

**CITY OF APACHE JUNCTION
AGREEMENT FOR CONCENTRATED DOWNTOWN MASTER PLAN UPDATE**

PROJECT NO. ED 2023-002

THIS AGREEMENT is made and entered into by and between the CITY OF APACHE JUNCTION ("City"), an Arizona municipal corporation, and SWABACK, an Arizona corporation ("Consultant"), who shall be collectively referred to as the "Parties", or individually as a "Party".

RECITALS

A. Consultant has responded to City's request for proposal (the "RFP" and response both being considered the "Contract Documents") via RFP No. ED2023-002, in which Consultant asserts its willingness, ability and qualifications to provide this work and service (hereinafter referred to as the "Work").

B. City and Consultant desire to set forth herein their respective responsibilities and the manner and terms upon which Consultant shall render the Work.

C. City has complied with the public bidding requirements under Arizona Revised Statute Title 34 and Apache Junction City Code, Vol. I, Chapter 3: Administration, Article 3-7: Procurement Procedures.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals noted above, the mutual covenants and conditions below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **CONSULTANT'S DUTIES:** Consultant agrees to perform the professional services detailed in RFP No. ED 2023-002.

2. **COMPENSATION:** In accordance with the terms and conditions of this Agreement, City shall compensate Consultant for professional services in an amount of Ninety Thousand Dollars and Zero Cents (\$90,000.00) with a ten percent contingency fee for any change order in the amount of Nine Thousand Dollars and Zero Cents (\$9,000.00) for a total amount not to exceed of Ninety-Nine Thousand Dollars and Zero Cents (\$99,000.00) in accordance with the price sheet set forth in Exhibit A.

3. **CONSULTANT BILLING:** Consultant shall bill City on a time and expense basis in a total amount not to exceed Section 2 above. City shall pay such billings within thirty (30) calendar days of the date of receipt.

4. **TERM/RENEWAL**: The term of this Agreement starts on February 20, 2024 and ends on December 31, 2024. Following the initial term, the Parties may not renew or extend this Agreement.

5. **CITY'S STANDARD OF PERFORMANCE**: City shall furnish Consultant with all data, information and other supporting services specified in Exhibit A.

6. **CONSULTANT'S STANDARD OF PERFORMANCE**: While performing the services, Consultant shall exercise the reasonable professional care and skill customarily exercised by reputable members of Consultant's profession practicing in the Phoenix Metropolitan Area, and shall use reasonable diligence and best judgment while exercising its professional skill and expertise. Consultant shall be responsible for all errors and omissions Consultant commits in the performance of this Agreement.

7. **NOTICES**: All notices to a Party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following:

If to City: City of Apache Junction
Patrick Ainsworth, Economic Development Director
300 East Superstition Boulevard
Apache Junction, AZ 85119
painsworth@apachejunctionaz.gov

And a Copy to: City Attorney
R. Joel Stern
300 E. Superstition Boulevard
Apache Junction, AZ 85119
rstern@apachejunctionaz.gov

If to Consultant: SWABACK
Jeffrey Denzak
7550 E. McDonald Dr., Ste. A
Scottsdale, AZ 85250
jdenzak@swaback.com

8. **INSURANCE**: Consultant, at its own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rating of B++6, or approved unlicensed in the State of Arizona with policies and forms satisfactory to City.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Agreement is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of City, constitute a material breach of this Agreement.

Consultant's insurance shall be primary insurance as respects the City, and any insurance or self-insurance maintained by City shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect City.

The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against City, its agents, officers, officials and employees for any claims arising out of Contractor's acts, errors, mistakes, omissions, work or service.

The insurance policies may provide coverage which contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to City under such policies. Consultant shall be solely responsible for the deductible and/or self retention and City, at its option, may require Consultant to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

City reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. City shall not be obligated, however, to review same or to advise Consultant of any deficiencies in such policies and endorsements, and such receipt shall not relieve Consultant from, or be deemed a waiver of, City's right to insist on strict fulfillment of Consultant's obligations under this Agreement.

The insurance policies, except Workers' Compensation and Professional Liability, required by this Agreement, shall name City, its agents, officers, officials and employees as Additional Insureds.

REQUIRED COVERAGE

Commercial General Liability

Consultant shall maintain Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence with a \$2,000,000 Products/Completed Operations Aggregate and a \$2,000,000 General Aggregate limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Agreement, which coverage will be at least as broad as that on Insurance Service Office, Inc. Policy Form No. CG 00011093, or the equivalent thereof.

Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, nor any provision which would serve to limit third party action over claims.

The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B, CG 20101185, or the equivalent thereof, and shall include coverage for Consultant's operations and products and completed operations.

If required by this Agreement, if Consultant sublets any part of the work, services or operations, Consultant shall purchase and maintain, at all times during prosecution of the work, services or operations under this Agreement, an Owner and Consultant's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of Consultant's work, service or operations under this Agreement. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues Consultant's Commercial General Liability insurance.

Automobile Liability

Consultant shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to Consultant's owned, hired, and non-owned vehicles assigned to or used in performance of Consultant's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 00011293, or the equivalent thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

Workers' Compensation

Consultant shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Consultant's employees engaged in the performance of the work or services; and, Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

By execution of this Agreement, Consultant certifies as follows:

"I am aware and understand the provisions of A.R.S. § 23-901 *et seq.* which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of this chapter, and I will comply with such

provisions before commencing the performance of the work of this Agreement.”

If Consultant has no employees for whom workers' compensation insurance is required, Consultant shall submit a declaration or affidavit to City so stating and covenanting to obtain such insurance if and when Consultant employs any employees subject to coverage.

In case any work is subcontracted, Consultant will require subcontractors to provide Workers' Compensation and Employer's Liability insurance to at least the same extent as required of Consultant.

Professional Liability

Consultant retained by City to provide the work or service required by this Agreement will maintain Professional Liability insurance covering acts, errors, mistakes and omissions arising out of the work or services performed by Consultant, or any person employed by Consultant, with a limit of not less than \$1,000,000 each claim.

Certificates of Insurance

Prior to commencing work or services under this Agreement, Consultant shall furnish City with Certificates of Insurance, or formal endorsements as required by the Agreement, issued by Consultant's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by this Agreement are in full force and effect. The form of the certificates of insurance and endorsements shall be subject to the approval of the Apache Junction City Attorney's Office, shall comply with the terms of this Agreement, and shall be issued and delivered to City Attorney, City of Apache Junction, 300 East Superstition Boulevard, Apache Junction, AZ 85119.

In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of Consultant's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Agreement, a renewal certificate must be sent to City thirty (30) calendar days prior to the expiration date.

All Certificates of Insurance shall be identified with bid serial number and title. Policies or certificates and completed forms of City's Additional Insured Endorsement (or a substantially equivalent insurance company form acceptable to the City Attorney) evidencing the coverage required by this section shall be filed with the City and shall include the City as an additional insured. The policy

or policies shall be in the usual form of a public liability insurance, but shall also include the following provision:

“Solely as respects work done by or on behalf of the named insured for the City of Apache Junction, it is agreed that the City of Apache Junction and its officers and employees are added as additional insureds under this policy.”

Insurance required herein shall not expire, be canceled, or materially changed without thirty (30) calendar days' prior written notice to City.

9. APPLICABLE LAW AND VENUE: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement, shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorney fees, necessary witness fees and court costs to be determined by the court in such action.

10. FORCE MAJEURE: Neither City nor Consultant, as the case may be, shall be considered not to have performed its obligations under this Agreement in the event of enforced delay (an “Enforced Delay”) due to causes beyond its control and without its fault or negligence or failure to comply with applicable laws, including, but not restricted to, acts of God, fires, floods, epidemics, pandemics, quarantine, restrictions, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain of any governmental body on behalf of any public entity, or a declaration of moratorium or similar hiatus (whether permanent or temporary) by any public entity directly affecting the obligations under this Agreement. In no event will Enforced Delay include any delay resulting from unavailability for any reason of labor shortages, or the unavailability for any reason of particular Consultants, subcontractors, vendors or investors desired by Consultant in connection with the obligations under this Agreement. Consultant agrees that Consultant alone will bear all risks of delay which are not Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for a period of the Enforced Delay; provided, however, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) calendar days after such Party knows or should know of any such

Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; and provided further that in no event shall a period of Enforced Delay exceed ninety (90) calendar days.

11. **TERMINATION:** This Agreement may be terminated by either Party for any reason upon one (1) months' written notice. If this Agreement is terminated, City shall be reimbursed from Consultant the amount paid for any undelivered and/or unaccepted products or services. Upon termination, City agrees to pay for all delivered, accepted, and properly invoiced services that were provided up to the announced Termination Date.

