

CITY CLERK ORIGINAL

C-8256-1
08/13/2013

AGREEMENT FOR PROFESSIONAL SERVICES City Project No. RFP 06-40

This Agreement for Professional Services ("Agreement") is entered into and effective between CITY OF GLENDALE, an Arizona municipal corporation ("City"), and on behalf of all West Valley cities and towns ("Partners" listed in Exhibit A), and Baker, Donelson, Bearman, Caldwell & Berkowitz, PC, a Tennessee corporation, doing business in the Washington, District of Columbia ("Consultant"), as of the 13th day of August, 2013 ("Effective Date").

RECITALS

- A. City, together with its Partners, entered into an Agreement for Professional Services with Hyjek & Fix, Inc. on December 11, 2012 with the intent of undertaking a project for the benefit of the public and with public funds that is more fully set forth in Exhibit B, (the "Project"); and
- B. City, together with its Partners, desire to continue the Project by retaining Baker, Donelson, Bearman, Caldwell & Berkowitz to perform all professional services ("Services") and produce the specific work as set forth in the attached Project; and
- C. Consultant desires to provide City and its Partners with professional services consistent with the highest standards of legal and lobbying representation and the standards set forth in this Agreement, in order to complete the Project ("Services"); and
- D. City, its Partners and Consultant desire to memorialize their agreement with this document.

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, City and Consultant agree as follows:

1. Key Personnel; Subconsultants.

1.1 Professional Services. Consultant will provide all Services necessary to assure the Project is completed timely and efficiently and in a manner consistent within Project requirements. Services shall include, but are not limited to, interacting and interfacing with City and its designated employees, and working closely with others, including other consultants or agents retained by City or the Partners.

1.2 Project Team.

(A) Project Lead Representative.

- (1) Consultant has designated Steven Hyjek as Lead Representative for this Project. The Parties agree Mr. Hyjek has sufficient training, knowledge, and experience to, in the City's opinion, complete the Project and handle all aspects of the Project such that the work produced by Consultant is consistent with applicable standards as detailed in this Agreement.
- (2) Should Consultant wish to change or replace its approved designated Lead Representative it shall propose a replacement and provide the City with the qualifications of the proposed replacement. City, in its sole unrenewable discretion, may approve or reject the replacement.

(B) Project Team.

- (1) The Lead Representative and all other employees assigned to the Project by Consultant will comprise the "Project Team."
- (2) Lead Representative will have responsibility for and will supervise all other employees assigned to the Project by Consultant.
- (3) Consultant will change any of the members of the Project Team at the City's request if an employee's performance does not equal or exceed the level of competence that the City may reasonably expect of a person performing those duties, or if the acts or omissions of that person are detrimental to the development of the Project.

2. **Consultant's Work.**

2.1 **Standard.** Consultant must perform Services in accordance with the standards of due diligence, care, and quality prevailing among consultants having substantial experience with the successful furnishing of Services for projects that are equivalent in size, scope, quality, and other criteria under the Project and identified in this Agreement.

2.2 **Compliance.** Services will be furnished in compliance with applicable federal, state, county and local statutes, rules, regulations, ordinances, and other standards and criteria designated by City

3. **Compensation for the Project.** Compensation for Consultant's Professional Services, including those furnished by its subconsultants and any related expenses, will not exceed \$144,000 annually over the term of this Agreement, as specifically detailed in **Exhibit C** ("Compensation").

4. **Billings and Payment.**

4.1 **Applications.**

- (A) Consultant will submit monthly invoices (each, a "Payment Application") to the City Manager and City will remit payments based upon the Payment Application.
- (B) The period covered by each Payment Application will be one calendar month ending on the last day of the month.

4.2 **Payment.** After a full and complete Payment Application is received, City will process and remit payment within 30 days.

5. **Termination.**

5.1 **For Convenience.** Either party may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date. Such notice shall be delivered at least 30 days before the date the termination becomes effective.

