

**AGREEMENT BETWEEN
THE GREATER PHOENIX ECONOMIC COUNCIL
AND THE TOWN OF FOUNTAIN HILLS
Town Contract No. C2019-039**

The Town Council of the TOWN OF FOUNTAIN HILLS, a municipal corporation (the "Town"), has approved participation in and support of the regional economic development program of the GREATER PHOENIX ECONOMIC COUNCIL ("GPEC"), an Arizona non-profit corporation. The purpose of this agreement ("Agreement") is to set forth the regional economic development program that GPEC agrees to undertake, the support that the Town agrees to provide, the respective roles of GPEC and the Town and the payments of the Town to GPEC for the fiscal year July 1, 2018 - June 30, 2019 ("FY2019").

NOW, THEREFORE, in consideration of the mutual promises contained herein, the TOWN 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 Town and receipt of which is hereby acknowledged. A summary of the Action Plan is attached hereto as **Exhibit A** ("GPEC Action Plan"). The Town 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 Town acknowledges and agrees that GPEC may, in its reasonable judgment and 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 Town 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 Town'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 to the Town 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 Town no later than December 31, 2018.

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 Town of such event or (ii) fails to meet with EDDT to present a plan for improving its performance during the balance of the term of the Agreement, which, if GPEC fails to comply with either step, will constitute an event of default for which the Town may terminate this Agreement pursuant to paragraph IV.J. below.

II. RESPONSIBILITIES OF THE TOWN

- A. STAFF SUPPORT OF GPEC EFFORTS:** The Town shall provide staff support to GPEC's economic development efforts as follows:
1. The Town 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 Town desires to compete and if the lead is appropriate for the Town. When available, the Town agrees to provide its response in the format developed jointly by EDDT and GPEC;
 2. The Town shall provide appropriate local hospitality, tours and briefings for prospects visiting sites in the Town;
 3. The Town shall provide an official economic development representative to represent the Town on the EDDT, which advises GPEC's President and CEO;
 4. The Town 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 Town shall use its best efforts to respond to special requests by GPEC for particularized information about the Town within three business days after the receipt of such request;

6. In order to enable GPEC to be more sensitive to the Town's requirements, the Town may, at its sole option, deliver to GPEC copies of any Town 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 Town shall utilize its best good faith efforts to cause an economic development professional representing the Town to attend all marketing events and other functions to which the Town has committed itself; and
8. The Town agrees to work with GPEC to improve the Town's Competitiveness and market readiness to support the growth and expansion of the targeted industries as identified for the Town in **Exhibit C** ("Targeted Industries").

B. RECOGNITION OF GPEC: The Town agrees to recognize GPEC as the Town's officially designated regional economic development organization for marketing the Greater Phoenix region.

III. ADDITIONAL AGREEMENTS OF THE PARTIES:

A. PARTICIPATION IN MARKETING EVENTS AND PROVISION OF TECHNICAL ASSISTANCE: Representative(s) of the Town 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 Town economic development staff for business location prospects identified and qualified by the Town and assist the Town with presentations to the prospect in the Town or the prospect's corporate location.

B. COMPENSATION:

1. The Town agrees to pay **\$11,089.00** for services to be provided by GPEC pursuant to the Agreement during the fiscal year ending on June 30, 2019, as set forth in this Agreement. This amount is based on \$.4647 per capita, based up on the 2017 Office of Economic Opportunity population estimate, which listed the Town as having a population of **23,862**. The payment by the Town may, upon the mutual and discretionary approval of the board of directors of GPEC and the Town Council, 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.
2. Funding of this Agreement shall be subject to the annual appropriations of funds for this activity by the Town Council pursuant to the required budget process of the Town;
3. Nothing herein shall preclude the Town from contracting separately with GPEC for services to be provided in addition to those to be provided hereunder, upon terms and conditions to be negotiated by the Town and GPEC; and
4. GPEC shall submit an invoice for payment on an annual basis. The foregoing notwithstanding, if GPEC has not provided the Town with the audit required pursuant to paragraph I.E. above no later than December 31, 2018, no payments shall be made hereunder until the Town receives the audit report. 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. COOPERATION:

1. The parties acknowledge that GPEC is a cooperative organization effort among GPEC and its member communities. Accordingly, the Town and GPEC covenant and agree to work

together in a productive and harmonious manner, to cooperate in furthering GPEC's goals for FY2019. The Town and GPEC further covenant and agree to comply with the Regional Cooperation Protocol, attached hereto as **Exhibit F**, in all material respects.