12. **INDEMNIFICATION:** To the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless City, its elected and appointed officers, officials, agents, and employees from and against any and all liability including but not limited to demands, claims, actions, fees, costs and expenses, including reasonable attorney and expert witness fees, arising from, or alleged to have arisen from, relating to, arising out of, or alleged to have resulted from the acts, errors, mistakes, omissions, Work or services of Consultant, its agents, employees, or any tier of Consultant's subcontractors in the performance of this Agreement, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of Consultant or its subcontractors in the performance of the Work under this Agreement or any subcontract. Consultant's duty to defend, hold harmless and indemnify City, its special districts, elected and appointed officers, officials, agents, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by an Consultant's acts, errors, mistakes, omissions, work or services in the performance of this Agreement including any employee of Consultant, any tier of Consultant's subcontractor or any other person for whose acts, errors, mistakes, omissions, Work or services Consultant may be legally liable, but only to the extent caused by the negligence, recklessness or intentional wrongful conduct of Consultant or any tier of Consultant's subcontractors or any other person for whose acts, errors, mistakes, omissions, Work or services Consultant may be legally liable in the performance of the Work under this Agreement or subcontract. The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph. The rights and obligations under this Section shall survive termination of this Agreement.

13. **TAXES:** Consultant shall pay all license, sales, consumer, transaction privilege, use and other similar taxes for services provided by Consultant which are legally enacted at the time the obligations under this Agreement are performed.

14. **PERMITS & FEES:** Unless otherwise provided in this Agreement, Consultant shall secure and pay for all applicable permits, government fees,

licenses and inspections necessary for the proper execution and completion of services which are customarily secured after execution of the Agreement. Consultant shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the obligations. Consultant represents and warrants that any license necessary to perform the services under this Agreement is current and valid. Consultant understands that the activity described herein constitutes "doing business in the City of Apache Junction" and Consultant agrees to obtain a business license pursuant to Chapter 8 of the Apache Junction City Code, Vol. I, and keep such license current during the term of this Agreement. Consultant also acknowledges that the tax provision of the Apache Junction Tax Code, Chapter 8A, may also apply and if so, shall obtain a transaction privilege license and/or other licenses as may be required by all applicable laws. Further, Consultant agrees to pay all applicable privilege and use taxes that are applicable to the activities, products and services provided under this Agreement.

15. **RECORDS:** Records of Consultant's labor, payroll, and other costs pertaining to this Agreement shall be kept on a generally recognized accounting basis and made available to City for inspection on request. Consultant shall maintain records for a period of at least two (2) years after termination of this Agreement, and shall make such records available during that retention period for examination or audit by City personnel during regular business hours.

16. **RIGHT OF CITY TO CONTRACT WITH OTHERS:** Nothing in this Agreement shall imply City is obligated to obtain the services described herein with only this particular Consultant.

17. **INDEPENDENT CONTRACTOR:** City and Consultant agree and understand that the relationship between both Parties is that of an independent contractor.

18. **WAIVER OF TERMS AND CONDITIONS:** The failure of City or Consultant to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

19. **COMPLIANCE WITH FEDERAL AND STATE LAWS:** Consultant 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 to the services performed under this Agreement.

As required by A.R.S. § 41-4401, Consultant hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Consultant further warrants that after hiring an employee, Consultant will verify the employment eligibility of the employee through the E-Verify program. If Consultant uses any subcontractors in performance of

services, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the Agreement that is subject to penalties up to and including termination of this Agreement. Consultant is subject to a penalty of \$100 per day for the first violation, \$500 per day for the second violation, and \$1,000 per day for the third violation. City at its option may terminate this Agreement after the third violation. Consultant shall not be deemed in material breach of this Agreement if the Consultant and/or subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). City retains the legal right to inspect the papers of any Consultant or subcontractor employee who works under this Agreement to ensure that the Consultant or subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the Parties may modify this paragraph consistent with state law.

20. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between City and Consultant and supersede all prior negotiations, representations or agreements, either express or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the Parties hereto. Written and signed amendments shall automatically become part of the Supporting Documents, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

21. 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.

22. SUCCESSORS, ASSIGNMENT & DELEGATION: City and Consultant each bind themselves, their partners, successors, assigns and legal representatives to the other Party hereto and to the partners, successors, assigns and legal representatives of such other Party in respect to all covenants, agreements and obligations contained in this Agreement. Neither Party to the Agreement shall assign the Agreement or sublet it as a whole or delegate the duties hereunder, without the written consent of the other, nor shall Consultant assign any monies due or to become due to it without the previous written consent of City.

23. ACCURACY OF WORK: Acceptance of services or work by City shall not relieve Consultant of the responsibility for subsequent correction of any such errors and the clarification of any ambiguities. Consultant shall make all necessary revisions or corrections resulting from errors and omissions on the part of Consultant without additional compensation.