- (A) Consultant will be equitably compensated for Services furnished prior to receipt of the termination notice and for reasonable costs incurred.
- (B) Consultant will also be similarly compensated for any approved effort expended and approved costs incurred that are directly associated with Project closeout and delivery of the required items to the City.

5.2 **For Cause.** Either party may terminate this Agreement for cause immediately if the other party fails to cure any breach of this Agreement within seven days after receipt of written notice specifying the breach.

- (A) If the Agreement is terminated by City for cause, then Consultant will not be entitled to further payment until after City has determined its damages. If City's damages resulting from the breach, as determined by City, are less than the equitable amount due but not paid Consultant for Services furnished, City will pay the amount due to Consultant, less City's damages, in accordance with the provision of Section 5.

- (B) If the Agreement is terminated by Consultant for cause, then City shall pay all charges, plus reasonable expenses, then due for the month in which such termination shall occur.
- (C) The party terminating the Agreement for cause shall be entitled to recover its direct damages from the terminated party immediately on demand. Neither party shall be liable to the other for damages in excess of the amount of payments to be made under this Agreement.

6. **Conflict.** Consultant acknowledges this Agreement is subject to A.R.S. § 38-511, which allows for cancellation of this Agreement in the event any person who is significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on City's behalf is also an employee, agent, or consultant of any other party to this Agreement.

7. **Insurance.**

7.1 **Requirements.** By its signature on this document, Consultant represents that it has sufficient malpractice and errors and omissions insurance coverage commensurate with its responsibilities and obligations under this Agreement. Failure to maintain malpractice and errors and omissions in an amount sufficient to compensate City for any damage it incurs as a result of the Contract shall in no way effect or otherwise limit City's potential recovery for Consultant's liability.

7.2 **Other Consultants or Vendors.**

- (A) Other consultants or vendors that may be contracted with in connection with the Project must procure and maintain insurance coverage as is appropriate to their particular contract.
- (B) This insurance coverage must comply with the requirements set forth above for Consultant's policies (e.g., the requirements pertaining to endorsements to name the parties as additional insured parties and certificates of insurance).

7.3 **Subconsultants.**

- (A) Consultant must also cause its subconsultants to obtain and maintain the appropriate insurance
- (B) City may consider waiving these insurance requirements for a specific subconsultant if City is satisfied the amounts required are not commercially available to the subconsultant and the insurance the subconsultant does have is appropriate for the subconsultant's work under this Agreement.
- (C) Consultant and subconsultants must provide to the City proof of the required insurance whenever requested.

7.4 **Indemnification.**

- (A) To the fullest extent permitted by law, each party must defend, indemnify, and hold harmless the other party and its elected officials, officers, employees and agents (each, an "Indemnified Party," collectively, the "Indemnified Parties") for, from, and against any and all claims, demands, actions, damages, judgments, settlements, personal injury (including sickness, disease, death, and bodily harm), property damage (including loss of use), infringement, governmental action and all other losses and expenses, including attorneys' fees and litigation expenses (each, a "Demand or Expense" collectively "Demands or Expenses") asserted by a third-party (i.e. a person or entity other than City or Consultant) and that arises out of or results from the breach of this Agreement by the other party or the other party's negligent actions, errors or omissions (including any subconsultant or other person or firm employed by Consultant), whether sustained before or after completion of the Project. The party responsible for providing indemnification under this Section shall be referred to as the "Indemnifying Party."
- (B) This indemnity and hold harmless provision applies even if a Demand or Expense is in part due to the Indemnified Party's negligence or breach of a responsibility under this

Agreement, but in that event, Consultant will be liable only to the extent the Demand or Expense results from the negligence or breach of a responsibility of Consultant or of any person or entity for whom Consultant is responsible.

- (C) Consultant is not required to indemnify any Indemnified Parties for, from, or against any Demand or Expense resulting from the Indemnified Party's sole gross negligence or other fault solely attributable to the Indemnified Party.

