

**PROFESSIONAL
CONSULTANTS
AGREEMENT**

THIS AGREEMENT, made and entered into this July ____, 20__, between the _____, with offices at _____, _____, NY _____ ("Municipality"), party of the first part, and _____, with offices at _____, _____, _____ ("Consultant") party of the second part.

WITNESSETH:

WHEREAS, the Board of Municipality desires to obtain certain professional assistance with respect to _____

WHEREAS, Consultant has offered to assist the Board of Municipality in performing professional services relative to the foregoing as described in Consultant's proposal dated _____, a copy of which is attached hereto as Schedule "A" (Schedule "A" must also be signed and dated by the parties hereto). In the event of a conflict between the terms of this Contract and the attached Schedule "A" and the terms hereof shall control.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter expressed, it is hereby agreed by and between the parties hereto as follows:

1. **Agreement**- The Municipality hereby enters into this agreement with Consultant to perform the services outlined more particularly on Schedule "A", the same not to include any additional, extra or optional services noted therein or otherwise without the express prior written consent of Municipality.

2. **Payment**- For the above services as outlined, the Consultant will receive the fees set forth on Schedule "A" based on the submittal of appropriate vouchers to the Municipality for audit upon final completion of the project. All travel, telephone and related incidental expenses will be reimbursed on an as-billed basis at 1.0 times cost and with total reimbursements not to exceed \$ _____.

3. **No Assignment**: In accordance with the provisions of section 109 of the General Municipal Law, the Consultant is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement, or of its right, title or interest in this agreement, or its power to execute this Agreement, to any other person or corporation without the previous consent in writing of the Municipality.

4. **Required Provisions of Law**: Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this contract shall be physically amended forthwith to make such insertion.

5. **Consultant**: in accordance with its status as an independent Consultant, covenants and agrees that it will conduct itself consistent with such status. It will neither hold itself out as, nor claim to be, an officer or employee of the Municipality by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Municipality, including, but not limited to: workers' compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

6. **Waiver**: No waiver of any breach of any condition of the Agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this Agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

7. **Authority for execution on behalf of Municipality**: This Contract has been authorized pursuant to a Resolution adopted by the Board of Municipality, at a meeting thereof held on _____. The person

whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Municipality. This instrument shall be executed in duplicate. At least one copy shall be permanently filed, after execution thereof, in the office of the Clerk of Municipality.

8. **Filing:** This instrument shall be executed in quadruplicate. At least one copy shall be permanently filed, after execution thereof, in the office of the Chief Executive and one in the office of the Clerk of Municipality.

9. **Insurance:** Insurance required of Consultant shall include General Professional, and Contractual Liability Insurance at the following limits: each occurrence \$1 million/general aggregate \$1 million/products/completed operations aggregate \$1 million/personal and advertising injury \$1 million/fire damage \$50 thousand/medical payments \$5 thousand/auto liability \$1 million/workman compensation statutory/Consultant pollution liability \$1 million/and professional liability \$1 million. The same shall specifically provide coverage for the Consultant's agreement to indemnify, defend and hold harmless hereunder. Consultant shall provide Municipality with an unconditional certificate or endorsement and separate binder providing such coverages and showing the premium paid, Municipality named as additional insured and providing for no expiration, termination or modification of coverage except upon thirty (30) days prior written notice to Municipality. The providing of such certificate or endorsement to Municipality shall be deemed a representation by Consultant that the provisions of such coverages comply with the terms hereof.

10. **Indemnification:** Consultant agrees to indemnify, defend and save the Municipality, its officers, agents and employees harmless from any liability whatsoever imposed upon the Municipality, its officers, agents and/or employees arising from the breach hereof or the acts or omissions of Consultant in performance of the Work.

11. **VILLAGE'S RIGHT TO STOP WORK OR TERMINATE CONTRACT:** The Municipality contract if:

- (a) The Consultant is adjudged bankrupt or makes an assignment for the benefit of creditors; or
- (b) A receiver or liquidator is appointed for the Consultant or for any of [his/her/its] property and is not dismissed within 20 days after such appointment or the proceedings in connection therewith are not stayed on appeal within the said 20 days; or
- (c) The Consultant refuses or fails to prosecute the work or any part thereof in a timely manner or with due diligence; or
- (d) The Consultant fails to make prompt payment to persons supplying labor for the work; or
- (e) The Consultant fails or refuses to comply with all applicable laws or ordinances; or
- (f) The Consultant defaults under or breaches any other provision of this contract;
- (g) In any event, the Municipality, without prejudice to any other rights or remedy it may have, by giving five (5) days' notice to the Consultant, and for any reason whatsoever, may terminate the employment of the Consultant and its right to proceed either as to the entire work or, at the option of the Municipality as to any portion thereof, and may take possession of the work and complete the work by contract or otherwise as the Municipality deems expedient. In such case, the Consultant shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the compensation to be paid the Consultant hereunder exceeds the expense of completing the work (including compensation for additional managerial, administrative and inspection services and any damage for delay), the excess shall be paid to the Consultant. If the expense exceeds the unpaid balance, the Consultant and any sureties shall be liable to the Municipality for the excess. If the right of the Consultant to proceed with the work is so terminated, the Municipality may take possession of and utilize in completing the work the materials, supplies, appliances, plant and equipment as may be on the site of the work and necessary therefore. If the Municipality does not so terminate the right of the Consultant to proceed, the Consultant shall continue the work.

