

CONSULTING AGREEMENT

This Agreement is made effective as of February 27, 2019, by and between Lake Havasu City, of 2330 McCulloch Blvd. North, Lake Havasu City, Arizona 86403, and Albert Holler & Associates, of 18521 E. Queen Creek Road #105-425 Queen Creek, Arizona 85142.

In this Agreement, the party who is contracting to receive services shall be referred to as "City", and the party who will be providing the services shall be referred to as "Consultant".

Consultant has a background in sales tax auditing and is willing to provide services to City based on this background.

City desires to have services provided by Consultant.

Therefore, the parties agree as follows:

1. DESCRIPTION OF SERVICES. Beginning on February 27, 2019, Consultant will provide the following services (collectively, the "Services"): select and complete sales tax desk review audits; and provide taxpayer assistance as requested and provide monthly reports on the results.

2. PERFORMANCE OF SERVICES. The manner in which the Services are to be performed and the specific hours to be worked by Consultant shall be determined by Consultant. City will rely on Consultant to work as many hours as may be reasonably necessary to fulfill Consultant's obligations under this Agreement.

3. PAYMENT. City will pay a fee to Consultant for the Services in the amount of \$4,000.00 per month. This fee shall be payable monthly, no later than the fifteenth day of the month following the period during which the Services were performed.

4. EXPENSE REIMBURSEMENT. Consultant shall be entitled to reimbursement from City for the following "out-of-pocket" expenses: none.

5. SUPPORT SERVICES. City will provide the following support services for the benefit of Consultant: providing business license and building permit information.

6. TERM/TERMINATION. This Agreement shall terminate automatically on June 30, 2019. Either party may terminate this Agreement upon thirty (30) calendar days' written notice to the other party.

7. RELATIONSHIP OF PARTIES. It is understood by the parties that Consultant is an independent contractor with respect to City, and not an employee of City. City will not provide fringe benefits, including health insurance benefits, paid vacation, or any other employee benefit, for the benefit of Consultant.

8. INJURIES. Consultant acknowledges Consultant's obligation to obtain appropriate insurance coverage for the benefit of Consultant (and Consultant's employees, if any). Consultant waives any rights to recovery from City for any injuries that Consultant (and/or Consultant's employees) may sustain while performing services under this Agreement and that are a result of the negligence of Consultant or Consultant's employees.

9. LIABILITY INSURANCE REQUIREMENTS

A. Consultant and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement, are satisfied, insurance as outlined in this section.

B. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Consultant from liabilities that might arise out of the performance of the services under this Agreement by the Consultant, its agents, representatives, employees or subcontractors, and Consultant is free to purchase additional insurance.

C. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Consultant shall provide coverage with limits of liability not less than those stated below.

1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

a. General Aggregate \$2,000,000

f. Each Occurrence \$1,000,000

i. The policy shall be endorsed, as required by this written agreement, to include the following additional insured language: "Lake Havasu City, its departments, agencies, boards, commissions, and its officers, officials, agents, volunteers, and employees shall be named as additional insureds with respect to liability arising out of the services performed by or on behalf of the Consultant".

ii. Policy shall contain a waiver of subrogation, as required by this written agreement, in favor of Lake Havasu City, its departments, agencies, boards, commissions, and its officers, officials, agents, volunteers, and employees for losses arising from services performed by or on behalf of the Consultant.

2. Workers' Compensation and Employers' Liability

a. Workers' Compensation Statutory

b. Employers' Liability

Each Accident \$1,000,000

Disease – Each Employee \$1,000,000

Disease – Policy Limit \$1,000,000

i. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of Lake Havasu City, its departments, agencies, boards, commissions, and its officers, officials, agents, volunteers, and employees for losses arising from services performed by or on behalf of the Consultant.

ii. This requirement shall not apply to each contractor or subcontractor that is exempt under A.R.S. § 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

3. Professional Liability (Errors and Omissions Liability)

a. Each Claim \$1,000,000

b. Annual Aggregate \$2,000,000

i. In the event that the professional liability insurance required by this Agreement is written on a claims-made basis, Consultant warrants that any retroactive date under the policy shall precede the effective date of this Agreement; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Agreement is completed.

ii. The policy shall cover professional misconduct, negligent acts, or lack of ordinary skill for the services defined in this Agreement.

D. ADDITIONAL INSURANCE REQUIREMENTS: The policies, with the exception of Workers' Compensation, shall include, or be endorsed to include, the following provisions:

1. Lake Havasu City, its departments, agencies, boards, commissions and its officers, officials, agents, volunteers, and employees wherever additional insured status is required.