8. Immigration Law Compliance.

- 8.1 Consultant, and on behalf of any subconsultant, warrants, to the extent applicable under A.R.S. § 41-4401, compliance with all federal immigration laws and regulations that relate to their employees as well as compliance with A.R.S. § 23-214(A) which requires registration and participation with the E-Verify Program.
- 8.2 Any breach of warranty under this Section is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement
- 8.3 City retains the legal right to inspect the papers of any Consultant or subconsultant employee who performs work under this Agreement to ensure that the Consultant or any subconsultant is compliant with the warranty under this Section.
- 8.4 City may conduct random inspections, and upon request of City, Consultant will provide copies of papers and records of Consultant demonstrating continued compliance with the warranty under this Section. Consultant agrees to keep papers and records available for inspection by the City during normal business hours and will cooperate with City in exercise of its statutory duties and not deny access to its business premises or applicable papers or records for the purposes of enforcement of this Section.
- 8.5 Consultant agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Consultant and expressly accrue those obligations directly to the benefit of the City. Consultant also agrees to require any subconsultant to incorporate into each of its own subcontracts under this Agreement the same obligations above and expressly accrue those obligations to the benefit of the City
- 8.6 Consultant's warranty and obligations under this Section to the City is continuing throughout the term of this Agreement or until such time as the City determines, in its sole discretion, that Arizona law has been modified in that compliance with this Section is no longer a requirement.
- 8.7 The "E-Verify Program" above means the employment verification program administered by the United States Department of Homeland Security, the Social Security Administration, or any successor program.

- 9. **Prohibitions.** Consultant certifies under A.R.S. §§ 35-391 *et seq.* and 35-393 *et seq.*, that it does not have, and during the term of this Agreement will not have, "scrutinized" business operations, as defined in the preceding statutory sections, in the countries of Sudan or Iran.

10. Notices.

10.1 Effect of Notice.

- (A) A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:
 - (1) The Notice is in writing; and
 - (2) Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested).
- (B) Notice will be deemed to have been delivered to the person to whom it is addressed as of the date of receipt, if:

- (1) Received on a business day, or before 5.00 p.m., at the address for Notices identified for the Party in this Agreement by U.S. Mail, hand delivery, or overnight courier service on or before 5:00 p.m.; or
- (2) As of the next business day after receipt, if received after 5:00 p.m.
- (C) The burden of proof of the place and time of delivery is upon the Party giving the Notice.
- (D) Digitalized signatures and copies of signatures will have the same effect as original signatures.

10.2 Representatives.

- (A) Consultant. Consultant's representative (the "Consultant's Representative") authorized to act on Consultant's behalf with respect to the Project, and his or her address for Notice delivery is:

Steven Hyeck
Senior Policy Advisor
Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
920 Massachusetts Ave. N.W
Suite 900
Washington, D.C. 20001

- (B) City. City's representative ("City's Representative") authorized to act on City's behalf, and its address for Notice delivery is:

City Manager
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

With required copy to:

City Attorney
City of Glendale
5850 West Glendale Avenue
Glendale, Arizona 85301

- (C) Concurrent Notices.

- (1) A notice will not be deemed to have been received by City's representative until the time that it has also been received by City Attorney.
- (2) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Consultant identifying the designee(s) and their respective addresses for notices.

- (D) Changes. Consultant or City may change its representative or information on Notice, by giving Notice of the change in accordance with this Section at least ten days prior to the change.

11. Entire Agreement; Survival; Counterparts; Signatures.

11.1 Integration. This Agreement contains, except as stated below, the entire agreement between City and Consultant and supersedes all prior conversations and negotiations between the parties regarding the Project or this Agreement.

- (A) Neither Party has made any representations, warranties or agreements as to any matters concerning the Agreement's subject matter.
- (B) Representations, statements, conditions, or warranties not contained in this Agreement will not be binding on the parties.

- (C) The solicitation, any addendums and the response submitted by the Consultant are incorporated into this Agreement as if attached hereto. Any Consultant response modifies the original solicitation as stated. Inconsistencies between the solicitation, any addendums, the response or any excerpts attached as Exhibit B, and this Agreement will be resolved by the terms and conditions stated in this Agreement.

