

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made as of this 18th day of November, 2014, between the CITY OF COTTONWOOD, an Arizona municipal corporation (the "City") and Information SPC/Outsource, (the "Consultant").

AGREEMENT

In consideration of the following mutual covenants and conditions, the City and the Consultant hereby agree as follows:

- A. **Term of Agreement.** This Agreement shall be effective as of the date first set forth above and shall remain in full force and effect until November 18th, 2015 (date). At the discretion of the City Council, the Agreement may be renewed for two (2) additional one (1) year periods.
- B. **Scope of Services.** The Consultant shall provide the Services as set forth in the attached Scope of Services, which is marked as Exhibit A and incorporated by reference herein.
- C. **Compensation.** The City shall pay the Consultant for the Services as set forth in the attached Offer Section, which is marked as Exhibit B and incorporated by reference herein.
- D. **Payments.** The City shall pay the Consultant subject to the Consultant submitting an invoice to the City for each requested payment. Invoices shall itemize all Services completed to the date of the invoice and provide sufficient detail to justify payment.
- E. **Insurance.** The Consultant shall maintain during the term of this Agreement insurance policies described below issued by companies licensed in Arizona with a current AM Best rating of A:VIII or better. The City's Risk Management reserves the right to review and make an exception for substitute/alternative coverage. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

Before the City signs this Agreement, the Consultant shall furnish the City's Risk Manager with certificates of insurance evidencing the coverages, conditions, and limits required by this Agreement, at the following address:

City of Cottonwood
Risk Manager
816 N Main Street
Cottonwood, AZ 86326
Telephone: (928) 340-2717 / Fax: (928) 634-3727

The insurance policies, except Worker's Compensation and Professional Liability, shall be endorsed to name the City of Cottonwood, its agents, officers, officials, employees, and volunteers as additional insureds with corresponding endorsement relative to the additional insured indemnification and with the following language:

The City of Cottonwood, its agents, officers, officials, employees, and volunteers are hereby named as additional insureds as their interest may appear.

If any insurance policies are written on a "claims made" basis, coverage shall extend for two (2) years past completion and acceptance of the Consultant's work or services and must be evidenced by annual certificates of insurance. The insurance policies shall be endorsed stating that they shall not expire, be cancelled, suspended, voided or materially changed without thirty (30) days written notice by certified mail to the City of Cottonwood Risk Manager. The Consultant's insurance must be primary, and any insurance or self-insurance maintained by the City shall not be contributed to it. If any part of this Contract is

subcontracted, these insurance requirements also apply to all subcontractors. The following policies are required:

1. **Commercial General Liability** insurance with a limit of not less than one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) aggregate for bodily injury, property damage, personal injury, products and completed operations, including but not limited to, the liability assumed under the indemnification provisions of this Contract.
2. **Automobile Liability** insurance with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence with respect to the Consultant's owned, hired, and non-owned vehicles.
3. **Worker's Compensation** insurance with limits statutorily required by any Federal or state law and **Employer's Liability** insurance of not less than one million dollars (\$1,000,000) for each accident, one million dollars (\$1,000,000) disease for each employee.
4. **Professional Liability** insurance covering acts, errors, mistakes, omissions arising out of the work or services performed by the Consultant, or any person employed by the Consultant, with a limit of not less than one million dollars (\$1,000,000) each claim.

F. Indemnification. To the fullest extent permitted by law, the Consultant shall defend, indemnify, and hold harmless the City of Cottonwood, its agents, officers, officials, employees and volunteers from and against all claims, damages, losses, and expenses (including but not limited to attorney fees and court costs) arising from the acts, errors, mistakes, omissions, work or service of the Consultant, its agents, employees, or any tier of Consultant's subcontractors in the performance of this Agreement. The requirements in Paragraph E will not be construed as limiting the scope of this indemnification.

G. Applicable Law; Venue. In the performance of this Agreement, the Consultant shall abide by and conform to any and all laws, codes and ordinances of the United States, State of Arizona and City of Cottonwood, including but not limited to, federal and state executive orders providing for equal employment and procurement opportunities, the Federal Occupational Safety and Health Act and any other federal or state laws applicable to this Agreement. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the State of Arizona.

H. Termination; Cancellation

1. **For City's Convenience.** This Agreement is for the convenience of the City and, as such, may be immediately terminated without cause after receipt by the Consultant of written notice by the City. Upon termination for convenience, the Consultant shall be paid for all undisputed services performed to the termination date.
2. **For Cause.** This Agreement may be terminated by either party upon thirty (30) days written notice should the other party breach any of its terms or otherwise violate the law in connection with the performance of any duty imposed on the party by the terms of this Agreement. In the event of such termination, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.
3. **Due to Work Stoppage.** This Agreement may be terminated by the City upon thirty (30) days written notice to the Consultant in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, payment shall be made by the City to the Consultant for the undisputed portion of its fee due as of the termination date.
4. **Conflict of Interest.** This Agreement is subject to the provisions of A.R.S. § 38-511. The City may cancel this Agreement without penalty or further obligations by the City or any of its

departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the City or any of its departments or agencies is, at any time while the Agreement or any extension of the Agreement is in effect, an employee of any other party to the Agreement in any capacity or a consultant to any other party of the Agreement with respect to the Agreement's subject.

