

CITY OF BOISE, IDAHO

PROFESSIONAL SERVICES CONTRACT

THIS AGREEMENT is made and entered into by and between the City of Boise, Idaho, hereinafter referred to as the "City," and **KILEY & ASSOCIATES LLC**, hereinafter referred to as the "Contractor," and is effective as of the date set forth below upon which it is executed.

IT IS AGREED BETWEEN THE PARTIES:

1. **Scope of Work.**

The Contractor shall perform the following work:

- A. With the goal of securing Gowen Field as a site for permanent fielding of F-35 Lightning II aircraft, K&A will:
 - a. Assist in the development of marketing plans, strategies, and preparation of appropriate presentation materials to market Gowen Field with the federal government.
 - b. Develop an appropriate contact plan and strategy for enhancing relationships with the appropriate Congressional Delegations, US Air Force, and US Air National Guard personnel.
 - c. Provide related information to the City as required to support these efforts. This information will include (but not be limited to) analysis of the following: DoD Budget Submissions; related Reports to Congress; and Air Force strategic basing documents.
 - d. Provide regular updates via meetings and memos (as required) on the progress of this effort. Specific formats and venues to be determined by the signatories to this agreement.
- B. In anticipation of future Base Realignment and Closure (BRAC) rounds, assist Gowen field in review of its Strengths, Weaknesses, Opportunities, Threats (SWOT) analysis.
- C. Preserve and Identify opportunities for Gowen Field to enhance military value.
- D. Identify proposed or enacted legislation, executive decisions or policy, armed service or Department of Defense proposals or policy decisions that may have an adverse effect on Gowen Field military units, military bases, or military value.
- E. Based on the objectives above, coordinate with the City to draft a legislative strategy document that would be used to inform the Mayor and guide the Congressional Delegation as it anticipates the F-35 final basing decision and considers the 2018 National Defense Authorization Act. The strategy document will be completed and delivered by 31 May 2017.

2. Compensation.

A. The City shall pay to the Contractor in full payment for services satisfactorily performed, not more than one hundred thousand dollars (\$100,000.00) based on the billing rate of Principal - \$250.00 per hour and Advisor - \$200.00 per hour. The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed one hundred thousand dollars (\$100,000.00). This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The parties do not intend for the Contractor to continue to provide services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the City when the services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for services provided in excess of the total compensation amount without this Agreement being amended in writing prior to those services in excess of the total compensation amount being provided.

B. Contractor will submit a detailed **monthly statement** accounting for all services performed and expenses incurred. Upon certification by the City that the services have been received and accepted, payment shall be tendered to the Contractor within forty-five (45) days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the City shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE CITY. This Agreement shall terminate on **April 30, 2018** unless terminated pursuant to paragraph 4 (Termination).

4. Termination.

A. Grounds. The City may terminate this Agreement for convenience or cause.

B. Notice; City Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(2), the City shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the City.

C. Liability. Except as otherwise expressly allowed or provided under this Agreement, the City's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination.

D. Termination Management. Immediately upon receipt by either the City or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the City; 2) comply with all directives issued by the City in the notice of

termination as to the performance of work under this Agreement; and 3) take such action as the City shall direct for the protection, preservation, retention or transfer of all property titled to the City and records generated under this Agreement.

5. Status of Contractor.

In all matters pertaining to this agreement, the Contractor and its agents and employees shall be acting as independent contractors performing professional services for the City, and neither Contractor, nor any officer, employee or agent of Contractor will be deemed an employee of City. The selection and designation of the personnel of City in the performance of this agreement shall be made by the City.

6. Indemnification and Insurance.

With respect to acts, errors or omissions in the performance of professional services, Contractor agrees to indemnify and hold harmless the City from and for any and all liability, losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses, including reasonable attorney fees, arising directly out of negligent acts, errors or omissions of Contractor, its servants, agents, employees, guests and business invitees, in the performance of its professional services under the terms of this contract

With respect to all acts or omissions which do not arise out of the performance of professional services including, but not limited to those acts or omissions normally covered by general and automobile liability insurance, Contractor agrees to indemnify and hold harmless the City from and for all liability, losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses, including reasonable attorney fees, caused or incurred by Contractor's rendering services under this contract; and not caused by or arising out of the tortious conduct of the City or its employees.