11.2 Interpretation.

- (A) The parties fairly negotiated the Agreement's provisions to the extent they believed necessary and with the legal representation they deemed appropriate.
- (B) The parties are of equal bargaining position and this Agreement must be construed equally between the parties without consideration of which of the parties may have drafted this Agreement.
- (C) The Agreement will be interpreted in accordance with the laws of Washington, District of Columbia.

11.3 Survival. Except as specifically provided otherwise in this Agreement, each warranty, representation, indemnification and hold harmless provision, insurance requirement, and every other right, remedy and responsibility of a Party, will survive completion of the Project, or the earlier termination of this Agreement.

11.4 Amendment. No amendment to this Agreement will be binding unless in writing and executed by the parties. Electronic signature blocks do not constitute execution for purposes of this Agreement. Any amendment may be subject to City Council approval.

11.5 Remedies. All rights and remedies provided in this Agreement are cumulative and the exercise of any one or more right or remedy will not affect any other rights or remedies under this Agreement or applicable law.

11.6 Severability. If any provision of this Agreement is voided or found unenforceable, that determination will not affect the validity of the other provisions, and the voided or unenforceable provision will be reformed to conform to applicable law.

11.7 Counterparts. This Agreement may be executed in counterparts, and all counterparts will together comprise one instrument.

12. Term. The term of this commences upon the effective date and continues until December 31, 2014. This Agreement may be extended or renewed for three (3) additional one (1)-year terms by written mutual assent of all authorized parties. The Party seeking to renew the Agreement must give the other Party notice of its intention to renew at least 60 days in advance of the expiration of prior term.

13. Dispute Resolution. Each claim, controversy and dispute (each a "Dispute") between Consultant and City will be resolved in accordance with Exhibit D. The final determination will be made by the City.

14. Exhibits. The following exhibits, with reference to the term in which they are first referenced, are incorporated by this reference.

Exhibit A	Project
Exhibit B	Scope of Services
Exhibit C	Compensation
Exhibit D	Dispute Resolution

(Signatures appear on the following Page.)

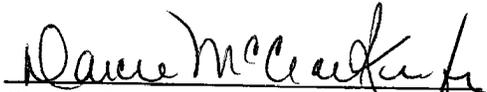
The parties enter into this Agreement effective as of the date shown above.

City of Glendale,
an Arizona municipal corporation

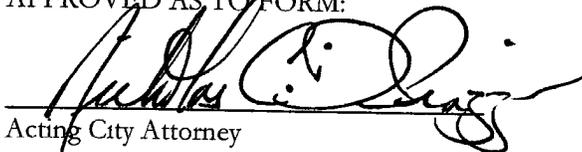


By: Brenda Fischer
Its: City Manager

ATTEST:


City Clerk (SEAL)

APPROVED AS TO FORM:


Acting City Attorney

Baker, Donelson, Bearman,
Caldwell & Berkowitz, PC,
doing business in Washington,
District of Columbia

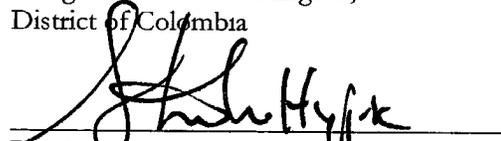

By: Steven Hyjek
Its: Senior Policy Advisor

EXHIBIT A

RFP 06-40

PROJECT

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C. will represent the interests of the City of Glendale and its West Valley regional partners: Avondale, Buckeye, El Mirage, Gila Bend, Goodyear, Litchfield Park, Maricopa County, Peoria, Phoenix, Surprise, Tolleson, Wickenburg and Youngtown to provide legal and lobbying services to preserve and retain the mission of Luke Air Force Base (Luke AFB) within Maricopa County, Glendale, Arizona.

EXHIBIT B

RFP 06-40

SCOPE OF SERVICES

The regional partners seek a consultant to provide comprehensive federal legislative representation and consulting services. The firm will represent the regional partners on policy issues in Washington, D.C. and assist elected officials and staff with implementing that agenda in order to protect and preserve the mission of Luke AFB in Arizona to the ultimate benefit of our taxpayers and national defense.