24. TIME IS OF THE ESSENCE: Time is of the essence with respect to all provisions in this Agreement. Any delay in performance by either Party shall constitute a material breach of this Agreement.

25. PROHIBITION TO CONTRACT WITH CONSULTANTS WHO ENGAGE IN BOYCOTT OF THE STATE OF ISRAEL: The Parties acknowledge A.R.S. §§ 35-393 through 35-393.03, as amended, which forbids public entities from contracting with Consultants who engage in boycotts of the State of Israel. Should Consultant under this Agreement engage in any such boycott against the State of Israel, this Agreement shall be deemed automatically terminated by operation of law. Any such boycott is a material breach of contract.

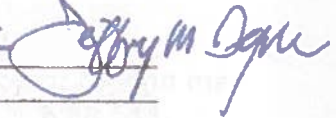
26. CERTIFICATION PURSUANT TO A.R.S. § 35-394. In accordance with Arizona Revised Statutes § 35-394, Consultant hereby certifies and agrees that Consultant does not currently and shall not for the duration of this Agreement use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China, 2) any services or goods produced by the forced labor of ethnic Uyghurs in the People's Republic of China, and/or 3) any suppliers, contractors or subcontractors that use the forced labor or any services or goods produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Consultant becomes aware during the term of this Agreement that Consultant is not in compliance with this Section, then Consultant shall notify the City within five (5) business days after becoming aware of such noncompliance. If Consultant does not provide the City with written certification that Consultant has remedied such noncompliance within one hundred eighty (180) days after notifying the City of such noncompliance, this Agreement shall terminate, except that if the Agreement termination date occurs before the end of such one hundred eighty (180) day remedy period, this Agreement shall terminate on such contract termination date.

27. **CONFLICTS OF INTEREST:** This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

IN WITNESS WHEREOF, Consultant and City have executed this Agreement as of the date first set forth above.

CONSULTANT:

SWABACK, LLC, an Arizona corporation

By: JEFFREY M. DENZAK 
Title: PARTNER

CITY:

CITY OF APACHE JUNCTION, an Arizona municipal corporation:

By: Walter "Chip" Wilson
Title: Mayor

ATTEST:

Jennifer Pena
City Clerk

APPROVED AS TO FORM:

 2-12-24
Richard J. Stern
City Attorney

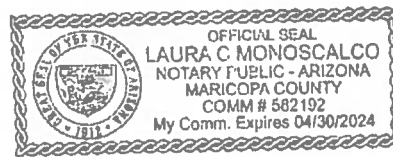
STATE OF Arizona)
) ss.
COUNTY OF Maricopa)

The foregoing was subscribed and sworn to before me this 8th
day of February, 2024, by Jeffrey M. Deozak as Partner of
SWABACK, an Arizona corporation.

Laura C Monoscalco
Notary Public

My Commission Expires:

4-30-2024



STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

The foregoing was subscribed and sworn before me this ____ day
of _____, 20____, by Walter "Chip" Wilson, as Mayor of the City of
Apache Junction, Arizona, an Arizona municipal corporation.

Notary Public

My Commission Expires:

COUNTY OF PINAL

Exhibit A

**COST PROPOSAL
PROJECT NO. ED 2023-002**

FIRM: SWABACK

ADDRESS: 7550 E McDonald Drive, Scottsdale, Arizona 85250

TELEPHONE: 480-367-2100 Fax _____

BASE BID

The nature of this recommended planning approach is, by nature, exploratory and as such, all of our work is done based on budgets established for each task.

By reviewing analogous work, we are able to articulate an overall process that we believe will best serve you and your interests. As stated, we think this process should take approximately 4 ½ months to substantially complete. Depending on your particular needs and interests, this could be accelerated or extended depending on work time vs review time.

Scope of Services and Methodology:

- 1. TASK ONE: Information Collection Phase:.....\$15,000.00
- 2. TASK TWO: Public Involvement Phase:.....\$25,000.00
- 3. TASK THREE: Plan Document Preparation Phase:.....~~\$5,500.00~~

\$47,500.00
JMD
02.08.24

Labor Costs: _____ \$87,500.00

Reimbursable Expenses: _____ \$2,500.00

TOTAL BASE LUMP SUM BID \$ \$90,000.00

NINETY THOUSAND DOLLARS

Total Base Lump Sum Bid in Words

Jeffrey M. Denzak Date January 10th
Signature

Jeffrey M. Denzak Title Partner
Printed Name