

ECONOMIC DEVELOPMENT AGREEMENT BETWEEN THE GREATER PHOENIX ECONOMIC COUNCIL AND THE CITY OF APACHE JUNCTION

This AGREEMENT is entered into between the CITY OF APACHE JUNCTION, an Arizona municipal corporation (“City”), and the GREATER PHOENIX ECONOMIC COUNCIL (“GPEC”), an Arizona non-profit corporation, both of which may be hereinafter referred to collectively as the “Parties” or individually as a “Party”.

RECITALS

- A. City desires to retain the services of a regional economic development agency to undertake strategic worldwide economic development initiatives including business recruitment, expansion and attraction to bring additional jobs and positive economic outcomes to the Phoenix region.
- B. GPEC is one of the region’s premier economic development groups for regional economic development services for the Phoenix region.
- C. The purpose of this agreement is to set forth the regional economic development program that GPEC agrees to undertake, the support that the City agrees to provide, the respective roles of GPEC and the City and the payment schedule between the City to GPEC for the 2020 fiscal year.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the CITY and GPEC agree as follows:

I. RESPONSIBILITIES OF GPEC

- A. **MISSION:** Attract and grow quality businesses and advocate for Greater Phoenix’s competitiveness.
- B. **GOALS:** GPEC is guided by and strategically focused on two specific long-range goals:
 - 1. Marketing the region to generate qualified business/industry prospects in targeted economic clusters
 - 2. Leveraging public and private allies and resources to locate qualified prospects, improve overall competitiveness, and sustain organizational vitality
- C. **RETENTION AND EXPANSION POLICY:**
 - 1. GPEC’s primary role is developing the Greater Phoenix region’s market intelligence strategy for high wage, base industry clusters in coordination with representatives of GPEC member communities.
 - 2. Retention and expansion of existing businesses within GPEC

member communities is primarily a local issue.

3. GPEC will support its member communities' efforts to retain and expand existing businesses through coordinating regional support and providing research on key retention and expansion projects.
4. GPEC will advise its member communities when an existing company contacts GPEC regarding a retention or expansion issue, subject to any legal or contractual non-disclosure obligations.

D. ACTION PLAN AND BUDGET: In accordance with the Mission, Goals and Retention and Expansion Policy set forth above and subject to the availability of adequate funding, GPEC shall implement the Action Plan and Budget adopted by GPEC's Board of Directors, a copy of which has been delivered to the City, receipt of which is hereby acknowledged. A summary of the Action Plan is attached hereto as **Exhibit A** ("GPEC Action Plan"). The City shall be informed of any changes in the adopted GPEC Action Plan which will materially affect or alter the priorities established therein. Such notification will be in writing and will be made prior to implementation of such changes. Notwithstanding the foregoing, the City acknowledges and agrees that GPEC may, in its reasonable judgment in accordance with its own practices and procedures, substitute, change, reschedule, cancel or defer certain events or activities described in the GPEC Action Plan as required by a result of changing market conditions, funding availability, unforeseen expenses or other circumstances beyond GPEC's reasonable control. GPEC shall solicit the input of the City on the formulation of future marketing strategies and advertisements. The GPEC Action Plan will be revised to reflect any agreed upon changes to the GPEC Action Plan.

E. PERFORMANCE TARGETS: Specific performance targets, established by GPEC's Executive Committee and Board of Directors, are attached hereto as **Exhibit B** ("GPEC Performance Measures") and shall be used to evaluate and report progress on GPEC's implementation of the GPEC Action Plan. In the event of changing market conditions, funding availability, unforeseen expenses or other circumstances beyond GPEC's reasonable control, these performance targets may be revised with the City's prior written approval, or with the prior written approval of a majority of the designated members of GPEC's Economic Development Directors Team ("EDDT"). GPEC will provide monthly reports on the 15th of each month to the City discussing in detail its progress in implementing the GPEC Action Plan as well as reporting the numerical results for each performance measurement set forth in Exhibit B. GPEC shall provide a copy of its annual external audit for the preceding fiscal year to the City no later than December 31, 2019.

In the case of any benchmark which is not met, GPEC will meet with the EDDT to provide an explanation of the relevant factors and circumstances and discuss the approach to be taken in order to achieve the target(s). Failure to meet a performance target will not, by itself, constitute an event of default hereunder unless GPEC: (i) fails to inform the City of such events; or (ii) fails to meet with EDDT to present a plan for

improving its performance during the balance of the term of the Agreement.