The goal of the contract is to achieve measurable long-term, ongoing permanency of the mission of Luke AFB through the support of Pentagon officials and congressional members, congressionally authorized programs, legislation and appropriations to advance this stated agenda.

The regional partners seek to obtain the following required services:

1) Foster relationships with key Congressional, Administration, and Federal contacts by:

- Maintaining close contact with the Arizona Congressional delegation and their staff and providing continued access and visibility with Headquarters, USAF and the Air Force Leadership, in conjunction with the US Congress and pertinent congressional committees.
- Drafting letters and testimony to clearly articulate the position on Luke AFB matters for the regional partners to send to the Executive Branch and Congress.
- Support the occasional scheduling, organizing, and execution of visits to Washington, DC by regional partners for the purpose of meeting with Congressional leaders, Pentagon officials, and other Federal agencies including developing a draft agenda, talking points, and appropriate background materials.

2) Maintain regular communication, reporting, advice, and advocacy to regional partners by:

- Communicating through monthly written reports to partners, including information about outcomes achieved.
- Confering through a designated point of contact on federal issues that impact the mission of Luke AFB by:
 - Reviewing federal executive proposals, legislation, proposed and adopted administrative rules and regulations, and other federal documents that directly impact the mission of Luke AFB and providing advice on issues that would impact the mission of Luke AFB and take action in concert with the regional partners to achieve the desired goal.
- Traveling to the Phoenix metro area once per year to provide in-person updates and briefings to the regional partners. If the regional partners request additional trips, the partners will reimburse the consultant for associated travel expenses.

3) Advocate to preserve the future mission of Luke AFB by:

- Monitoring and lobbying the Pentagon and **House and Senate DOD authorization and appropriation members and staff** as necessary to ensure no actions taken by Congress or the DOD adversely affect the mission of Luke AFB.

- Assisting to secure and safeguard funding for Luke/BMGR (either placed in the President's Budget, or secured via authorizing or appropriations bills such as MILCON) and providing analysis of any proposed funding cuts and the potential impacts on Luke AFB and recommending an action plan to best mitigate the assessed impacts.
 - Assisting with any Base Realignment and Closure Commission (BRAC) or other Force Structure Adjustment-related issues and recommending an action plan to mitigate potential concerns and promote Luke AFB's strengths.
 - Occasionally consulting on necessary local and state actions to better prepare Luke AFB for future mission needs, including land and air space encroachment, and providing analysis of how proposed state and local actions may impact federal decision making processes (i.e : regulatory takings or eminent domain legislation).
- 4) In addition to attending to all of the above-mentioned tasks, Consultants will:
- Assist in securing and implementing new missions at Luke AFB, including assistance in securing related funding.
 - Assure that any potential aircraft or staff departures are minimized or are timed to not adversely affect or have a detrimental impact on Luke AFB.

EXHIBIT C
RFP 06-40
COMPENSATION

The total amount of compensation which may be paid to Consultant shall not exceed \$144,000 annually over the term of the Agreement. Should additional trips to Arizona be required (besides the annual trip noted in Exhibit B and covered by the existing compensation) under this Agreement, the West Valley Partners will reimburse Consultant for the reasonable costs of the trip(s). By agreement with the West Valley regional partners, the City's proportional monthly share of the \$12,000 per month amount is approximately \$2,273.00.