2. The Consultant's insurance coverage shall be primary insurance with respect to all other available sources.

3. Coverage provided by the Consultant shall not be limited to the liability assumed under the indemnification provisions of this Agreement.

E. NOTICE OF CANCELLATION: Each insurance policy required by the insurance provisions of this Agreement shall not be suspended, voided, cancelled, reduced in coverage or in limits without ten (10) business days' written notice to the City. Such notice shall be mailed directly to Lake Havasu City, City Attorney/Contracts, 2330 McCulloch Blvd. North, Lake Havasu City, Arizona 86403 and shall be sent by certified mail, return receipt requested.

F. ACCEPTABILITY OF INSURERS: Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Consultant from potential insurer insolvency.

G. VERIFICATION OF COVERAGE:

1. Consultant shall furnish City with certificates of insurance as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

2. All certificates and endorsements are to be received and approved by City at least ten (10) days before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Agreement, or to provide evidence of renewal, is a material breach of contract.

3. All certificates required by this Agreement shall be sent directly to Lake Havasu City, Community Investment Department, City Attorney/Contracts, 2330 McCulloch Blvd. North, Lake Havasu City, Arizona 86403. Include the contract number on the certificate of insurance.

City reserves the right to require complete, certified copies of all insurance policies required by this Agreement at any time.

H. **SUBCONTRACTORS:** Consultant's certificate(s) shall include all subcontractors as insureds under its policies or Consultant shall furnish to the City separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL:** Any modification or variation from the insurance requirements in this Agreement shall be made by the contracting agency in consultation with the City. Such action will not require a formal Agreement amendment, but may be made by administrative action.

10. INDEMNIFICATION. To the fullest extent permitted by law, Consultant shall pay, defend, indemnify and hold harmless City, and its officers, employees, agents, and volunteers (collectively the "Indemnified Party") for, from, and against any and all liabilities, damages, losses, claims, expenses, and costs (including, but not limited to, reasonable attorney's fees and court costs), to which any Indemnified Party may become subject, under any theory of liability whatsoever ("Claims"), relating to, arising out of, or alleged to have resulted from acts, errors, mistakes, omissions, or services caused by Consultant, its officers, employees, agents, or any tier of subcontractor in connection with Consultant's work or services in the performance of this Agreement. The amount and type of insurance coverage requirements required by this Agreement will in no way be construed as limiting the scope of indemnity in this Section.

11. ASSIGNMENT. Consultant's obligations under this Agreement may not be assigned or transferred to any other person, firm, or corporation without the prior written consent of City.

12. CONFIDENTIALITY. City recognizes that Consultant has and will have the following information:

- sales tax information

and other proprietary information (collectively, "Information") which are valuable, special and unique assets of City and need to be protected from improper disclosure. In consideration for the disclosure of the Information, Consultant agrees that Consultant will not at any time or in any manner, either directly or indirectly, use any Information for Consultant's own benefit, or divulge, disclose, or communicate in any manner any Information to any third party without the prior written consent of City. Consultant will protect the Information and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement.

13. CONFIDENTIALITY AFTER TERMINATION. The confidentiality provisions of this Agreement shall remain in full force and effect after the termination of this Agreement.

14. RETURN OF RECORDS. Upon termination of this Agreement, Consultant shall deliver all records, notes, data, memoranda, models, and equipment of any nature that are in Consultant's possession or under Consultant's control and that are City's property or relate to City's business.

15. NOTICES. All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

IF for City:

Lake Havasu City
Administrative Services Director
2330 McCulloch Blvd. N
Lake Havasu City, Arizona 86403

Copy to:

City Attorney
2330 McCulloch Blvd. N.
Lake Havasu City, AZ 86403

IF for Consultant:

Albert Holler & Associates
Albert Holler, Owner
18521 E. Queen Creek Road #105-425
Queen Creek, Arizona 85142

Such address may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

16. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

17. AMENDMENT. This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

18. SEVERABILITY. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

19. WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

20. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of Arizona.

21. CONFLICT OF INTEREST. The Agreement may be cancelled in accordance with Arizona Revised Statutes (A.R.S.) § 38-511.

Party receiving Services:
Lake Havasu City

By: _____
Jess Knudson, City Manager

Party providing Services:
Albert Holler & Associates

By: _____
Albert Holler
Owner