

**OUTSIDE AGENCY AGREEMENT  
BETWEEN THE CITY OF YUMA AND  
GREATER YUMA ECONOMIC DEVELOPMENT CORPORATION**

This Outside Agency Agreement (“Agreement”) is entered into by and between the City of Yuma (“City”), an Arizona municipal corporation, and the Greater Yuma Economic Development Corporation (“GYEDC”), a non-profit organization. The City and GYEDC are referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, the City is interested in supporting organizations that promote the creation of wealth for all citizens within the Yuma region; and,

WHEREAS, GYEDC’s mission is to expand economic activity within the City and Yuma County by attracting commerce and industry to the region, and to assist in developing the region’s existing industry to its fullest potential. GYEDC actively recruits base industry to Yuma County combined with aggressive support to existing industry thus creating a stronger tax base supported by new investment dollars to our economy; and,

WHEREAS, the City wants to support GYEDC.

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

**I. GYEDC RESPONSIBILITIES**

GYEDC shall:

A. Perform the following services for the City:

1. Conduct business retention and expansion activities for existing companies and grow jobs through retention;
2. Act as a facilitator to the Yuma Manufacturer’s Association;
3. Partner with the Yuma International Airport (“YIA”) to recruit airline service, and recruit aerospace companies to utilize assets at YIA and Million Air;
4. Represent employers’ on the Yuma Private Industry Council regarding workforce needs and training;
5. Foster educational opportunities through cooperation with the Yuma School Districts and college institutions, assist with grant applications, and help guide the development of curriculum geared towards workforce needs;
6. Encourage Yuma partnerships with the University of Arizona, Arizona State University, Northern Arizona University, and Arizona Western College;
7. Represent the Yuma region at the Arizona-Mexico Commission;
8. Represent the region on the Arizona Commerce Authority Rural Advisory Council grant funding, infrastructure funding and statewide support for rural development

9. Work with the 4FrontED consortium of Yuma County Public Agencies, San Luis Rio Colorado Sonora and Mexicali Baja.
10. Maintain active involvement in the Statewide Economic Development Organization;
11. Maintain active involvement in the International Economic Development Organization;
12. Continue to provide cost analysis and statistic reports quarterly and upon request;
13. Publish a monthly publication depicting economic happenings in the region, state and federal areas as well as showcasing local investors driving economic vitality;
14. Conduct local speaking engagements to inform the community of GYEDC's activities at the state and national levels which brings positive attention to the Yuma region;
15. Conduct outbound marketing to site selectors and targeted industry sectors that align with Yuma's assets; and
16. Identify grants, incentives and low-interest financing mechanisms to assist existing base industry expansions.

B. Maintain the following:

1. A point of contact for all inquiries concerning locating or expanding in Yuma County through the GYEDC website;
2. Data Clearing House for all statistics needed for site selection and economic vitality of the region;
3. Maintain the Business Contact and Management Network and LinkedIn contacts;
4. Influence and provide access to economic development policy, best practices and economic modeling that calculates costs of doing business in the region;
5. Maintain an up-to-date GIS/Demographic website tool for site selectors and company research;
6. Maintain an up-to-date Economic Impact Report model and provide project reports as needed;
7. Maintain Grantee designation for Yuma Foreign Trade Zone 219; and
8. A resource for New Market Tax Credit and Opportunity Zone investments.

C. Maintain accurate records of all monies received from the City and the disbursement of all such monies. GYEDC 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 ("AICPA"), 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.

D. On or before July 1<sup>st</sup> of each year, provide the City with names and addresses of officers or directors, bylaws, and articles of incorporation and amendments thereto of GYEDC. In the event of any change of officer and/or director, bylaws, or articles of incorporation, GYEDC 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.

E. In coordination with the City's Economic Development Administrator, GYEDC shall participate in Pre-Development Meetings with the City of Yuma, for any prospective business considering relocation within City limits, prior to any agreement/commitments being entered into.

F. Within fifteen (15) days after the end of each quarter (the end of each quarter being 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.

A separate program status report documenting activities from July 1st to December 31st, shall be submitted to the City mid-month of the following February. The separate program status report documenting activities from January 1st to June 30th must be submitted on or before August 15<sup>th</sup> of the same year.

- G. The City Administrator may also require GYEDC to provide a brief monthly statement or status report in a form set forth by the City.

## **II. CITY RESPONSIBILITIES**

The City shall:

- A. In order to assess the impact of the efforts of GYEDC, the City shall evaluate GYEDC's performance relative to the performance criteria set forth in this Agreement. Any additional information desired by the City which is relevant and necessary to the City's evaluation shall be made available by GYEDC.
- B. Unless terminated as provided in Article V, the City shall provide funds as directed by the City Council to GYEDC for the fiscal year in the amount approved by City Council as part of the annual budget process. Such sum shall be disbursed on a monthly basis as set forth in Article III of this Agreement.

## **III. METHOD OF PAYMENT**

- A. GYEDC shall submit a monthly request for payment to the City's Finance Director 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 Finance Director shall make payments to GYEDC within fifteen (15) days, 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. GYEDC'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 GYEDC'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 GYEDC of the specific deficiencies in performance and provide a reasonable time for GYEDC to rectify said deficiencies, but in no event shall such time to rectify exceed ninety (90) days. Whether or not GYEDC's services are acceptable will be the City's exclusive decision;

2. GYEDC's failure to supply information, documents, records or reports as required by this Agreement;
3. GYEDC's failure to comply with the accounting procedures set forth in this Agreement; or
4. GYEDC's failure to allocate money received from the City for the purposes described in this Agreement.

