



WHEN RECORDED MAIL TO:

**CITY OF SAN LUIS
ATTN: CITY CLERK
P.O. BOX 1170
SAN LUIS, ARIZONA 85349**

The above area is to be reserved for recording information

CAPTION HEADING:

RESOLUTION

Resolution No. 2159

Development Agreement with Greater Yuma Port Authority to phase the development of Magrino Industrial Park, Unit 3.



Resolution

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

No. 2159

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SAN LUIS, ARIZONA AUTHORIZING AND DIRECTING THE ENTERING INTO A DEVELOPMENT AGREEMENT WITH THE GREATER YUMA PORT AUTHORITY TO PHASE THE DEVELOPMENT OF MAGRINO INDUSTRIAL PARK, UNIT 3.

BE IT RESOLVED by the Mayor and City Council of the City of San Luis, Arizona:

Section 1. It is deemed in the best interest of the City of San Luis and its residents that the city enter into a development agreement with the Greater Yuma Port Authority to phase development of Magrino Industrial Park, Unit 3,

Section 2. A true copy of the development agreement, Exhibit 1 including its Exhibit A, are incorporated herein as though set forth again in full.

Section 3. City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

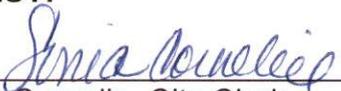
Section 5. The San Luis City Clerk and the City Clerk's designees are authorized and directed to deliver this Intergovernmental Agreement to the Greater Yuma Port Authority and to maintain a fully executed Intergovernmental Agreement in the official files of the City Clerk.

PASSED, ADOPTED and APPROVED by the Mayor and City Council of the City of San Luis, Yuma County, Arizona this 24th day of March 2021.



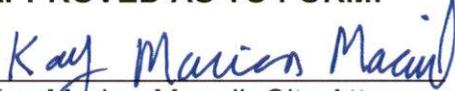
Gerardo Sanchez, Mayor

ATTEST:



Sonia Cornelio, City Clerk

APPROVED AS TO FORM:



Kay Marion Macuil, City Attorney

Exhibit 1

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**” or “**Development Agreement**”) is entered into as of 24th day of March 2021 (“**Effective Date**”) by and between the City of San Luis, an Arizona municipal corporation (the “**City**”) and Greater Yuma Port Authority, Inc., an Arizona non-profit corporation, (the “**Owner**”). This Agreement is entered into pursuant to City Resolution Number 2159

RECITALS

A. WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into development agreements with landowners and persons having an interest in real property that is located in the City; and

B. WHEREAS, Greater Yuma Port Authority, Inc., Owner, owns property located in the municipal limits of the City and is currently developing a subdivision known as Magrino Industrial Park Unit 3 (the “**Property**”), and

C. WHEREAS, the Owner has requested to phase development of Magrino Industrial Park Unit 3 and provide for certain conditions and timing of development of infrastructure for said subdivision; and

D. WHEREAS, the City’s governing body has authorized the execution of this Agreement by Resolution No. 2159.

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

ARTICLE 1. DEFINITIONS

The following terms shall have the meanings set forth below whenever used in this Agreement, except where the context clearly indicates otherwise:

1.1. Certificate of Completion as used in this Agreement shall mean a final written acceptance of the completed and inspected project issued by the Public Works Department. A Certificate of Completion will not be issued until the entire project is completed in conformance with this Agreement and accepted by the City.

1.3. Owner shall mean and refer to Greater Yuma Port Authority, Inc., an Arizona non-profit corporation and any successor in ownership.

1.4. Improvements shall mean and refer to all public and private improvements which may be constructed from time to time on the Property, including, without limitation, all roads, driveways, water mains, wastewater mains, walls, landscaping and other infrastructure or utility improvements of any type or kind, or any other alteration of the natural terrain to be built by the Owner or the City, as the case may be.

1.5. Property, as used in this Agreement, shall mean and refer to all of the real property, which is legally described as Magrino Industrial Park Unit 3 and shown the subdivision plat, which is part of Exhibit A.

ARTICLE 2. DEVELOPMENT PLAN

2.1. Duration of Development Agreement. The term of this Agreement shall be for a period of five (5) years from the date of execution.

2.2. Failure of Timely Performance. In the event that either party hereto fails to perform any of its obligations which are set forth in or contemplated by this Agreement in a timely manner, and should such failure not otherwise be excused by agreement of the parties or by the terms of this Agreement, such failure shall be considered to be a breach of this Agreement and the non-breaching party shall have their respective remedies set forth in Section 5.3 of this Agreement.

2.3. Approval and Processing of Plans. The City hereby acknowledges and agrees that development of the Property may occur over time and will require the City's ongoing participation in the review and approval of modifications and amendments to any site plans, infrastructure plans, drainage plans, design plans, grading permits, building permits, archaeological and historic preservation review and disposition, and other plans, permit applications and inspections which are a part of the City's building and development requirements (hereinafter collectively called "**Approval Requests**"). The City approves the phasing of the development of the Property as shown on Exhibit A and agrees that Magrino Industrial Park Unit 3 can be built by Owner in accordance with phasing as shown on Exhibit A. Each phase will be considered its own project and will be approved as though that phase were its own subdivision, and financial assurances for each phase may be posted separately and dealt with separately. The financial assurances for each phase may be posted by and subject to an agreement for financial assurances. The current agreement for financial assurances shall be considered modified to conform to the provisions of this Development Agreement.