2. The Town agrees to work with GPEC, as necessary or appropriate, to revise the performance measures, and/or benchmarks, and/or goals for the FY2020 contract.
3. The Town agrees to work with GPEC during FY2019 to develop a revised public sector funding plan, including a regional allocation formula for FY2020, 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 Town 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 recognizes the provisions of the Town Code of the Town of Fountain Hills which require and demand that no payment be made to any contractor as long as there is any outstanding obligation due to the Town, and directs that any such obligation 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 no effect.
- D. **INDEPENDENT CONTRACTOR; NO AGENCY:** Nothing contained in this Agreement creates any partnership, joint venture or agency relationship between the Town and GPEC. At all times during the term of this Agreement, GPEC shall be an independent contractor and shall not be an employee of Town. Town 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 Town in any capacity whatsoever as an agent. GPEC shall have no authority, express or implied, pursuant to this Agreement to bind Town to any obligation whatsoever.
- E. **INDEMNIFICATION AND HOLD HARMLESS:** During the term of this Contract, and to the fullest extent permitted by law, GPEC shall indemnify, defend, hold, protect and save harmless the Town and any and all of its Councilmembers, officers and employees for, 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 Town, brought, made, filed against, imposed upon or sustained by the Town, its 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 Town 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 Town 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 Town 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 Town makes such findings shall be an issue and may be reviewed in any competent court. In the event of such termination, the Town shall be entitled to pursue all legal and equitable remedies against GPEC available to the Town. Activities by an officer or employee of the Town while engaged in official business with GPEC, including travel shall not be deemed a gratuity.
- 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 Town, GPEC shall provide Town 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 Town or in such other format as the Town shall prescribe.
- I. COMPLIANCE WITH APPLICABLE FEDERAL AND STATE LAWS REQUIRED.** GPEC understands and acknowledges the applicability of the Immigration Reform and Control Act of 1986, the Drug Free Workplace Act of 1989 and the Americans with Disabilities Act, and agrees to comply therewith in performing under any resultant agreement and to permit Town inspection of its records to verify such compliance.
1. GPEC warrants to the Town 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 Town 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 Town 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 Town 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 A.R.S. § 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. GPEC certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.

J. TERMINATION. Town 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 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 Town; 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 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 days or such longer period as the Town 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 Town 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 Maricopa, 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.
- 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. **TOWN REVIEW OF GPEC RECORDS.** GPEC must keep all Agreement records separate and make them available for audit by Town 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) days after the notice is deposited in the United States mail addressed as follows:

If to Town: Mr. Grady Miller
 Town Manager
 Town of Fountain Hills
 16705 East Avenue of the Fountains
 Fountain Hills, Arizona 85268
 Phone: (480) 816-5107
 Fax: (480) 837-3145

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.** All parties hereto acknowledge that this Agreement is subject to cancellation by the Town pursuant to the provisions of Section 38-511, Arizona Revised Statutes.
- R. **NONLIABILITY OF OFFICIALS AND EMPLOYEES.** No member, official or employee of the Town will be personally liable to GPEC, or any successor in interest, in the event of any default or breach by the Town 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 Town, 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 Town or successor, or on any obligation under the terms of this Agreement.
- S. **NO WAIVER.** 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.

- T. SEVERABILITY.** If any provision of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law, provided that the fundamental purposes of this Agreement are not defeated by such severability.
- U. CAPTIONS.** The captions contained in this Agreement are merely a reference and are not to be used to construe or limit the text.
- V. 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.
- W. DISCLOSURE OF CONFIDENTIAL INFORMATION IF REQUIRED TO BY LAW.** This Agreement allows the parties to disclose Confidential Information, as defined below, to each other under the following terms. The parties agree that: (1) the Confidential Information is the proprietary property of each respective Party 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. Is designated as being confidential; or
2. A reasonable person knows or reasonably should understand to be confidential.

The Town 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 Town 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. Use reasonable means to protect the Confidential information to the extent possible; and
2. Give GPEC reasonable prior notice of the request for records and identified responsive documents to allow GPEC to seek a protective order, unless such notice is not permitted under law.

- X. 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 nine (9) 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.

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

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed the Agreement this ___ day of _____, 2018.

TOWN OF FOUNTAIN HILLS, a municipal corporation
Mr. Grady Miller

By: 
Its: Town Manager

CR
11/1/18

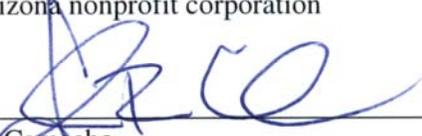
ATTEST:

By: 
Elizabeth A. Burke
Town Clerk

APPROVED AS TO FORM:

By: 
Aaron D. Arnson
Town Attorney

GREATER PHOENIX ECONOMIC COUNCIL,
an Arizona nonprofit corporation

By: 
Chris Camacho
President & Chief Executive Officer