

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made and entered into the day and year set forth below, by and between **THE CITY OF BISBEE, ARIZONA**, a municipal corporation, hereinafter referred to as the "City" and **Stephen J. Pauken**, hereinafter referred to as "Professional".

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. **SCOPE OF SERVICES.** The Professional agrees to provide services in accordance with the scope of services attached hereto as "Exhibit A", consisting of one (1) page and incorporated herein by this reference.
2. **STANDARD OF CARE.** The Professional agrees that the performance of work and services pursuant to the requirements of this agreement shall conform to high professional standards and that Professional shall use its best skill and workmanship to provide a product of the highest quality.
3. **THE WORK SCHEDULE.** The services to be performed pursuant to this Agreement shall be performed in accordance with the Work Schedule attached hereto as Exhibit "B", consisting of one (1) page, and incorporated herein by this reference.
4. **TIME OF COMMENCEMENT AND COMPLETION OF SERVICES.** The services to be performed pursuant to this Agreement shall be initiated within ten, (10) days following execution of this Agreement. Time is of the essence. Any extensions of the time limit set forth above must be agreed upon in writing by the parties hereto.
5. **EARLY TERMINATION BY CITY.** Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Professional. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties.

All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

If Professional:

Stephen J. Pauken
2001 Scenic View Dr.
Winslow, AZ 86047

If City:

Mayor and City Council
City of Bisbee, AZ
P.O. Box 4601
915 S. Tovreaville Road
Bisbee, AZ 85603-4601

In the event of any such early termination by the City, the Professional shall be paid for services rendered prior to the date of termination, subject only to the satisfactory performance of the Professional's obligations under this Agreement. Such payment shall be the Professional's sole right and remedy for such termination.

6. **DESIGN, PROJECT, INDEMNITY AND RESPONSIBILITY.** The Professional shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all services rendered by the Professional, including but not limited to designs, plans, reports, specifications, and drawings and shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies. The Professional shall indemnify, save and hold harmless the City, its officers and employees in accordance with Arizona law, from all damages whatsoever claimed by third parties against the City; and for the City's costs and reasonable attorney fees, arising directly or indirectly out of the Professional's performance of any of the services furnished under this Agreement.
7. **COMPENSATION.** In consideration of the services to be performed pursuant to this Agreement, the City agrees to pay Professional a fee of \$17,600.00 for services provided over a 19-week period. The fee will be prorated and paid once a month. Should this Agreement be terminated early, or before the 19-week period has expired, Professional shall only be entitled to the prorated portion of the fee earned for services provided up to the date of termination of this Agreement .
8. The City further agrees to pay Professional's costs for lodging and mileage as follows: City will pay for actual lodging expenses in Bisbee of up to \$1,000.00 per month. City will pay for mileage at the federal rate of \$0.58/mile for travel to and from the Professional's residence in Winslow, AZ.

Monthly partial payments based upon the Professional's billings and itemized statements are permissible. The Professional shall bill its charges to the City on the 1st and 15th of each month. The itemized invoices from the Professional shall include:

An itemized list of costs and copies of invoices and/or receipts.

8. **DOCUMENTS.** Professional understands that the City is a government entity subject to Arizona public records laws. All documents generated by Professional in the course and scope of his work for City are considered public record and must be maintained pursuant to Arizona law. Professional shall follow all laws related to protecting and preserving public records on behalf of the City.
9. **INDEPENDENT CONTRACTOR.** The services to be performed by Professional are those of an independent contractor and not of an employee of the City of Bisbee. The City shall not be responsible for withholding any portion of Professional's compensation hereunder for the payment of FICA, Workers' Compensation, other taxes or benefits or for any other purpose.
10. **INSPECTION.** The City, through its authorized representative, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.
11. **PERSONAL SERVICES.** It is understood that the City enters into this Agreement based on the special abilities of the Professional and that this Agreement shall be considered as an agreement for personal services. Accordingly, the Professional shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the City.
12. **ACCEPTANCE NOT WAIVER.** The City's approval of work furnished hereunder shall not in any way relieve the Professional of responsibility for the quality or technical accuracy of the work. The City's approval or acceptance of, or payment for, any of the services shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement.
13. **DEFAULT.** Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.
14. **REMEDIES.** In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other


remedy at law or equity. If the non-defaulting party commences legal or equitable action(s) against the defaulting party and prevails in the action(s), the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

15. **SEVERABILITY.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
16. **CONFLICT OF INTEREST:** This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.
17. **INSPECTION AND AUDIT:** The parties agree to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after completion of the contract; and, in addition, agrees that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214.
18. **PUBLIC RECORDS LAW:** Notwithstanding any other provision of the agreement, the parties understand that the City of Bisbee is a public entity and, as such, is subject to Arizona's public records law, A.R.S. § 39-121 et. seq.
19. **JURISDICTION AND APPLICABLE LAW:** This Agreement shall be governed by the laws of the State of Arizona. Jurisdiction and venue for any action under this Agreement shall be in Cochise County, Arizona.
20. **WAIVER OF TERMS AND CONDITIONS:** The failure of either party 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.
21. **SEVERABILITY:** If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.
22. **COMPLIANCE WITH LAWS:** The Parties shall comply with all federal, state and local laws, rules, regulations, standards and Executive Orders, without limitation to those designated within this Agreement.
23. **NO JOINT VENTURE:** It is not intended by this Agreement to, and nothing contained in this Agreement shall, be construed to create any partnership, joint venture, or employment relationship between the Parties or create any employer-employee relationship between the Parties' employees. Neither Party shall be liable for any debts, accounts, obligations or other liabilities whatsoever of the

other Party, including, but without limitation, the other Party's obligation to withhold Social Security and income taxes for itself or any of its employees.


24. **NO THIRD-PARTY BENEFICIARIES:** Nothing in this Agreement is intended to create duties or obligations to or rights in third parties not Parties to this Agreement or affect the legal liability of either Party to the Agreement by imposing any standard of care with respect to the maintenance of public facilities different from the standard of care imposed by law.

THE CITY OF BISBEE, ARIZONA

BY: 

DATE: 3-21-19

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

Stephen J. Parken

BY: 

DATE: 3/21/19

EXHIBIT "A"

SCOPE OF WORK

The City's review of proposals will focus in part on the expertise, experience and understanding of the project evidenced by the project team. A general description of the scope of work follows:

1. OBJECTIVES

To provide interim city management services to the City of Bisbee

2. PURPOSE

To assist the City with day to day operations management while filling position vacancies and recruiting a new full time City Manager

3. WORK TASKS

To assist the City temporarily to provide management and leadership to the staff, to work with Council, staff and the community to fill the several vacancies that now exist, and to coordinate the recruitment of a new city manager.

EXHIBIT "B"

WORK SCHEDULE

The services to be performed pursuant to this Agreement shall be performed in accordance with the following Work Schedule:

Professional will work for City a minimum of three days per week (scheduled for the convenience of the City, but likely to be Tuesday through Thursday, and available by phone 24/7). Professional will work for City for a period of nineteen (19) weeks.

Should Professional require time off while working for the City, Professional shall notify the Mayor with 7 days advance notice, unless the time off is due to an emergency. If the time off is due to an emergency, Professional shall notify the Mayor as soon as reasonably practical. Any time off taken will not be included in the nineteen-week work period.