2.4. Review Process. The City acknowledges the necessity for expeditious review by the City of all plans and other materials ("**Submitted Materials**") submitted by the Owner to the City hereunder or pursuant to any zoning procedure, permit procedure, or other governmental procedure pertaining to the development of the Property and

assurances. The current agreement for financial assurances shall be considered modified to conform to the provisions of this Development Agreement.

2.4. Review Process. The City acknowledges the necessity for expeditious review by the City of all plans and other materials ("**Submitted Materials**") submitted by the Owner to the City hereunder or pursuant to any zoning procedure, permit procedure, or other governmental procedure pertaining to the development of the Property and agrees to use its reasonable efforts accomplish such an expeditious review of the Submitted Materials whenever possible.

ARTICLE 3. INDEMNIFICATION

3.1. Owner agrees to defend, indemnify and hold harmless City, its officers, officials and employees ("**Indemnified Group**") for liability from and against claims, damages, losses and expenses of any nature whatsoever (including but not limited to reasonable attorney fees, court costs, the costs of appellate proceedings, and all claim adjusting and handling expense), relating to, arising out of, resulting from or alleged to have resulted from the Owner's acts, errors, mistakes or omissions relating to any action or inaction of the Owner under this Agreement, including but not limited to work or services in the performance of this Agreement by any subcontractor or anyone directly or indirectly employed by or contracting with the Owner or a subcontractor or anyone for whose acts any of them may be liable.

3.2. If any claim, action or proceeding is brought against the Indemnified Group, by reason of any event that is the subject of this Agreement, Owner (at its sole cost and expense) shall pay, resist or defend such claim or action on behalf of the Indemnified Group by the attorney of the Owner, or if covered by insurance, Owner's insurer, all of which must be approved by City, which approval shall not be unreasonably withheld or delayed. The City shall cooperate with all reasonable efforts in the handling and defense of such claim. Any settlement of claims must fully release and discharge the Indemnified Group from any liability for such claims. The release and discharge shall be in writing and shall be subject to approval by the City, which approval shall not be unreasonably withheld or delayed. If Owner neglects or refuses to defend any of the Indemnified Group as required by this Agreement, any recovery or judgment against the Indemnified Group for a claim covered by this Agreement shall conclusively establish Owner's liability to the Indemnified Group in connection with such recovery or judgment. If the City desires to settle such dispute, the City shall be entitled to settle such

dispute in good faith, and Owner shall be liable for the amount of such settlement and all expenses in connection with such settlement.

3.3. The indemnity provisions of this Agreement shall survive the termination of this Agreement.

ARTICLE 4. SUB AGREEMENTS

4.1. Subordinate Development Agreements. The City and Owner hereby acknowledge that the development of the Property may be accomplished by Owner through a series of sales, leases, joint ventures and/or other agreements and arrangements with experienced developers, investors and/or owners of real property. In connection therewith, it is anticipated and contemplated by the parties that such developers, investors or owners may desire to negotiate and enter into separate and subordinate development agreements with the City and/or Owner with respect to infrastructure Improvements, uses, plan approvals and other similar matters which may be the subject of separate agreements between such developers, investors and owners and the City and/or Owner, all to be set forth in the Amended Agreement. The parties hereby agree that any and all development agreements entered into with any such developer, investor or owner of any parcels of the Property shall be subordinate in all respects to the terms and conditions of this Agreement and the Amended Agreement, and, in the event of any conflict or discrepancy between the provisions of any such development agreement and the terms and conditions of this Agreement or the Amended Agreement, this Agreement or the Amended Agreement (as the case may be) shall govern and control.

ARTICLE 5. MEDIATION AND DEFAULT

5.1. Representatives. To further the cooperation of the parties in implementing this Agreement, the City and Owner each shall designate and appoint a representative to act as a liaison between the City and its various departments and the Owner. The initial representative for the City (the “**City Representative**”) shall be the City Manager, and the initial representative for the Owner shall be its project manager, as identified by the Owner from time to time (the “**Developer Representative**”). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property.

5.2. Mediation. In the event that there is a dispute hereunder which the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. In the event that the parties cannot agree upon

the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Yuma County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

5.3. Default. Failure or unreasonable delay by any party to perform any term or provision of this Agreement for a period of ten (10) days after written notice thereof from another party shall constitute a default under this Agreement. If the default is of a nature that is not capable of being cured within ten (10) days, the cure shall be commenced within such period and diligently pursued to completion. The notice shall specify the nature of the alleged default and the manner in which the default may be satisfactorily cured. In the event of a default hereunder by any party, the non-defaulting party shall be entitled to all remedies both at law and in equity, including, without limitation, specific performance and the right to perform the obligation(s) of which the defaulting party is in default and to immediately seek reimbursement from the defaulting party of all sums expended in order to cure such default, together with interest on all such sums from the date said sums are expended by the non-defaulting party for the purpose of curing the default to the date such sums are paid in full.