EXHIBIT D

RFP 06-40

DISPUTE RESOLUTION

1. Disputes.

- 1.1 Commitment. The parties commit to resolving all disputes promptly, equitably, and in a good-faith, cost-effective manner.
- 1.2 Application. The provisions of this Exhibit will be used by the parties to resolve all controversies, claims, or disputes ("Dispute") arising out of or related to this Agreement-including Disputes regarding any alleged breaches of this Agreement.
- 1.3 Initiation. A party may initiate a Dispute by delivery of written notice of the Dispute, including the specifics of the Dispute, to the Representative of the other party as required in this Agreement.
- 1.4 Informal Resolution. When a Dispute notice is given, the parties will designate a member of their senior management who will be authorized to expeditiously resolve the Dispute.
 - (A) The parties will provide each other with reasonable access during normal business hours to any and all non-privileged records, information and data pertaining to any Dispute in order to assist in resolving the Dispute as expeditiously and cost effectively as possible;
 - (B) The parties' senior managers will meet within 10 business days to discuss and attempt to resolve the Dispute promptly, equitably, and in a good faith manner, and
 - (C) The Senior Managers will agree to subsequent meetings if both parties agree that further meetings are necessary to reach a resolution of the Dispute.

2. Arbitration.

- 2.1 Rules. If the parties are unable to resolve the Dispute by negotiation within 30 days from the Dispute notice, and unless otherwise informal discussions are extended by the mutual agreement, the Dispute will be decided by binding arbitration in accordance with Commercial Rules of the AAA, as amended herein. Although the arbitration will be conducted in accordance with AAA Rules, it will not be administered by the AAA, but will be heard independently.
 - (A) The parties will exercise best efforts to select an arbitrator within 5 business days after agreement for arbitration. If the parties have not agreed upon an arbitrator within this period, the parties will submit the selection of the arbitrator to one of the principals of the mediation firm of Scott & Skelly, LLC, who will then select the arbitrator. The parties will equally share the fees and costs incurred in the selection of the arbitrator.
 - (B) The arbitrator selected must be an attorney with at least 15 years experience with commercial legal matters in Maricopa County, Arizona, be independent, impartial, and not have engaged in any business for or adverse to either Party for at least 10 years.
- 2.2 Discovery. The extent and the time set for discovery will be as determined by the arbitrator. Each Party must, however, within ten (10) days of selection of an arbitrator deliver to the other Party copies of all documents in the delivering party's possession that are relevant to the dispute.
- 2.3 Hearing. The arbitration hearing will be held within 90 days of the appointment of the arbitrator. The arbitration hearing, all proceedings, and all discovery will be conducted in Glendale, Arizona unless otherwise agreed by the parties or required as a result of witness location. Telephonic hearings and other reasonable arrangements may be used to minimize costs.
- 2.4 Award. At the arbitration hearing, each Party will submit its position to the arbitrator, evidence to support that position, and the exact award sought in this matter with specificity. The arbitrator must select the award sought by one of the parties as the final judgment and may not independently alter or modify the awards sought by the parties, fashion any remedy, or make any equitable order. The arbitrator has no authority to consider or award punitive damages.

- 2.5 Final Decision. The Arbitrator's decision should be rendered within 15 days after the arbitration hearing is concluded. This decision will be final and binding on the Parties.
- 2.6 Costs. The prevailing party may enter the arbitration in any court having jurisdiction in order to convert it to a judgment. The non-prevailing party will pay all of the prevailing party's arbitration costs and expenses, including reasonable attorney's fees and costs.
3. **Services to Continue Pending Dispute.** Unless otherwise agreed to in writing, Consultant must continue to perform and maintain progress of required Services during any Dispute resolution or arbitration proceedings, and City will continue to make payment to Consultant in accordance with this Agreement.
4. **Exceptions.**
- 4.1 Third Party Claims. City and Consultant are not required to arbitrate any third-party claim, cross-claim, counter claim, or other claim or defense of a third-party who is not obligated by contract to arbitrate disputes with City and Consultant.
- 4.2 Liens. City or Consultant may commence and prosecute a civil action to contest a lien or stop notice, or enforce any lien or stop notice, but only to the extent the lien or stop notice the Party seeks to enforce is enforceable under Arizona Law, including, without limitation, an action under A.R.S. § 33-420, without the necessity of initiating or exhausting the procedures of this Exhibit.
- 4.3 Governmental Actions. This Exhibit does not apply to, and must not be construed to require arbitration of, any claims, actions or other process filed or issued by City of Glendale Building Safety Department or any other agency of City acting in its governmental permitting or other regulatory capacity.