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

- A. The term of this Agreement shall be for one year commencing on July 1, 2018, and ending on June 30, 2019 and will renew up to three additional one (1) year terms upon approval of the City's annual budget and funding for GYEDC for each fiscal year.
- B. The City agrees to pay to GYEDC the amount of \$232,000.00 for services to be provided by GYEDC pursuant to this Agreement during Fiscal Year 2018-2019.
- C. Funding amounts and renewal 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 GYEDC'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 in this Agreement shall preclude the City from contracting separately with GYEDC for services upon terms and conditions to be negotiated by the City and GYEDC, in addition to those services to be provided under 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 desire, in which case the City shall provide thirty (30) days written notice to GYEDC;
- B. If GYEDC breaches this Agreement or defaults on any of its contractual obligations the City shall provide GYEDC ninety (90) days written notice of the specific grounds for termination and provide a reasonable time for remedial action by GYEDC. 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, GYEDC shall defend, indemnify and hold harmless the City, 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 GYEDC’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 GYEDC’s employees, agents, advertisers, contractors, subcontractors, or any other person for which GYEDC 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 GYEDC, GYEDC shall purchase and maintain, at its own expense, the hereinafter stipulated minimum insurance coverages 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 shall have 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 GYEDC from, nor be construed or deemed a waiver of, GYEDC’s 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 GYEDC. GYEDC shall arrange to have such subrogation waivers incorporated into each policy by written endorsement.

5. *Coverage Term.* All required insurance 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.* GYEDC'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 containing the required provisions 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. GYEDC 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, GYEDC shall execute written agreements with its subcontractors containing the indemnification and insurance requirement provisions set forth in this Agreement protecting the City and GYEDC. GYEDC 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, GYEDC 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. 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, GYEDC 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. GYEDC's insurance shall be primary, non-contributory insurance with respect to performance of the Agreement.

- c. All policies, except for Professional Liability and 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 GYEDC under this Agreement.
- d. Each insurance policy required by the insurance provisions of the Agreement shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days' prior written notice has been given to City. Such notice shall be sent directly to the City Administrator, One City Plaza, P.O. Box 13014, Yuma, Arizona, 85364 and shall be sent by certified mail, return receipt requested.

B. Required Insurance Coverage.

1. *Commercial General Liability.* GYEDC 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 GYEDC engages in any professional services or work adjunct or residual to performing the work under this Agreement, GYEDC shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by GYEDC, or anyone employed by GYEDC, or anyone for whose negligent acts, mistakes, errors and omissions GYEDC 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: GYEDC understands and agrees that GYEDC'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. GYEDC acknowledges that any injury its employees sustain in the performance of this Agreement will not be eligible for industrial benefits through the City and any necessary treatment will be GYEDC, or GYEDC's insurer's, sole responsibility.

## VIII. GENERAL CONDITIONS

- A. Non-Discrimination Laws. 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, 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, GYEDC shall include similar requirements of subcontractors in any contracts entered into for performance of GYEDC's obligations under this Agreement.
- B. Financial Review. GYEDC 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 GYEDC's financial records to verify use of City funds according to the terms and conditions of this Agreement, GYEDC shall cooperate fully in the performance of such audit. GYEDC 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. 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 performance of GYEDC obligations under this Agreement.
- 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.
- J. Relationship of Parties. The Parties understand and expressly agree that GYEDC 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. This Agreement shall not 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 GYEDC 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. Boycott of Israel. Pursuant to A.R.S. § 35-393.01, GYEDC certifies it is not engaged in a boycott of Israel as of the Effective Date of this Agreement, and agrees that for the duration of this Agreement GYEDC will not engage in a boycott of Israel.
- 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. GYEDC shall take all steps necessary to ensure GYEDC compliance with all applicable federal, state, and local environmental laws, regulations 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, GYEDC 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). GYEDC'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 GYEDC contractor or subcontractor employee who works on this Agreement to ensure that GYEDC or subcontractor is complying with this warranty.

- Q. Political Activities. Employees, directors, board members, officers, and volunteers of 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 member, officer, or volunteer to support any candidate for public office. No employee, director, board member, officer, or volunteer shall use the name of GYEDC, or use their affiliation with GYEDC, 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 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 any GYEDC function or event.

- R. 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 GYEDC:  
Greater Yuma Economic  
Development Corporation  
Attn: Julie Engel, President  
899 E. Plaza Circle, Ste. 2  
Yuma, Arizona 85364

- S. Provisions Required by Law. Each and every provision of law and any clause required by 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 \_\_\_\_\_, 2018.

City of Yuma, an Arizona municipal  
Corporation

Greater Yuma Economic Development Corporation

\_\_\_\_\_  
Gregory K. Wilkinson  
City Administrator

\_\_\_\_\_  
Julie Engel, President

ATTEST:

\_\_\_\_\_  
Lynda L. Bushong  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Richard W. Files  
City Attorney