5. **Gratuities.** The City may, by written notice to the Consultant, cancel this Agreement if it is found by the City that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Consultant or any agent or representative of the Consultant to any officer, agent or employee of the City for the purpose of securing this Agreement. In the event this Agreement is cancelled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Consultant an amount equal to one hundred fifty percent (150%) of the gratuity.
6. **Fund Appropriation Contingency.** The Consultant understands that the continuation of this Agreement after the close of any given fiscal year of the City, which ends on June 30, shall be subject to the budget of the City providing for the contract item as expenditure. The City cannot assure that the budget item for funding this Agreement will be approved in the future; as such assurance would be a legislative and policy determination of the City Council at the time of the adoption of the budget. Should the funding of the Agreement not be approved by City Council, the City may terminate this Agreement as of the close of its fiscal year.

I. **Miscellaneous**

1. **Independent Contractor.** The Consultant acknowledges and agrees that the Services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the City. The Consultant, its employees and subcontractors are not entitled to workers' compensation benefits from the City. The City does not have the authority to supervise or control the actual work of the Consultant, its employees or subcontractors. The Consultant, and not the City, shall determine the time of its performance of the services provided under this Agreement so long as the Consultant meets the requirements of its agreed scope of work as set forth in Section 2 above. The Consultant is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere.
2. **Laws and Regulations.** The Consultant shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Consultant is responsible remains in compliance with all rules, regulations, ordinances, statutes or laws affecting the Services, including the following: (i) existing and future City and County ordinances and regulations, (ii) existing and future state and federal laws and (iii) existing and future Occupational Safety and Health Administration ("OSHA") standards.
3. **Amendments.** This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the City and the Consultant.
4. **Provisions Required by Law.** Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Agreement will promptly be physically amended to make such insertion or correction.
5. **Severability.** The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of the Agreement which may remain in effect without the invalid provision or application.

6. **Relationship of the Parties.** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venture, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Consultant is advised that taxes or Social Security payments will not be withheld from any City payments issued hereunder and the Consultant agrees to be fully and solely responsible for the payment of such taxes or any other tax applicable to this Agreement.
7. **Entire Agreement; Interpretation; Parol Evidence.** This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting the Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.
8. **Assignment.** No right or interest in this Agreement shall be assigned by the Consultant without prior, written permission of the City and no delegation of any duty of the Consultant shall be made without prior, written permission of the City. Any attempted assignment or delegation by the Consultant in violation of this provision shall be a breach of this Agreement by the Consultant.
9. **Subcontracts.** No subcontract shall be entered into by the Consultant with any other party to furnish any of the material or services specified herein without the prior written approval of the City. The Consultant is responsible for performance under this Agreement whether or not subcontractors are used.
10. **Rights and Remedies.** No provision in this Agreement shall be construed, expressly or by implication, as waiver by the City of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the City to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the City's acceptance of and payment for services, shall not release the Consultant from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the City to insist upon the strict performance of this Agreement.
11. **Attorneys' Fees.** In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.
12. **Liens.** All materials or services shall be free of all liens and, if the City requests, a formal release of all liens shall be delivered to the City.
13. **Notices and Requests.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (i) delivered to the party at the address set forth below, (ii) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (iii) given to a recognized and reputable overnight delivery service, to the address set forth below:

Contractor: Standard Realty Co/IO City of Cottonwood (Owner)

c/o Shelley Bogdanowski
3540 W. Lincoln Street
Phoenix, AZ 85009

c/o _____

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (i) when delivered to the party, (ii) three (3) business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (iii) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14. **Confidentiality of Records.** The Consultant shall establish and maintain procedures and controls that are acceptable to the City for the purpose of ensuring that information contained in its records or obtained from the City or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform the Consultant's duties under this Agreement. Persons requesting such information should be referred to the City. The Consultant also agrees that any information pertaining to individual persons shall not be divulged other than to employees, agents or officers of the Consultant as needed for the performance of duties under this Agreement.
15. **Public Records.** Notwithstanding any provisions of this Agreement regarding confidentiality, secrets, or protected rights, the Consultant acknowledges that all documents provided to the City may be subject to disclosure by laws related to open public records. Consequently, the Consultant understands that disclosure of some or all of the items subject to this Agreement may be required by law. In the event City receives a request for disclosure that is reasonably calculated to incorporate information that might be considered confidential by Consultant, the City agrees to provide the Consultant with notice of that request, which shall be deemed given when deposited by the City with the USPS for regular delivery to the address of the Consultant specified in 9.13. Within ten (10) days of City notice by the City, the Consultant will inform the City in writing of any objection by the Consultant to the disclosure of the requested information. Failure by the Consultant to object timely shall be deemed to waive any objection and any remedy against the City for disclosure. In the event the Consultant objects to disclosure within the time specified, the Consultant agrees to handle all aspects related to the request, including properly communicating with the requestor and timely responding with information the disclosure of which the Consultant does not object thereto. Furthermore, the Consultant agrees to indemnify and hold harmless the City from any claims, actions, lawsuits, or any other controversy or remedy, in whatever form, that arises from the failure to comply with the request for information and the laws pertaining to public records, including defending the City in any legal action and payment of any penalties or judgments. This provision shall survive the termination of this Agreement.
16. **Conflicting Terms.** In the event of a conflict between the Exhibit and this Agreement, the terms of this Agreement shall govern.
17. **Compliance with Federal Immigration Laws and Regulations.** Consultant warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214.A. Consultant acknowledges that pursuant to A.R.S. § 41-4401, a breach of this warranty is a material breach of this contract subject to penalties up to and including