II. RESPONSIBILITIES OF THE CITY

A. STAFF SUPPORT OF GPEC EFFORTS: The City shall provide staff support to GPEC's economic development efforts as follows:

1. The City shall respond to leads or prospects referred by GPEC in a professional manner within the time frame specified by the lead or prospect if the City desires to compete and if the lead is appropriate for the City. When available, the City agrees to provide its response in the format developed jointly by EDDT and GPEC.
2. The City shall provide appropriate local hospitality, tours and briefings for prospects visiting sites in the City.
3. The City shall provide an official economic development representative to represent the City on the EDDT, which advises GPEC's President and CEO.
4. The City shall cooperate in the implementation of GPEC/EDDT process improvement recommendations including the use of common presentation formats, exchange of information on prospects with GPEC's staff, the use of shared data systems, land and building data bases and private sector real estate industry interfaces.
5. The City shall use its best efforts to respond to special requests by GPEC for particularized information about the City within three business days after the receipt of such request.
6. In order to enable GPEC to be more sensitive to the City's requirements, the City shall, at its sole option, deliver to GPEC copies of any City approved economic development strategies, work plan, programs and evaluation criteria. GPEC shall not disclose the same to the other participants in GPEC or their representatives.
7. The City shall utilize its best good faith efforts to cause an economic development professional representing the City to attend all marketing events and other functions to which the City has committed itself.
8. The City agrees to work with GPEC to improve the City's competitiveness and market readiness to support the growth and expansion of the targeted industries as identified for the City in **Exhibit C ("Targeted Industries")**.

B. NONEXCLUSIVE AGREEMENT: The City recognizes GPEC as a regional economic development organization for marketing the Greater Phoenix region. Nothing in this agreement however prohibits the City from

contracting with other regional economic development marketing providers for similar services.

III. ADDITIONAL AGREEMENTS OF THE PARTIES:

A. PARTICIPATION IN MARKETING EVENTS AND PROVISION OF TECHNICAL ASSISTANCE: Representative(s) of the City shall be entitled to participate in GPEC's marketing events provided that such participation shall not be at GPEC's expense. When requested and appropriate, GPEC will use its best efforts to provide technical assistance and support to City economic development staff for business location prospects identified and qualified by the City and assist the City with presentations to the prospect in the City or their corporate location.

B. COMPENSATION & TERM:

1. The City agrees to pay **\$25,347.00** for services to be provided by GPEC pursuant to the Agreement during the fiscal year ending on June 30, 2020, as set forth in this Agreement. This amount is based on approximately \$0.6252 per capita applied to that portion of the City's population outside of Maricopa County plus \$0.4897 per capita applied to that portion of the City's population within Maricopa County, based upon the based up on the 2018 Office of Economic Opportunity population estimate, which listed the City as having a population of **40,294** in Pinal County and **317** in Maricopa County. The payment by the City may, upon the mutual and discretionary approval of the board of directors of GPEC and the City, be increased or decreased from time to time during the term hereof in accordance with the increases or decreases of general application in the per capita payments to GPEC by other municipalities which support GPEC, but in no event shall the total compensation exceed \$30,000.00 for the term of this Agreement.
2. Funding of this Agreement shall be subject to the annual appropriations of funds for this activity by the City pursuant to the required budget process of the City.
3. GPEC shall submit invoices for payment on an annual basis. The foregoing notwithstanding, if GPEC has not provided the City with the audit required pursuant to paragraph I(E) above no later than December 31, 2019, no payments shall be made hereunder until the City receives the audit report and is provided at least a 30 calendar day review and approval period.. Invoices and monthly activity reports, substantially in the form of **Exhibit D** ("Reporting Mechanism for Contract Fulfillment") attached hereto, are to be submitted to the address listed under paragraph IV(P).

C. MUTUAL COOPERATION:

1. The parties acknowledge that GPEC is a cooperative organization effort among GPEC and its member communities. Accordingly, the City and GPEC covenant and agree to work together in a productive and harmonious manner, to cooperate in furthering

GPEC's goals for FY2020. The City and GPEC further covenant and agree to comply with the Regional Cooperation Protocol, attached hereto as **Exhibit F**, in all material respects.

2. The City agrees to work with GPEC, as necessary or appropriate, to revise the performance measures, and/or benchmarks, and/or goals for the FY2021 contract.
3. The City agrees to work with GPEC during FY2020 to develop a revised public sector funding plan, including a regional allocation formula for FY2021, if determined to be necessary or appropriate.