In addition, Contractor shall maintain, and specifically agrees that it will maintain, throughout the term of this Agreement, liability insurance, in which the City shall be named an additional insured in the minimum amount as specified in the Idaho Tort Claims Act set forth in Title 6, Chapter 9 of the Idaho Code. The limits of insurance shall not be deemed a limitation of the covenants to indemnify and save and hold harmless City; and if City becomes liable for an amount in excess of the insurance limits, herein provided, Contractor covenants and agrees to indemnify and save and hold harmless City from and for all such losses, claims, actions, or judgments for damages or liability to persons or property. Contractor shall provide City with a Certificate of Insurance, or other proof of insurance evidencing Contractor's compliance with the requirements of this paragraph and file such proof of insurance with the City. In the event the insurance minimums are changed, Contractor shall immediately submit proof of compliance with the changed limits.

Contractor shall maintain automobile insurance with a limit of no less than \$500,000 per occurrence for owned, non-owned and hired vehicles. If Contractor has no owned motor vehicles, then hired and non-owned motor vehicle liability coverage with limits not less than \$500,000 per accident for bodily injury and property damage is required. Where applicable, the City of Boise shall be named as an additional insured.

Additionally, the Contractor shall have and maintain during the life of this contract, statutory Workers Compensation, regardless of the number of employees, or lack thereof, to be engaged in work on the project under this agreement (including himself) in the statutory limits as required by law. In case any such work is sublet, the Contractor shall require any subcontractor of Contractor to provide Workers Compensation Insurance for himself and any/all the latter's employees. It is

mutually agreed and understood by the parties that the Contractor and the Contractor's employees, agents, servants, guests and business invitees, and are acting as independent Contractors and are in no way employees of the City.

7. Errors and Omission.

Contractor will maintain Professional Liability Insurance with a minimum limit as specified in the Idaho Tort Claims Act as set forth in Title 6, Chapter 9 of Idaho Code (\$500,000). Proof of all insurance shall be submitted to City of Boise, **Purchasing**, P.O. Box 500, Boise, ID. 83701.

8. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the City.

9. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the City. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring City.

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the City.

11. Best Efforts.

Contractor represents and warrants that it shall perform the work using personnel for the required skill, experience and qualifications and in a professional and workmanlike manner in accordance with best industry standards for similar services, and shall devote adequate resources to meet its obligations under the Agreement. Contractor further represents that in its professional opinion, it can complete the Scope of Work as set forth in Section 1, herein, within the term of this Agreement and for the compensation agreed upon herein.

12. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the City of Boise and shall be delivered to the City no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

13. Conflict of Interest; Governmental Conduct Act.

The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

14. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the City proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth herein, or to agree to the reduced funding.

15. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

16. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City: Rebecca Hupp, A.A.E.
Airport Director
Suite 1000
3201 Airport Way
Boise, ID 83705-6530
RHupp@cityofboise.org
(208) 383-3110

To the Contractor: Gregory Kiley, President
Kiley & Associates, LLC
636 North Carolina Ave SE
Washington, DC 20003
gregory.kiley@gmail.com
(202) 544-6897

17. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

18. Discrimination Prohibited.

In performing the services required herein, the Contractor, sub-recipient, or subcontractor shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, gender identity/expression, national origin or ancestry, age or disability. It is the

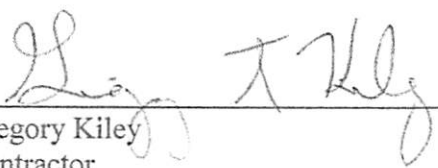
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Contractor's responsibility to ensure that the sub-Contractor is in compliance with this section.

19. Compliance with Laws.

In performing the scope of services required hereunder, Contractor shall comply with all applicable laws, ordinances, and codes of Federal, State, and local governments.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature below.

By: 
Gregory Kiley
Contractor

Date: Mar 29, 2017

By: _____
David H. Bieter
Mayor

Date: _____

Attest: _____
Lynda Lowry
Ex-Officio City Clerk