12. **DAMAGES:** It is hereby mutually covenanted and agreed that the relation of the Consultant to the work to be performed by it under this contract shall be that of an independent Consultant. As an independent Consultant, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said work, whether or not the Consultant, its agents, or employees have been negligent. The Consultant shall hold and keep the Municipality free and discharged of and from any and all responsibility and liability of any sort or kind. The Consultant shall assume all responsibility for risks or casualties of every description, for loss or injury to persons or property arising out of the nature of the work, from the action of the elements, or from any unforeseen or unusual difficulty. The Consultant shall make good any damages that may occur in consequence of the work or any part of it. The Consultant shall assume all blame, loss and responsibility of any nature by reason of neglect or violation of any federal, state, county or local laws, regulations or ordinances.

13. **NON-COLLUSIVE BIDDING CERTIFICATION:** The Consultant warrants, under penalty of perjury, that its Contract was arrived at independently and without collusion aimed at restricting competition and otherwise without conflict of interest or any prohibited conduct or relationship with a Municipality official. The Consultant further warrants that, an authorized and responsible person has executed and delivered to the Municipality a non-collusive certification on the Consultant's behalf.

14. **SET-OFF RIGHTS:** The Municipality shall have rights of set-off. These rights shall include, but not be limited to, the Municipality's option to withhold for the purposes of set-off any moneys due to the Consultant under this contract up to any amounts due and owing by the Consultant to the Municipality with regard to this contract, or any other contract with the Municipality, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Municipality for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Municipality and third parties in connection therewith.

15. **IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION:** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to the Municipality must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

16. **TAXES:** Any and all taxes now or hereafter imposed on the work to be performed and/or materials to be furnished or upon the Contract itself or any matter in connection therewith shall be paid by the Consultant, it being the intention of the parties hereto that in no event shall such taxes be borne by the Municipality.

17. **CONFLICTING TERMS:** In the event of a conflict between the terms of this Contract and the attached Schedule "A" and the terms hereof shall control.

18. **GOVERNING LAW:** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

19. **SERVICE OF PROCESS:** In addition to the methods of service allowed by the State Civil Practice Law and Rules, the Consultant hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Consultant's actual receipt of process or upon the Municipality's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Consultant must promptly notify the Municipality, in writing, of each and every change of address to which service of process can be made. Service by the Municipality to the last known address shall be sufficient. The Consultant will have thirty (30) calendar days after service hereunder is complete in which to respond.

20. **NO WAIVER OF PROVISIONS:** The Municipality's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Municipality of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Municipality, and such waiver shall be limited to the

specific instance so written and shall not constitute a waiver of such right or remedy in the future of any other remedy under this contract.

21. **ENTIRE AGREEMENT:** This contract and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

22. **AUTHORITY FOR EXECUTION ON BEHALF OF MUNICIPALITY:** The [Mayor/Supervisor] has executed this agreement pursuant to a Resolution adopted by the [Municipality], Board at a meeting thereof held on _____ 200_. [Name], whose signature appears hereafter, is duly authorized and empowered to execute this instrument and enter into such an agreement on behalf of the Municipality. This instrument shall be executed in duplicate. At least one copy shall be permanently filed, after execution thereof, in the office of the _____ Clerk of Municipality.

IN WITNESS WHEREOF, the Municipality of Phoenix has caused its corporate seal to be affixed hereto and these presents to be signed by _____, Chief Executive, duly authorized to do so, and to be attested to by _____ Clerk of Municipality, and the said Consultant has hereunto set its hand and seal the day and year first above written.

Attest:

MUNICIPALITY: _____

_____, Clerk

By:

PRINT NAME:
TITLE:

CONSULTANT: _____

By: _____
Print Name:
Title:

STATE OF NEW YORK)

COUNTY OF _____) ss:

On the ____ day of _____, in the year 20__, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

COUNTY OF _____) ss:

On the _____ day of _____, in the year 20____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT "A"