IV. GENERAL PROVISIONS:

- A. COVENANT AGAINST CONTINGENT FEES:** GPEC warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For a breach or violation of this warranty, the City shall have the right to terminate this Agreement without liability or, in its discretion, to deduct the commission, brokerage or contingent fee from its payment to GPEC.
- B. PAYMENT DEDUCTION OFFSET PROVISION:** GPEC acknowledges that no payment shall be made to any contractor as long as there is any outstanding obligation due to the City, and any such obligation shall be offset against payment due to GPEC.
- C. ASSIGNMENT PROHIBITED:** No party to this agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and have no effect.
- D. INDEPENDENT CONTRACTOR; NO AGENCY:** Nothing contained in this Agreement creates any partnership, joint venture or agency relationship between the City and GPEC. At all times during the term of this Agreement, GPEC shall be an independent contractor and shall not be an employee of City. City shall have the right to control GPEC only insofar as to the results of GPEC's services rendered pursuant to this Agreement. GPEC shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. GPEC shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.
- E. INDEMNIFICATION AND HOLD HARMLESS:** During the term of this Contract, GPEC shall indemnify, defend, hold, protect and save harmless the City and any and all of its council members, appointees, officers and employees from and against any and all actions, suits, proceedings, claims and demands, loss, liens, costs, expense and liability of any kind and nature whatsoever, for injury to or death of persons, or damage to property, including property owned by City brought, made, filed against, imposed upon or sustained by the City, its appointees, officers, or employees in and arising from or attributable to or caused directly or indirectly by the negligence, wrongful acts, omissions or from operations

conducted by GPEC, its directors, officers, agents or employees acting on behalf of GPEC and with GPEC's knowledge and consent.

Any party entitled to indemnity shall notify GPEC in writing of the existence of any claim, demand or other matter to which GPEC's indemnification obligations would apply, and shall give to GPEC a reasonable opportunity to defend the same at its own expense and with counsel reasonably satisfactory to the indemnified party.

Nothing in this Subsection E shall be deemed to provide indemnification to any indemnified party with respect to any liabilities arising from the fraud, negligence, omissions or willful misconduct of such indemnified party.

- F. INSURANCE:** GPEC shall procure and maintain for the duration of this Agreement, at GPEC's own cost and expense, insurance against claims for injuries to persons or damages to property which may arise from or in connection with this Agreement by GPEC, its agents, representatives, employees or contractors, in accordance with the Insurance Requirements set forth in **Exhibit E** ("Insurance Requirements"), attached hereto. The City acknowledges that it has received and reviewed evidence of GPEC's insurance coverage in effect as of the execution of this Agreement.
- G. GRATUITIES.** The City may, by written notice to GPEC, terminate the right of GPEC to proceed under this Agreement upon one (1) calendar day notice, if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by GPEC, or any agent or representative of GPEC, to any officer or employee of the City with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of such contract; provided that the existence of the facts upon which the City makes such findings shall be an issue and may be reviewed in any competent court. In the event of such termination, the City shall be entitled to pursue all legal and equitable remedies against GPEC available to the City.
- H. EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this Agreement, GPEC agrees as follows:
1. GPEC will not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual orientation, national origin, age or disability. GPEC shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, gender, sexual orientation, national origin, age or disability. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. GPEC agrees to post in conspicuous places, available to employees and applicants for employment,

notices setting forth the provisions of this nondiscrimination clause.

2. GPEC will, in all solicitations or advertisements for employees place by or on behalf of GPEC, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, sexual orientation, national origin, age or disability.
3. GPEC will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to Agreements or subcontracts for standard commercial supplies or new materials.
4. Upon request by the City, GPEC shall provide City with information and data concerning action taken and results obtained in regard to GPEC's Equal Employment Opportunity efforts performed during the term of this Agreement. Such reports shall be accomplished upon forms furnished by the City or in such other format as the City shall prescribe.

I. COMPLIANCE WITH APPLICABLE FEDERAL AND STATE LAWS REQUIRED. GPEC understands and acknowledges the applicability of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989 and agrees to comply therewith in performing under any resultant agreement and to permit City inspection of its records to verify such compliance.

