

**CITY OF EL MIRAGE
PROFESSIONAL SERVICES CONTRACT**

THIS PROFESSIONAL SERVICES CONTRACT is made and entered into this 14th day of October, 2017 by and between the City of El Mirage, an Arizona municipal corporation ("City"), and BizConnectPro, a service of Expansion Dynamics International, LLC, ("Consultant").

RECITALS

- A. The City of El Mirage is authorized and empowered by provisions of the City Code to execute contracts for professional services by and through its City Manager;
- B. The City desires to contract for Consultant to perform/provide Scope of Services as described in the attached scope of work (Exhibit "A") in accordance with the terms of this Contract;
- C. Consultant is duly qualified to perform the requested services.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth herein, the parties hereto agree as follows:

1.0 DESCRIPTION, ACCEPTANCE, DOCUMENTATION

Consultant shall act under the authority and approval of the Contract Administrator for the City to provide the professional services required by this Contract. The Contract Administrator for the City shall be the City Manager or designee. The Contract Administrator shall oversee the execution of this Contract, assist the Consultant in accessing the organization, audit billings, and approve payments. The Consultant shall channel reports and special requests through the Contract Administrator. City reserves the right to change the Contractor Administrator for the City without prior approval of Consultant.

1.1 SERVICE DESCRIPTION

Consultant shall provide the services described in Exhibit "A." All work will be reviewed and approved by the Contract Administrator to determine acceptable completion. Review and approval by the Contract Administrator shall not relieve Consultant of any liability for improper, negligent or inadequate services rendered pursuant to this Contract.

1.2 DOCUMENTATION

All documents, including but not limited to, data compilations, studies, and reports which are prepared in the performance of this Contract are to be and remain the property of the City and are to be delivered to the Contract Administrator before final payment is made to the Consultant.

2.0 BILLING RECORDS, AUDIT, FEES

2.1 BILLING RECORDS, AUDIT

Consultant shall maintain all books, papers, documents, accounting records and other evidence pertaining to time and costs incurred and will make such materials available for audit by the City pursuant to Section 4.6 of this Contract.

2.2 FEE SCHEDULE

The total fee Consultant shall be paid for all services provided pursuant to the terms of this Contract, inclusive of all expenses under this Contract shall not exceed \$105,000 and will be paid quarterly, over a three-year term as follows:

Year 1 @ \$35,000	\$8,750 by November 15, 2017
	\$8,750 by February 15, 2018

	\$8,750 by May 15, 2018
	\$8,750 by August 15, 2018
Year 2 @ \$35,000	\$8,750 by November 15, 2018
	\$8,750 by February 15, 2019
	\$8,750 by May 15, 2019
	\$8,750 by August 15, 2019
Year 3 @ \$35,000	\$8,750 by November 15, 2019
	\$8,750 by February 15, 2020
	\$8,750 by May 15, 2020
	\$8,750 by August 15, 2020

2.3.1 ADDITIONAL SERVICES; PRICE ADJUSTMENT

The total Scope of Work to be performed by Consultant in accordance with this Contract is set forth herein and Exhibit A. Services not included in this Contract, including Exhibit A, will be considered Additional Services. Consultant shall not perform any Additional Services without written authorization from the City. It shall be presumed that all services performed/provided by Consultant were included in the Contract and contemplated by Consultant as being part of the original Scope of Work and the fees set forth herein, unless such services have been separately approved by the City, in writing, as Additional Services. Consultant shall not be paid for any Additional Services that are not authorized by the City in writing.

3.0 TERM, EXTENSION, TERMINATION

3.1 TERM AND EXTENSION

This contract shall be in full force and effect only when approved and signed by City's City Manager as attested by the City Clerk and City Attorney and for the term specified in this contract. The term of this Contract shall be for a three year period beginning October 14, 2017 and ending October 13, 2020. Extensions of the contract may be administratively approved by the City Manager and the Consultant. Each extension shall not exceed three years in length. Fee changes and scope of work modifications may also be administratively approved by the City Manager and the Consultant.

