

ATTACHMENT A

PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF APACHE JUNCTION AND _____ FOR OPERATION OF A LOCAL VISITOR INFORMATION CENTER.

This Agreement is made as of the ____ day of _____ 20____ (the "Effective Date") by and between THE CITY OF APACHE JUNCTION, an Arizona municipal corporation ("City"), and _____, a _____, ("Consultant"), both of which may be hereinafter referred to collectively as the "Parties" or individually as a "Party", for professional operational services of a local visitor information center.

RECITALS

A. City desires to retain a consultant to operate a local visitor information center and to make payment for the same in accordance with the terms and conditions set forth in this Agreement, including all attachments and addenda which are appended hereto by mutual agreement of the Parties.

B. The open market procedures set forth in the Apache Junction City Code have been satisfied.

C. The Parties have set forth below contemplated services Consultant will provide City, including payment terms for such services and products.

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 the Scope of Work set forth in Exhibit A.

2. COMPENSATION: In accordance with the terms and conditions of this Agreement, City shall compensate Consultant for professional services in an amount not to exceed an aggregate sum of \$41,000.00, in accordance with the Fee and Quarterly Reporting Schedule set forth in Exhibit B and Reporting Form Template set forth in Exhibit C.

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: This Agreement shall be effective beginning on _____, 20____ and shall remain in full force and effect until June 30, 2017, unless otherwise terminated earlier as set forth herein.

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 the 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
Janine Solley, Economic Development Administrator
300 East Superstition Boulevard
Apache Junction, AZ 85119

If to Consultant: _____

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 any replacements 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, 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 any replacements 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. § 23-900 *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 attorneys' 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 four (4) 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 attorney and expert witness fees, arising from or connected with or alleged to have arisen from or connected with, 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. 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 tortious 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.

13. **LICENSE:** Consultant represents and warrants that any license necessary to perform the work 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 privilege license pursuant to Chapter 8 of the Apache Junction City Code and

keep such license current during the term of this Agreement. Any activity by subcontractors within the corporate city limits, will invoke the same business tax regulations on any subcontractors, and Consultant ensures its subcontractors will obtain any required privilege license.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

_____,
an Arizona _____

By: _____
Its: _____

CITY OF APACHE JUNCTION, ARIZONA,
an Arizona municipal corporation

By: John S. Insalaco
Its: Mayor

ATTEST:

Kathleen Connelly, City Clerk

APPROVED AS TO FORM:

By: _____
R. Joel Stern, City Attorney

STATE OF _____)
) ss.
County of _____)

The foregoing was acknowledged and subscribed before me this
_____ day of _____, 20____, by _____ as _____
of [Company Name], an Arizona [corporation/limited liability company].

Notary Public

My Commission Expires:

(seal)

STATE OF ARIZONA)

) ss.

COUNTY OF _____)

The foregoing was acknowledged and subscribed before me this _____ day of _____, 20____, by John S. Insalaco, as Mayor of the City of Apache Junction, Arizona, an Arizona municipal corporation.

Notary Public

My Commission Expires:

(seal)

EXHIBIT A

SCOPE OF WORK

The services to be provided to the city by interested parties shall include the following:

1. Operate a Visitor Information Center located within the city limits, consistent with the guidelines established by the Arizona Office of Tourism ("AOT") in the Center Criteria effective July 1, 2008 or as such new/revised guidelines are published by AOT.
2. Provide a means for patrons of the Visitor Information Center to have easy access to information about all licensed businesses located within the city limits and refer those patrons to those licensed businesses.
3. Refer prospective new business inquiries to the City of Apache Junction Economic Development Department.
4. Develop, implement and revise a program to encourage return visits to the community.
5. Ensure marketing tools utilized by the Visitor Information Center are regularly updated and maintained to inform visitors of city-sponsored and local events, area cultural, historical and recreational attractions.
6. Seek out opportunities to participate in a cooperative marketing program in conjunction with a regional marketing association, firm, agency or consultant and chambers of commerce to promote all city businesses and the area's cultural, historical and recreational attractions.
7. Actively participate with the city in a "Shop local/Shop AJ" program designed to help reduce retail sales leakage.
8. Enhance city sales tax revenues through the information and services listed above.
9. Submit timely quarterly reports to the city on the above activities and expenditure of public funds (utilizing the Quarterly Reporting Form template, as reflected in Exhibit C of Attachment A). Copies of these reports will be shared with the city council.
10. Report at least once during the term of the agreement on the performance of the Visitor Information Center to mayor and city council. This report will consist of an appearance by the consultant's staff at a city council session (regular or work).

EXHIBIT B

FEE & QUARTERLY REPORTING SCHEDULE

In accordance with the terms and conditions of this Agreement, city shall compensate Consultant for its professional services as follows:

- A. An aggregate sum of up to, \$41,000.00, billed in the amount of \$10,250.00 each quarter for a total of four quarters, subject to council appropriation of funds.
- B. Notwithstanding the fee arrangements outlined above, the mayor and city council of the City of Apache Junction reserve the right to annually review the Consultant's performance as related to the Scope of Work delineated in Exhibit A of this Agreement.
- C. Within ten (10) working days following the last day of each fiscal quarter, Consultant shall submit to the City's Economic Development Office detailed reports accounting for the expenditure of city funds. Consultant agrees to submit to the City typed or prepared word processor quality reports. The reports must utilize Quarterly Reporting Form delineated in Exhibit C of this Agreement.

EXHIBIT C

Quarterly Reporting Form

Within ten (10) working days following the last day of each fiscal quarter, Consultant shall submit to the City's Economic Development Office detailed reports accounting for the expenditure of city funds. Consultant agrees to submit to the City typed or prepared word processor quality reports. All following sections must be contained in the reports:

- A. Expense Summary – To include a summarized expense report of direct costs associated with operating the center for each quarter. Detailed receipts for any of the expenditures may be requested by the City and shall be produced by the Consultant within ten (10) working days from receipt of such request.
- B. Scope of Work Status Report – A description of all work undertaken and all findings and conclusions related to each item contained in the Scope of Work delineated in Exhibit A.
- C. Verified Data Collection Summary – To include any visitor information center counts, marketing results (i.e. website hits, community video views, etc.) for all items identified by the Consultant as categories of data collection.
- D. Miscellaneous – To include any additional information to keep the City updated on any activities or relevant work they are doing that demonstrates the value of the Consultant's performance and its impact upon economic development within the corporate boundaries of the City. This may include items such as those that add value but are not direct expenses to run the Center.