1. GPEC warrants to the City that, to the extent applicable under A.R.S. § 41-4401, GPEC is in compliance with all Federal Immigration laws and regulations that relate to its employees and with the E-Verify Program under A.R.S. § 23-214(A). GPEC acknowledges that a breach of this warranty by GPEC or any subconsultants providing services under this Agreement is a material breach of this Agreement subject to penalties up to and including termination of this Agreement or any applicable subcontract. The City retains the legal right to inspect the papers of any employee of GPEC or any subconsultant who works on this Agreement to ensure compliance with this warranty.
2. The City may conduct random verification of the employment records of GPEC and any of its subconsultants who work on this Agreement to ensure compliance with this warranty.
3. The City will not consider GPEC or any of its subconsultants who work on this Agreement in material breach of the foregoing warranty if GPEC and such subconsultants establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A).

4. The provisions of this Section I must be included in any contract GPEC enters into with any and all of its subconsultants who provide services under this Agreement or any subcontract to provide services under this Agreement. As used in this Section I "services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property.
 5. Pursuant to A.R.S. §§ 35-393 through 35-393.03, GPEC hereby certifies to the City that GPEC does not have any contracts/services/providers/suppliers that boycott Israel.
- J. TERMINATION.** City shall have the right to terminate this Agreement if GPEC shall fail to duly perform, observe or comply with any covenant, condition or agreement on its part under this Agreement and such failure continues for a period of 30 calendar days (or such shorter period as may be expressly provided herein) after the date on which written notice requiring the failure to be remedied shall have been given to GPEC by the City; provided, however, that if such performance, observation or compliance requires work to be done, action to be taken or conditions to be remedied which, by their nature, cannot reasonably be accomplished within 30 calendar days, no event of default shall be deemed to have occurred or to exist if, and so long as, GPEC shall commence such action within that period and diligently and continuously prosecute the same to completion within 90 calendar days or such longer period as the City may approve in writing. The foregoing notwithstanding, in the event of circumstances which render GPEC incapable of providing the services required to be performed hereunder, including, but not limited to, insolvency or an award of monetary damages against GPEC in excess of its available insurance coverage and assets, the City may immediately and without further notice terminate this Agreement.
- K. RESPONSIBILITY FOR COMPLIANCE WITH LEGAL REQUIREMENTS.** GPEC's performance hereunder shall be in material compliance with all applicable federal, state and local health, environmental, and safety laws, regulations, standards, and ordinances in effect during the performance of this Agreement.
- L. INSTITUTION OF LEGAL ACTIONS.** Any legal actions instituted pursuant to this Agreement must be filed in the county of Pinal, State of Arizona, or in the Federal District Court in the District of Arizona. In any legal action, the prevailing party in such action will be entitled to reimbursement by the other party for all costs and expenses of such action, including reasonable attorneys' fees as may be fixed by the Court.
- M. APPLICABLE LAW.** Any and all disputes arising under any Agreement to be awarded hereunder or out of the proposals herein called for, which cannot be administratively resolved, shall be tried according to the laws of the State of Arizona, and GPEC shall agree that the venue for any such action shall be in the State of Arizona, Pinal County.

- N. CONTINUATION DURING DISPUTES.** GPEC agrees that, notwithstanding the existence of any dispute between the parties, each party shall continue to perform the obligations required of it during the continuation of any such dispute, unless enjoined or prohibited by an Arizona court of competent jurisdiction.
- O. CITY REVIEW OF GPEC RECORDS.** GPEC must keep all Agreement records separate for three years and make them available for audit by City personnel upon request .
- P. NOTICES.** Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be deemed received at the time it is personally delivered, on the day it is sent by facsimile transmission, on the second day after its deposit with any commercial air courier or express service or, if mailed, three (3) business days after the notice is deposited in the United States mail addressed as follows:

If to City: Bryant Powell
 City Manager
 City of Apache Junction
 300 East Superstition Boulevard
 Apache Junction, AZ 85119
 Phone: (480) 474-5092
 Fax: (480) 474-5110

If to GPEC: Chris Camacho
 President and Chief Executive Officer
 Greater Phoenix Economic Council
 Two North Central Avenue, Suite 2500
 Phoenix, Arizona 85004-4469
 Phone: (602) 256-7700
 FAX: (602) 256-7744

Any time period stated in a notice shall be computed from the time the notice is deemed received. Either party may change its mailing address or the person to receive notice by notifying the other party as provided in this paragraph.