In the event the work cannot be completed within the time specified, the Contract Administrator may approve a change order extending the time for completion of the work when he/she determines it is in the best interests of the City to do so, for such period as the Contract Administrator deems reasonable. A change order extending the time for completion of the work pursuant to this subparagraph shall not entitle the Consultant to additional compensation.

3.2 TERMINATION

3.2.1. Termination for Cause

The City has the right to terminate this contract for cause in the event Consultant materially breaches any provision of this contract or portion of the project and fails to remedy the breach within five (5) business days of notification of the breach, if the breach is remedial. If Consultant fails to remedy the breach or if the breach is not remedial, City may terminate this contract for cause immediately upon written notice to Consultant. In the event the City terminates this contract or any part of the services as herein provided pursuant to this Section 3.2.1, the City shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all work under this contract.

Upon termination for cause, Consultant shall immediately deliver to the City all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by the Consultant under the contract, together with all unused material supplied by the City. Consultant shall be responsible only for such portion of the work which has been completed and accepted by the City. Use of incomplete data by the City shall be the City's sole responsibility.

In the event of termination for cause, Consultant shall only be compensated a portion of the agreed upon fee for such portion of the work that City agrees, in its sole discretion to accept. City shall have no obligation to accept any portion of Consultant's work if the contract is terminated for cause, and shall have no obligation to pay Consultant for any portion of the work, if any, not accepted by City.

If the Consultant materially fails to fulfill in a timely and proper manner its obligations under this contract, or if the Consultant violates any of the covenants, agreements, or stipulations of this contract, the City may withhold from payment due to the Consultant such amounts as are necessary to protect the City's position for the purpose of set-off until such time as the exact amount of damages can be determined.

3.2.2. Termination for Convenience

The City has the right to terminate this contract for convenience or to abandon any portion of the project for which services have not been performed by the Consultant. In the event the City terminates this contract or any part of the services as herein provided pursuant to this Section 3.2.2, the City shall notify the Consultant in writing, and immediately upon receipt of such notice, the Consultant shall discontinue all work under this contract.

Upon such termination for convenience or abandonment, the Consultant shall immediately deliver to the City all drawings, special provisions, field survey notes, reports, estimates and any and all other documents or work product generated by the Consultant under the contract, together with all unused material supplied by the City. Consultant shall be responsible only for such portion of the work which has been completed and accepted by the City. Use of incomplete data by the City shall be the City's sole responsibility.

The Consultant shall receive as compensation in full for services performed to the date of such termination or abandonment, a fee for the percentage of services actually completed and accepted by the City. This fee shall be in an amount to be mutually agreed upon by the Consultant and the City, based upon the scope of work set forth in Exhibit A and the payment schedule set forth in Article 2 hereof. If mutual agreement cannot be reached after reasonable negotiation, the contract Administrator shall determine the percentage of satisfactory completion of each task set forth in the scope of work contained in Exhibit A and the amount of compensation Consultant is entitled to for such work and the contract Administrator's determination in this regard shall be final. The City shall make such final payment within 60 days after the Consultant has delivered the last of the partially completed items.

3.3 FUNDS APPROPRIATION

~~If the City Council does not appropriate funds to continue this Contract and pay for charges hereunder, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice, pursuant to Section 4.10, of termination to the Consultant at least thirty (30) days prior to the end of its current fiscal period and will pay to the Consultant all approved charges incurred through the end of such period.~~

4.0 GENERAL TERMS

4.1 ENTIRE AGREEMENT

This Contract constitutes the entire understanding of the parties and supersedes all previous representations, written or oral, with respect to the services specified herein. This Contract may not be modified or amended except by a written document, signed by the City Manager and the Consultant.

4.2 ARIZONA LAW

This Contract shall be governed and interpreted according to the laws of the State of Arizona.

4.3 MODIFICATIONS

Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after signed by the City Manager and the Consultant.

