall be deemed received at the time of actual receipt, which shall be evidenced by a copy of receipt (in the case of notices that are personally delivered), or as evidenced by the United States Postal Service receipt; or five (5) calendar days after mailing, whichever comes first, in the case of notices that are mailed.:

To City:

City of Yuma
Attn: City Administrator
One City Plaza
Yuma, Arizona 85364

To Yuma Visitors Bureau:

Yuma Visitors Bureau
Attn: Linda Morgan, Exec. Dir
180 W 1st Street
Yuma, Arizona 85364

- T. Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.

IN WITNESS WHEREOF, the Parties have executed this Agreement this ____ day of _____, 2017.

City of Yuma, an Arizona municipal
corporation

Yuma Visitors Bureau

Gregory K. Wilkinson
City Administrator

Linda Morgan, Executive Director

ATTEST:

Lynda L. Bushong
City Clerk

DATE

APPROVED AS TO FORM:

Richard W. Files
City Attorney

Exhibit A

List of YVB Required Services and Funds Allocated for Each Service

[see the following pages]