**ARTICLE 6. CONFLICT OF INTEREST;
REPRESENTATIVES NOT INDIVIDUALLY LIABLE**

6.1. Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to the provisions of A.R.S. §38-511.

6.2. No Personal Liability. No member, official or employee of the City shall be personally liable to Owner, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Owner or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

ARTICLE 7. MISCELLANEOUS PROVISIONS

7.1. Notices. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

If to the City: City Manager
City of San Luis
P.O. Box 1170
San Luis, Arizona 85349

If to the Owner: Greater Yuma Port Authority
P.O. Box 4601
Yuma, Arizona 85366-4601

or to such other addresses as either party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

7.2. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

7.3. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of the Agreement.

7.4. Authority. The undersigned represent to each other that they have full power and authority to enter into this Agreement and that all necessary actions have been taken to give full force and effect to this Agreement. The Owner represents and warrants that it is duly formed and validly existing under the laws of the State of Arizona and that it is duly qualified to do business in the State of Arizona and is in good standing under applicable state laws. The Owner and the City warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing. The Owner represents to the City that by entering into this Agreement, the Owner has bound the Property and all persons and entities having any legal or equitable interest therein to the terms of the Agreement.

7.5. Amendment of the Agreement. This Agreement may be amended, in whole or in part and with respect to all or any portion of the Property, only with the mutual written consent of the parties to this Agreement or by their successors in interest or assigns. The City shall record the amendment or cancellation in the official records of the Yuma County Recorder.

7.6. Severability. If any other provision of the Agreement is declared void or unenforceable, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect.

7.7. Governing Law. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The parties agree that the venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Yuma County, Arizona, and the parties hereby waive any right to object to such venue.

7.8. Recordation of Agreement and Subsequent Amendment; Cancellation. This Agreement and any amendment or cancellation of it shall be recorded in the official records of the Yuma County Recorder no later than ten (10) days after the City and the Owner execute such agreement, amendment, or cancellation, as required by A.R.S. § 9-500.05.

7.9. Attorneys' Fees and Costs. If either party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs.

7.10. Notice of Conveyance or Assignment. The Owner shall give notice to the City of any sale of the entire Property at least ten (10) days prior to the effective date of the sale.

7.11. No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and no person or entity not a party hereto shall have any right or cause of action hereunder.

7.12. No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

7.13. Non-Liability of City Officials and Employees. Except for mandamus and other special actions, no member, official or employee of the City shall be personally liable to Owner, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Owner or successor, or under any obligation under the terms of this Agreement.

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Exhibit

A

Magrino Industrial Park

Unit 3 Phasing

Base Phase: Underground utilities (water lines, sewer lines, power, and data) from County 25th to Vaughn Street south on Ave D, west on Vaughn to service lot 3. Paving and grading to be completed from Vaughn street to Avenue D. Box Culvert from County 25th and Ave D, paving and grading from County 25th to Vaughn Street. Complete service to lots 4/5/6/7.

Note on Base Phase: GYPA, Core Engineering, Barnet Rodgers of Labrie Properties and Eckard Construction have been in communication on start dates and service dates. GYPA does not want to hinder the progress on Labrie's development. Additionally, the hindrances caused by Covid are being diligently worked through.

Underground Cost: \$601,504.23

GYPA will pay up to \$150,000 from their operating account for project initiation. Remaining balance will be drawn from escrow and assurance account whose current balance is \$626,888.32. Core Engineering will be providing project management services, subcontractor will present invoices to them for review and approval. Once requests are received and approved by Core Engineering, they will be presented to Eulogio @ Public works for final City approval and then forwarded to City of San Luis finance department that would request a draw from Deb Feller at Pioneer Title, with the amount payable to the contractor directly.

The ACA ESP grant that was awarded to the City of San Luis for this project will be allocated towards the Paving and grading portion of the project. Once Jenny Torres receives the contract from ADOT, she, along with Core Engineering and public works will proceed with the City's procurement policy and put this portion of work out to bid. GYPA and City of San Luis will draw up an agreement once bids are received for this phase. In the event of a cost exceeding \$500,000, GYPA will be responsible for that amount. ADOT has allowed 18 months for the use of these funds.

Phase A: Underground utilities (water lines, sewer lines, power, and data) along with pavement southbound on Port Authority Avenue to allow access to the NE corner of lot 1 and NW Corner of lot 2. Lot 1 is owned by RL Jones company and lot 2 is owned by Cocopah Indian Tribe. Estimated time of completion on or before January 2022. Estimated cost: \$537,000.

Note on Phase A: In the event of any remaining funds from the ACA ESP Grant, that funding will be allocated towards cost of paving on Phase A.

Phase B: Underground utilities (water lines, sewer lines, power, and data) along with pavement running south on avenue D until the south east boundary of lot 2. This will provide full service to lots 8/9/10/11/12/13 and utilities to the eastern portion of lot 2. Estimated costs \$1,046,000.

Note on Phase B: No sales of lots 8-13 will occur until all services are in place.