4.4 ASSIGNMENT

Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the City through its Contract Administrator.

4.5 SUCCESSORS AND ASSIGNS

This Contract shall extend to and be binding upon Consultant, its successors and assigns, including any individual, company, partnership or other entity with or into which Consultant shall merge, consolidate or be liquidated, or any person, corporation, partnership or other entity to which Consultant shall sell its assets.

4.6 RECORDS AND AUDIT RIGHTS

Consultant's records (hard copy, as well as computer readable data), and any other supporting evidence deemed necessary by the City to substantiate charges and claims related to this contract shall be open to inspection and subject to audit and/or reproduction by City's authorized representative to the extent necessary to adequately permit evaluation and verification of cost of the work, and any invoices, change orders, payments or claims submitted by the Consultant or any of his payees pursuant to the execution of the contract. The City's authorized representative shall be afforded access, at reasonable times and places, to all of the Consultant's records and personnel pursuant to the provisions of this article throughout the term of this contract and for a period of three years after last or final payment.

Consultant shall require all SubConsultants, insurance agents, and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between Consultant and payee. Such requirements will also apply to any and all SubConsultants.

If an audit in accordance with this article, discloses overcharges, of any nature, by the Consultant to the City in excess of one percent (1%) of the total contract billings, the actual cost of the City's audit shall be reimbursed to the City by the Consultant. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Consultant's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of City's findings to Consultant.

4.7 ATTORNEY'S FEES

In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Contract, or on account of any breach or default hereof, the prevailing party shall be entitled to received from the other party reasonable ~~attorneys' fees and reasonable costs and expenses, determined by the court sitting without a jury or arbitration board,~~ which shall be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment or by arbitration award.

As an alternative to filing a law suit to resolve the dispute, the parties may elect to arbitrate the dispute. Each party shall select a competent and impartial arbitrator. The two selected arbitrators shall appoint a third arbitrator. If the two appointed arbitrators cannot agree on a third, they may petition a judge having competent jurisdiction to select the third arbitrator, or they may resign their appointment jointly or individually so that the parties may renew the selection process. The written award of two of the three arbitrators shall bind the parties. The cost of the arbitrators and any expert witnesses shall be borne by the party that hired them. The cost of the third arbitrator and other expenses of the arbitration shall be shared equally by the parties. The arbitration shall take place in the City of El Mirage. State court rules of procedure and evidence shall be governing.

4.8 INDEPENDENT CONTRACTOR

The services Consultant provides under the terms of this Contract to the City are that of an Independent Contractor, not an employee, or agent of the City. The City will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099.

City shall not withhold income tax as a deduction from contractual payments. As a result of this, Consultant may be subject to I.R.S. provisions for payment of estimated income tax. Consultant is responsible for consulting the local I.R.S. office for current information on estimated tax requirements. Consultant will not be entitled to any benefits provided by City to its employees, including, but not limited to, health benefits, workers' compensation, unemployment coverage, deferred compensation, and all other typical employee benefits.

4.9 CONFLICT OF INTEREST

The City may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the City's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party to the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from the City is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. §38511).

4.10 NOTICES

All notices or demands required to be given pursuant to the terms of this Contract shall be given to the other party in writing, delivered by hand or registered or certified mail, at the addresses set forth below, or to such other address as the parties may substitute by written notice given in the manner prescribed in this paragraph.

In the case of Consultant: BizConnectPro
 C/O Expansion Dynamics Intl., LLC
 Attn: David Moss
 PO Box 1088
 El Mirage, AZ 85335

In the case of City: City of El Mirage
 Attn: City Manager
 10000 N. El Mirage
 El Mirage, AZ 85335

With a copy to: City of El Mirage
 City Attorney
 10000 N. El Mirage
 El Mirage, AZ 85335

Notices shall be deemed received on date delivered, if delivered by hand, and on the delivery date indicated on receipt if delivered by certified or registered mail.

4.11 FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from acts beyond their control. Such acts shall include, but not be limited to, acts of God, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, communication line failures, power failures, or earthquakes.

4.12 TAXES

Consultant shall be solely responsible for any and all tax obligations which may result out of the Consultants performance of this contract. The City shall have no obligation to pay any amounts for taxes, of any type, incurred by the Consultant.

4.13 ADVERTISING

No advertising or publicity concerning the City using the Consultant's services shall be undertaken without prior written approval of such advertising or publicity by the City Contract Administrator.

4.14 COUNTERPARTS

This contract may be executed in one or more counterparts, and each originally executed duplicate counterpart of this Contract shall be deemed to possess the full force and effect of the original.

4.15 CAPTIONS

The captions used in this Contract are solely for the convenience of the parties, do not constitute a part of this Contract and are not to be used to construe or interpret this Contract.

4.16 SUBCONSULTANTS

During the performance of the Contract, the Consultant may engage such additional SubConsultants as may be required for the timely completion of this Contract. The addition of any SubConsultants shall be subject to the prior approval of the City.

In the event of subcontracting, the sole responsibility for fulfillment of all terms and conditions of this Contract rests with the Consultant.

4.17 INDEMNIFICATION

The Consultant agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees (collectively, Client) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Consultant's negligent performance of professional services under this Agreement and that of its subconsultants or anyone for whom the consultant is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, to the extent caused by the Client's negligent acts in connection with the Project and the acts of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable.

Neither the Client nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence or for the negligence of others.

5.0 INSURANCE

The Consultant shall secure and maintain at all time that this contract is in effect, insurance coverage which shall include statutory workman's compensation, comprehensive general and automobile liability, owner's and Consultant's protective liability insurance and errors and omissions professional liability. The comprehensive general and automobile liability limits shall be no less than one million dollars (\$1,000,000) combined single limit. The owner's and Consultant's protective liability limits shall be no less than five hundred thousand dollars (\$500,000) for each occurrence and one million dollars (\$1,000,000.00) policy aggregate naming the City as an additional insured. The minimum amounts of coverage for Consultant's professional liability shall be one million dollars (\$1,000,000.00). In other than errors and omissions professional liability, owner's and Consultant's protective liability, and workman's compensation, the City of El Mirage shall be named as an additional insured.

All insurance coverage shall be written through carriers licensed in Arizona, or on an approved non-admitted list of carriers published by the Arizona Department of Insurance, and possessing an A.M. Best rating of at least A+ or through Lloyd's of London. Such coverage shall not be written on a claims-made basis without the prior written approval of City.

The Consultant shall submit to the City a certificate of insurance evidencing the coverage and limits stated in the foregoing paragraph within ten (10) days of award of this contract. City shall not issue a "Notice to Proceed" until after Consultant has submitted the certificate of insurance to City. Insurance evidenced by the certificate shall not expire, be canceled, or materially changed without thirty (30) days prior written notice to the City, and a statement to that effect must appear on the face of the certificate and the certificate shall be signed by a person authorized to bind the insurer. The amount of any errors and omissions deductible shall be stated on the face of the certificate, but shall not exceed ten percent (10%) of the amount set forth in Section 2.2 or \$11,000. The Contract Administrator may require the Consultant to furnish a financial statement establishing the ability of Consultant to fund the deductible. If in the judgment of the Contract Administrator the financial statement does not establish the Consultant's ability to fund the deductible, and no other provisions acceptable to the Contract Administrator are made to assure funding of the deductible, the Contract Administrator may, in his sole discretion, terminate this contract without further liability to the City.

6.0 FEDERAL AND STATE EMPLOYMENT IMMIGRATION LAWS.

To the extent applicable under A.R.S. § 41-4401, Consultant warrants its and its subcontractors compliance with all federal immigration laws and regulations that relate to their compliance with the E-verify requirements under A.R.S. § 23-214(A). Consultant's or its subcontractors' breach of the above-mentioned warranty shall be deemed a material breach of

the Agreement and may result in the termination of the Agreement by the City of El Mirage. The City of El Mirage retains the legal right to randomly inspect the papers and records of Consultant and its subcontractors to ensure that the Consultant and its subcontractors are complying with the above-mentioned warranty.

The Consultant warrants to keep the papers and records open for random inspection during normal business hours by the City of El Mirage. The Consultant shall cooperate with the City of El Mirage's random inspections including granting the City entry rights to Consultant's property to perform the random inspections and waiving its right to keep such papers and records confidential. The failure of Consultant to comply with this warranty regarding the keeping of papers and records and cooperating with the City's random inspections shall constitute a material breach of the Agreement and the City shall have the right to immediately terminate the Agreement.

Consultant further agrees to include the following language in all subcontracts entered into by Consultant with any person or entity to perform work on the Agreement and to terminate the agreement with any subcontractor who violates any of the warranties set forth in said language below.

To the extent applicable under A.R.S. § 41-4401, Subcontractor warrants to Consultant and the City of El Mirage Subcontractor's compliance with all federal immigration laws and regulations that relate to its compliance with the E-verify requirements under A.R.S. § 23-214(A). Subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the subcontract by Consultant at the direction of the City of El Mirage. Subcontractor further acknowledges the City of El Mirage's right to randomly inspect the papers and records of Subcontractor to ensure that Subcontractor is complying with the above-mentioned warranty.

Subcontractor warrants to keep the papers and records open for random inspection during normal business hours by City of El Mirage. Subcontractor shall cooperate with City of El Mirage's random inspections including granting the City entry rights to Subcontractor's property to perform the random inspections and waiving their respective rights to keep such papers and records confidential. The failure of Subcontractor to comply with this warranty regarding the keeping of papers and records and failure to cooperate with the City's random inspections shall constitute a material breach of the Agreement and the City shall have the right to immediately require Consultant to terminate the Agreement with Subcontractor.

7.0 SEVERABILITY AND AUTHORITY

7.1 SEVERABILITY

If any term or provision of this Contract shall be found to be illegal or unenforceable, then notwithstanding such illegality or unenforceability, this Contract shall remain in full force and effect and such term or provision shall be deemed to be deleted.

7.2 AUTHORITY

Each party hereby warrants and represents that it has full power and authority to enter into and perform this Contract, and that the person signing on behalf of each has been properly authorized and empowered to enter this Contract. Each party further acknowledges that it has read this Contract, understands it, and agrees to be bound by it.

CITY OF EL MIRAGE:

CONSULTANT: BizConnectPro



By:  _____

By: Dr. Spencer A. Isom
Its: City Manager

By: David Moss
Signature
Its: President, Expansion Dynamics Int'l LLC

ATTEST:

Sharon Antes
Sharon Antes
City Clerk

APPROVED AS TO FORM:

Robert M. Hall
Robert M. Hall
City Attorney

Exhibit "A"

BizConnectPro

A Service of Expansion Dynamics Intl, LLC

SCOPE OF SERVICES:

Web-based business license fulfillment system:

Beginning to end business license application

Editable FAQs section

Printable license emailed to applicant automatically upon approval

Approval designation can be automated or done manually depending on license type

Approval requirement/advisement of new business license applications

Dedicated BCP computer kiosk at city hall for walk-in business license traffic

Renewal fulfillment

- First Invoice: Email default, hard-copy for those without email
- Second Invoice: Email plus hard copy
- Notice of Cancellation: Email plus hard copy

GIS element to ensure accuracy & uniform format of El Mirage business addresses

Ability to adjust business license types & sub-types

Ability to designate required application fields

Reports:

Real time-reporting accessible to all designated staff (multiple levels of access)

Date range activity reports

Business mapping up to 100 businesses per render

Document storage capacity per individual business account

Notes functionality per individual business account

Quick Report capability for frequently accessed reports

Communication/Research:

Pre-application poll/survey capability

City to business community flash announcements

Business Directory capability

Listing

Link to website

Link to map