- Q. TRANSACTIONAL CONFLICT OF INTEREST.** Notwithstanding paragraph IV(J), all parties hereto acknowledge that this Agreement is subject to cancellation by the City pursuant to the provisions of A.R.S. § 38-511.
- R. NONLIABILITY OF OFFICIALS AND EMPLOYEES.** No member, official or employee of the City will be personally liable to GPEC, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to GPEC or successor, or on any obligation under the terms of this Agreement. No member, official or employee of GPEC will be personally liable to the City, or any successor in interest, in the event of any default or breach by the GPEC or for any amount which may become due to the City or successor, or on any obligation under the terms of this Agreement.

- S. SEVERABILITY.** City and Consultant each believe that the execution, delivery and performance of this Agreement are in compliance with all applicable laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any applicable laws, including any constitutional provision, law, regulation, or city code), such provision shall be deemed severed from this Agreement and this Agreement shall otherwise remain in full force and effect; provided that this Agreement shall retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. Unless prohibited by applicable laws, the Parties further shall perform all acts and execute, acknowledge and/or deliver all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.
- T. CAPTIONS.** The captions contained in this Agreement are merely a reference and are not to be used to construe or limit the text.
- U. NO THIRD PARTY BENEFICIARIES.** No creditor of either party or other individual or entity shall have any rights, whether as a third-party beneficiary or otherwise, by reason of any provision of this Agreement.
- V. Disclosure of Confidential Information If Required By Law.** This agreement allows the Parties to disclose Confidential Information, as defined below, to each other under the following terms. In the opinion of the Parties to this Agreement: (1) the Confidential Information is the proprietary property of the Parties and is strictly confidential and privileged pursuant to, among other laws, A.R.S. §§ 44-401, et seq., (2) the release of the Confidential Information provided could cause harm to the Parties' competitive position, (3) the Confidential Information is potentially personal and private, and (4) the Confidential Information is exempt from disclosure under the Arizona Public Records and Open Meeting Laws, A.R.S. § 39-121, et seq. The Agreement does not license, assign, or convey any intellectual property or proprietary rights from any Party to any other Party.

"Confidential Information" means non-public information, know-how, or trade secrets in any form, that:

1. Are designated as being confidential; or
2. A reasonable person knows or reasonably should understand to be confidential.

The City must comply with and may be subject to certain disclosure requirements under the Arizona public records law (A.R.S. § 39-101, et seq.). The City may disclose Confidential Information if required to comply with a court order or other government demand that has the force of law. Prior to disclosure, the Party must:

1. Seek the highest level of protection available; and

2. Give GPEC reasonable prior notice of the request for records and identified responsive documents to allow them to seek a protective order, unless such notice is not permitted under law.

W. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS. This Agreement may be executed in up to three (3) duplicate originals, each of which is deemed to be an original. This Agreement, including eleven (11) pages of text and the below-listed exhibits which are incorporated herein by this reference, constitutes the entire understanding and agreement of the parties.

Exhibit A - GPEC Action Plan

Exhibit B - GPEC Performance Measures

Exhibit C - Targeted Industries

Exhibit D - Reporting Mechanism for Contract Fulfillment

Exhibit E - Insurance Requirements

Exhibit F – Regional Cooperation Protocol

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Except as otherwise expressly provided in this Agreement, any failure or delay by any party in asserting any of its rights or remedies as to any default, will not operate as a waiver of any default, or of any such rights or remedies, or deprive any such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City or GPEC, and all amendments hereto must be in writing and signed by the appropriate authorities of the parties hereto.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed the Agreement
this ____ day of _____, 2019.

City of Apache Junction, an Arizona municipal
corporation

By: _____
Jeff Serdy, Mayor

ATTEST:

By: _____
Kathy Connelly, City Clerk

APPROVED AS TO FORM:

By: _____
Richard J. Stern, City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

On this ____ day of _____, 2019, before me, the undersigned Notary Public,
personally appeared Jeff Serdy, who acknowledged himself to be the mayor of
the city of Apache Junction, an Arizona municipal corporation, that he, as such
officer, being authorized so to do, executed the foregoing instrument for the
purposes therein contained, by signing the name of the corporation by himself as
such officer. In witness whereof, I hereunto set my hand and official seal.

Notary Public

My commission expires:

**GREATER PHOENIX ECONOMIC COUNCIL,
an Arizona nonprofit corporation**

By:_____
Chris Camacho, President & Chief Executive Officer

**STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)**

On this ____ day of _____, 2019, before me, the undersigned Notary Public, personally appeared Chris Camacho, who acknowledged himself to be the President & Chief Executive Officer of Greater Phoenix Economic Council, an Arizona non-profit corporation, that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer. In witness whereof, I hereunto set my hand and official seal.

Notary Public

My commission expires: