

**CITY CLERK
ORIGINAL**

**C-10496
01/05/2015**

**REVOCABLE SERVICES AGREEMENT
WITH AERIAL MARKETING, LLC**

This Revocable Services Agreement (the "Agreement") is made as of this 21ST day of December, 2015, by and between the City of Glendale, an Arizona municipal corporation ("City"), and Aerial Marketing, LLC, an Arizona limited liability company ("Contractor"), based upon the following facts and circumstances:

- A.** City provides the main sponsorship and staging for the Glendale Glitters and Glow Block Party which event is located at or near 5850 West Glendale Avenue in Glendale, AZ;
- B.** Contractor is a company that will arrange for the presence of and coordinate hot-air balloonists and pilots to appear and display their balloons at Glendale Glitter & Glow Block Party ("Event");

NOW, THEREFORE, in consideration of the mutual covenants herein contained and the terms and conditions set forth below, the Parties agree as follows:

1. **Term.** The "Term" of this Agreement shall commence on December 7, 2015 at 11:59 p.m., and shall terminate on January 9, 2016 at 11:59 p.m., unless sooner terminated as provided for in the Agreement. Notwithstanding the foregoing, City understands that hot air balloon activity requires mild weather and calm winds. Should unfavorable weather be a factor in the Event and City is unable to host the Event, the parties agree the City will pay Contractor the coordination fee rain or shine.
2. **Event.** City is hosting an event entitled, "Glendale Glitter & Glow Block Party" (the "Event"), currently scheduled to be held on January 9, 2016, as further described on the attached **Exhibit A** Which is incorporated into this Agreement as fully set forth (the "Event Services").
3. **Display Premises.** The City will designate the "Display Premises" wherein Contractor may place balloons during the Event is located within the portion(s) of the City blocks cross-hatched on the attached **Exhibit B** attached hereto, which specific location shall be mutually agreed upon by the parties. No other portion of City blocks may be used by Contractor. Contractor agrees that the Display Premises may be relocated at any time at the discretion of, and without liability to, City, to a mutually agreed upon location within the city.
4. **Fees.** City shall pay to Contractor, a "Coordination Fee" for its services hereunder; the sum of \$4,000 payable on or before January 9, 2016.
 - (A) City shall pay each balloonist \$175 per balloon as propane reimbursement, even if the Event is cancelled due to unfortunate weather or other conditions.
 - (B) City shall pay Contractor no later than one (1) business day upon conclusion of the Event.

5. **Insurance.** As Contractor and Coordinator, Contractor shall confirm that each balloon entity/owner shall have procured and will maintain for the duration of this contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the balloon activities at the Event at a minimum as set forth below:

Minimum Scope and Limit of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this event or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Balloonist has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of Arizona, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

In the Individual Balloonist maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by that balloonist/entity/owner. Any available insurance proceeds in excess of the specified minimum limits of insurance and overage shall be available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising from the balloon activities at the Event. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

Primary Coverage

For any claims related to this Agreement, the individual balloonist's/entity's/owner's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor, individual balloonist's/entity's/and owner's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City ten (10) days before the Event. DO NOT SEND CERTIFICATES TO RISK MANAGEMENT. However, failure to obtain the required documents prior to the Event shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

If Contractor contracts with or hires independent licensees or vendors to participate in the Event on City property, Contractor shall require such independent Licensees and/or vendors to obtain, maintain and furnish to Contractor and City satisfactory evidence of insurance with coverages, limits, and additional insureds endorsement outline above with the exception of the tethered hot-air balloons which will require liability limits of One Hundred Thousand Dollars (\$100,000.00) per passenger/One Million Dollars (\$1,000,000.00) per occurrence. Contractor shall not allow any independent balloonist/entity/owner, or vendor to enter the Event until each has obtained and submitted the insurance evidence required herein.

6. **Mutual Indemnification.** The City and Contractor ("Parties" or individually "Party") agree to defend, indemnify and hold harmless each other and their elected or appointed officials, agents, boards, commissions and employees ("Indemnified Parties") from all loss, damages, claims or suits of whatever nature, including attorney's fees, expert witness fees and the costs and expenses of litigation (collectively "Damages"), that arise out of any act or omission of a Party or its Indemnified Parties in connection with Contractor's operations and that result directly or indirectly in the injury to or death of any person or the damage to or loss of any property, or that is caused by the failure or a Party to comply with any provision of this Agreement, except to the extent that the Damages are caused by the Party's or its Indemnified Parties' negligence, fault, or willful misconduct. City is not liable for any lost revenue, lost profits, loss of technology, rights or services, or incidental, punitive, indirect, special or consequential Damages, loss of data, or interruption, or loss of use of service, even if advised of the possibility of such Damages, whether under theory of contract, tort (including negligence), strict liability or otherwise in connection with Contractor's operations. Each Party shall give the other prompt notice of any claim made or suit instituted that may subject the other Party to liability under this Section, and either Party shall have the right to compromise and defend the same

to the extent of its own interest. Either Party may exercise the right to, defend the same to the extent of its own interest. Either Party may exercise the right to, but does not have the duty, to participate in the defense of any claim or litigation with attorney of its own selection and at its sole cost without relieving the other Party of any obligations under this Agreement. The Parties' obligations under this Section survive any termination of this Agreement or the Contractor's activities.

7. Immigration Law Compliance.

- (A) Contractor, 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.
- (B) Any breach of warranty under subsection 7.A above is considered a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement.
- (C) City retains the legal right to inspect the papers of any Contractor employee who performs work under this Agreement to ensure that the Contractor is compliant with the warranty under subsection 7.A above.
- (D) City may conduct random inspections, and upon request of City, Contractor shall provide copies of papers and records of Contractor demonstrating continued compliance with the warranty under subsection 7.A above. Contractor 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.
- (E) Contractor agrees to incorporate into any subcontracts under this Agreement the same obligations imposed upon Contractor and expressly accrue those obligations directly to the benefit of the City. Contractor also agrees to require any subcontractors 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.
- (F) Contractor'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.
- (G) 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.

8. Assignment. This Agreement, and the rights granted hereunder, are personal to Contractor and are non-assignable and non-transferable by Contractor. Any attempted assignment or other transfer of this Agreement or any rights hereunder by Contractor shall be null and void, have no effect and confer no rights upon any third party.

9. **Manner of Operation.** Contractor and its employees shall wear appropriate attire at all times during the Event. Contractor agrees to comply with (and cause its officers, employees, Vendors, invitees and all others doing business with Contractor) all rules and regulations of general applicability regarding the Event as may be established by City at any time and from time to time during the Term, including without limitation, the Event Operating Rules attached hereto and marked as **Exhibit D**, and the rules and regulations pertaining to signs.

10. **Suitability of Display Premises.** Contractor hereby accepts the Display Premises in an "AS IS" condition and City expressly disclaims any warranty or representation with regard to the condition, safety, security or suitability of the Display Premises. Contractor understands that City does not provide security protection for the Display Premises and/or Contractor's or other Independent balloonists'/entities'/owners' property.

11. **Waiver of Jury Trial, Venue and Governing Law.** City and Contractor hereby waive trial by jury in any action or proceeding brought by either to enforce or defend the provisions of this Agreement. The parties further agree that any legal action or proceeding related to this Agreement shall be instituted in a court of competent jurisdiction in the state of Arizona. This Agreement shall be construed and enforced in accordance with the laws of the state of Arizona, including the construction, performance and enforcement of the Agreement.

12. **Compliance with Laws.** Contractor shall, at its sole cost and expense, comply with all laws, ordinances, orders, rules and regulations (state, federal, municipal or any other agency having or claiming jurisdiction) related to its activities at the Event. All business licenses and other applicable permits and licenses shall be secured and paid for by Contractor, as appropriate.

13. **Authority.** By signing below each party represents that the individual executing this Agreement is dually authorized to act on behalf of the respective entity.

14. **Notices.** A notice, request or other communication that is required or permitted under this Agreement (each a "Notice") will be effective only if:

- (A) The Notice is in writing; and
- (B) Delivered in person or by overnight courier service (delivery charges prepaid), certified or registered mail (return receipt requested); and
- (C) 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.

- (D) The burden of proof of the place and time of delivery is upon the Party giving the Notice; and
- (E) Digitalized signatures and copies of signatures will have the same effect as original signatures.

15. Representatives.

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

Aerial Marketing, LLC
c/o Bob Romaneschi
8355 West Camino de Oro
Peoria, AZ 85383
602-469-7262

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

City of Glendale
c/o Martin Dickey
5800 West Glenn Dr.
Glendale, Arizona 85301
623-930-2959

With required copy to:

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

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

- (C) Concurrent Notices.

- (1) All notices to City's representative must be given concurrently to City Manager and City Attorney.
- (2) 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 Manager and City Attorney.
- (3) City may appoint one or more designees for the purpose of receiving notice by delivery of a written notice to Contractor identifying the designee(s) and their respective addresses for notices.

- (D) Changes. Contractor 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.

16. Representations and Warranties Regarding Trademarks. Contractor represents and warrants to City that it has all of the rights required under state and federal law for the use of trademarks and service marks of Contractor and its affiliates, including their names and logos during the Term of this Agreement. Contractor hereby grants to City (at no cost to City) the right and license to use, exploit, print, publish, reproduce, display, distribute and broadcast and to grant others the right to use, exploit, print, publish, reproduce, display, distribute and broadcast all such trademarks and service marks, including Contractor's and its affiliates' names and logos, during the Term of this Agreement in connection with the Event.

17. Termination. Upon the expiration or earlier termination of this Agreement for any reason whatsoever, Contractor shall leave the Display Premises in a neat and broom-clean condition, free of debris and in as good condition as when the Display Premises were originally delivered to Contractor, ordinary wear and tear and casualty damage excepted, and all personal property placed on the Display Premises by or on behalf of Contractor.

18. Conflict. Contractor 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.

19. Entire Agreement. This Agreement is an integrated agreement, containing the entire agreement between the parties as to the matters addressed herein. There are no agreements between the parties which are not contained herein, and Contractor has not received or relied on any representations from City or City's agents other than as provided herein. No subsequent change, modification, or addition to this Agreement shall be binding unless in writing and signed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

City of Glendale,
an Arizona municipal corporation

Aerial Marketing, LLC,
an Arizona limited liability corporation

By: Martin Dickey

By: Bob Romaneschi

Name: Martin Dickey
Title: Special Events Mgr.

Name: Bob Romaneschi
Title: Managing Member

ATTEST:
[Signature]
City Clerk

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Approved as to form
[Signature]
City Attorney

EXHIBIT A

Contractor shall provide the following Event Services all at Contractor's sole cost and expense during the Term:

(1) Hot Air Balloons:

(A) Static Hot Air Balloons: Contractor shall provide not less than eighteen (18) Hot Air Balloons including three (3) special shape Hot Air Balloons, previously approved by City for the Event that never leave the ground, but remain inflated for the duration of the Event.

EXHIBIT B

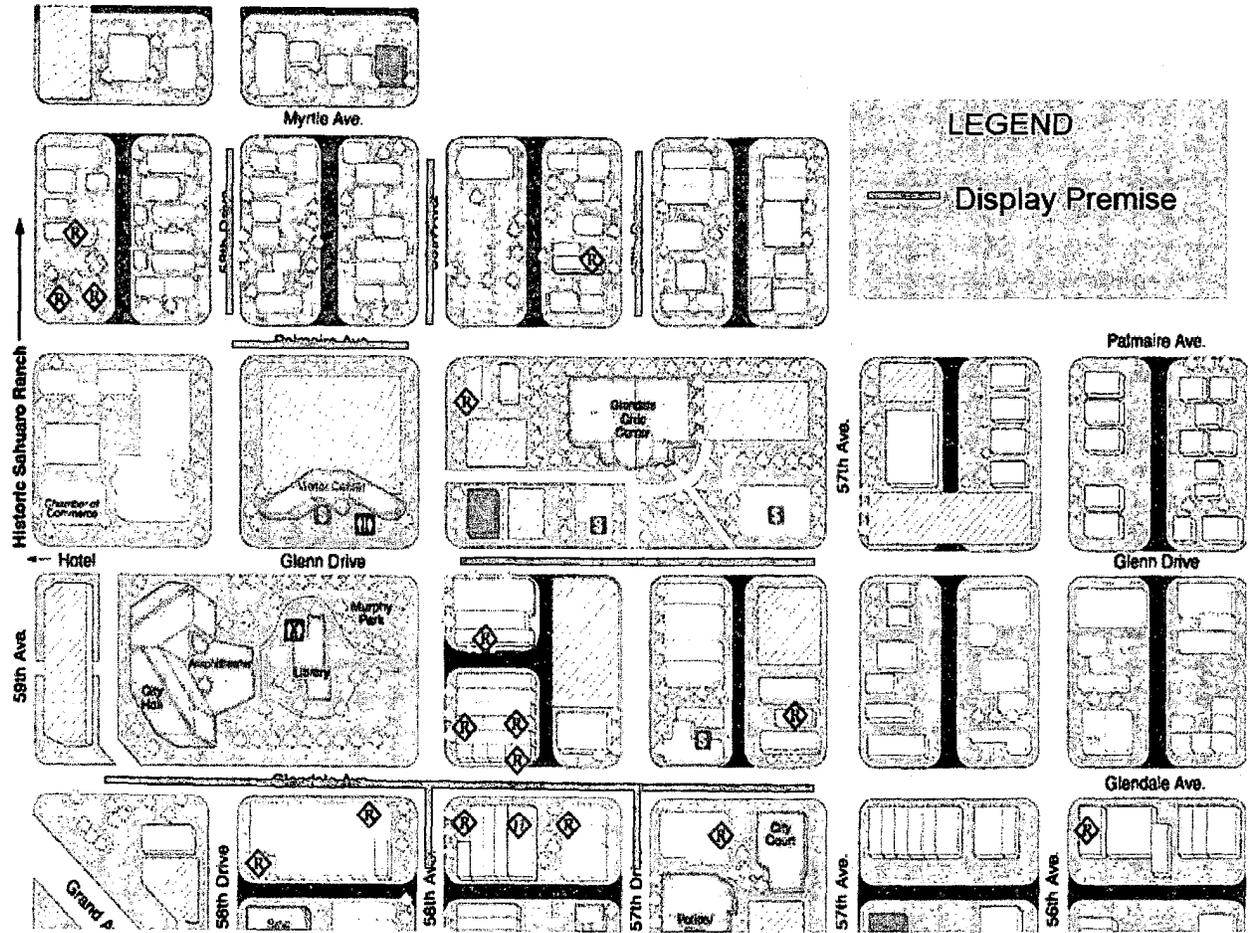


EXHIBIT C

MARKETING AND SPONSORSHIP COMPONENTS

(Intentionally omitted.)

EXHIBIT D

EVENT OPERATING RULES

1. Contractor shall keep the Hot Air balloons displayed, inflated and open for safe public viewing at all times during the Event.
2. Contractor shall furnish City with emergency contact telephone numbers, e-mail addresses and a forwarding mailing address.
3. Contractor shall comply with all rule and regulations established by City from time to time with respect to the common areas, including Murphy Park and the downtown Glendale plaza area, facilities and sidewalks.