

## **MASTER CONSULTING AGREEMENT**

CLIENT Legal Name ("Client") and Address:	JOHN LYNCH & ASSOCIATES, LLC ("Consultant")
City of Valdez 212 Chenega Avenue Valdez, AK 99686	John Lynch & Associates, LLC 6884 West Briles Rd Peoria, Arizona 85383
Client Signature Contact:	JOHN LYNCH & ASSOCIATES, LLC – Contact Info
Name: Elke Doom Title:  City Manager Telephone:  313.310.0492  Email: <a href="mailto:elkedoom@hotmail.com">elkedoom@hotmail.com</a>	Name: John H. Lynch  Title: Chief Executive Officer  Phone: 623.512.8591  Email: <a href="mailto:john.lynch@johnlynchandassociates.com">john.lynch@johnlynchandassociates.com</a>

### **Master Consulting Agreement General Terms and Conditions**

**THIS MASTER CONSULTING AGREEMENT** (the "Agreement") is made as of the 19th day of December, 2017 ("Effective Date"), by and between City of Valdez ("Client"), with principal offices located in Valdez, Alaska, and John Lynch & Associates, LLC ("Consultant"), a consulting company located in Peoria, Arizona.

**WHEREAS**, Consultant is in the business of providing certain business consulting services;

**WHEREAS**, Client desires to engage Consultant, and Consultant desires to be engaged by Client, to render such services upon the terms and subject to the conditions set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the premises set forth below and the mutual covenants hereinafter entered into, the parties agree as follows:

#### **1. Services.**

1.1 Description of Services. Consultant will perform the business consulting services specified in Statements of Work to this Agreement (the "Services"). Each Statement of Work is hereby incorporated into this Agreement by this reference. The Statement of Work will be executed by the parties concurrently with the execution of this Agreement and is attached hereto as Statement of Work No. 1. Any additional Statements of Work shall be initially generated by Consultant and shall become effective when signed by both parties.

1.2 Change Procedure. Unless otherwise stated in an applicable Statement of Work, changes to the parties' respective obligations under a Statement of Work shall be made as set forth in this Section 1.2. Client may request changes to a Statement of Work by providing Consultant with a

written request for changes (a "Change Request") that specifies the desired change with at least the same degree of specificity as that contained in the original Statement of Work. Following Consultant's receipt of a Change Request, Consultant shall submit to Client a written response which should outline the tasks to be performed by each party, schedule and cost changes, and any other items applicable to the Change Request (a "Change Response"). Consultant will charge Client on a time and, if applicable, material basis, at Consultant's then-current time and, if applicable, material rates, for the time spent by Consultant in analyzing Client's Change Request and preparing a Change Response. If, within ten (10) days after Consultant's delivery of such Change Response to Client, Client provides Consultant with written notice of acceptance of the Change Response, the Change Response will amend and become a part of, the applicable Statement of Work. In the event of a conflict among the terms and conditions of the Change Response and the applicable Statement of Work, the terms and conditions of the Change Response shall govern and control. If Client fails to provide Consultant with written notice of acceptance of the Change Response within said ten (10) day period, the Change Response will be deemed rejected by Client and the original Statement of Work shall remain in full force and effect.

1.3 Cooperation. Client acknowledges that the successful and timely rendering of the Services will require the good faith cooperation of Client. Client shall fully cooperate with Consultant, including without limitation, by: (a) providing Consultant with all information as may be reasonably required by Consultant; and (b) making available to Consultant at least one employee, consultant or director of Client, reasonably acceptable to Consultant, who shall have substantial relevant knowledge and experience to act as a subject matter expert in connection with the rendering of the Services. All estimated dates specified in a Statement of Work shall be extended by delays caused by Client, including without limitation, Client's submission of Change Requests which impact Consultant's normal schedule.

1.4 Consultant Personnel. In the event Client believes that any of Consultant's employees, agents, consultants or subcontractors is failing to perform the Services in a satisfactory manner, Client shall notify Consultant as to the reasons for such failure. Upon receipt of such notice or as soon as reasonably practical thereafter, Consultant and Client shall mutually determine the best course of action to take to resolve such failure, which action may include replacing such personnel.

## 2. Payment.

2.1 Compensation. In consideration for the Services, Client shall pay to Consultant fees based on the rates described in the applicable Statement(s) of Work, along with any material expenses incurred. Consultant shall invoice Client weekly for Services. All such invoiced amounts become due and payable to Consultant upon Client's receipt of such invoice. Amounts that are not paid within thirty (30) days following Client's receipt of such invoice will incur a late fee of one and one-half percent (1.5%) per month or the maximum allowed by law, whichever is less. Client shall pay any amounts incurred by Consultant in the collection of past-due amounts owed, including, but not limited to, reasonable attorneys' fees and costs.

2.2 Expenses. Client shall pay Consultant's expenses, as determined by Consultant in its reasonable business judgment, for performing the Services under this Agreement, including but not limited to travel, lodging expenses, mileage, and costs of materials and supplies. Consultant

shall invoice Client weekly for Expenses. All such invoiced amounts become due and payable to Consultant upon Client's receipt of such invoice. Amounts that are not paid within thirty (30) days following Client's receipt of such invoice will incur a late fee of one and one-half percent (1.5%) per month or the maximum allowed by law, whichever is less. Client shall pay any amounts incurred by Consultant in the collection of past-due amounts owed, including, but not limited to, reasonable attorneys' fees and costs.

2.3 Retainer. Client will pay an advance payment upon execution of this agreement, the amount of which is listed in the applicable Statement(s) of Work. This retainer will be applied against Consultant fees, expenses, and any other charges. The retainer is received with the understanding that Consultant is expressly authorized to withdraw sums necessary to pay for Services and expenses as they are performed or incurred. Client will be notified in writing of the amounts applied. If the charges for Services and expenses exceed the balance on deposit, the statement will show the excess due and payable. Consultant may require additional retainers to cover additional Services and expenses. When the Services are completed or the Agreement terminated, Client will receive a final invoice. Any remaining balance after payment to Consultant's final invoice will be returned to client. No interest will accrue or be owed on a Retainer on deposit.

2.3 Client shall be responsible to pay all taxes, however designated, that are levied or imposed by reason of the transactions contemplated by this Agreement, including without limitation all sales, use, transfer, privilege, excise and other taxes and duties, whether international, national, state or local, excluding, however, taxes based on Consultant's net income.

### 3. Ownership; Grant of Licenses.

3.1 Except as otherwise provided herein or in any applicable Statement of Work, the parties agree that all documents, designs, inventions, products, pricing, costs, future plans, business information, process information, technical information, Client lists, computer programs, computer systems, data, computer documentation, ideas, processes, techniques, know-how, knowledge and other proprietary and/or tangible materials authored or prepared by Consultant (and its employees, agents, consultants or subcontractors) for Client as the Deliverables are the sole and exclusive property of Client or its third party licensees.

3.2 Client acknowledges that Consultant provides business consulting services to other clients, and agrees, subject to Consultant's confidentiality obligations hereunder, that nothing in this Agreement shall be deemed or construed to prevent Consultant from carrying on such business during the Term of this Agreement. In particular, Client agrees that as part of Consultant's provision of the Services hereunder, Consultant may utilize proprietary works of authorship that have not been created specifically for Client, including without limitation, software, methodologies, tools, specifications, drawings, sketches, models, samples, records and documentation, as well as copyrights, trademarks, service marks, ideas, concepts, know-how, techniques, knowledge or data, which have been originated, developed or purchased by Consultant or by third parties under contract to Consultant (all of the foregoing, collectively, "Consultant's Information"), and Consultant's Information and Consultant's administrative communications, records, files and working papers relating to the Services are and shall remain the sole and exclusive property of Consultant.

3.3 Except as otherwise provided herein or in any applicable Statement of Work, upon payment in full of all fees and other amounts due under this Agreement and provided that Client is not in material breach of this Agreement, Consultant grants to Client a perpetual, worldwide, non-exclusive, non-transferable license to use Deliverables solely for the purpose expressly set forth in any applicable Statement of Work, and Consultant's Information incorporated into the Deliverables solely in connection with Client's use of the Deliverables. Except as otherwise provided herein or in any applicable Statement of Work, Client shall not have the right to license, sublicense or otherwise transfer to others the right to use the Deliverables or Consultant's Information without Consultant's prior written consent.

3.4 Any and all data, information, reports, analysis, artwork, logos, graphics, video, text, and other materials, including without limitation, financial data supplied by Client to Consultant in connection with this Agreement, if any, shall remain the sole and exclusive property of Client (the "Client Content").

3.5 Consultant shall have the right to use Client's name and trademark in its advertising, Client lists and marketing materials, subject to Client's approval.

#### 4. Confidentiality.

4.1 A party disclosing Confidential Information shall herein be referred to as the "Disclosing Party," and a party receiving Confidential Information hereunder shall herein be referred to as the "Receiving Party."

4.2 "Confidential Information" shall mean, without limitation, (i) any idea, proposal, plan, information, procedure, technique, formula, technology or method of operation, any written or oral information of a proprietary nature, and any intellectual property owned or licensed by a Disclosing Party or relating to a Disclosing Party's or any of its principals' or affiliates' business, projects, operations, finances, activities or affairs, whether of a technical nature or not (including trade secrets, know-how, processes, and other technical or business information), and any proposed change thereto; (ii) any other information disclosed by a Disclosing Party and designated by a Disclosing Party as confidential; and (iii) the Deliverables (until paid for by Client as provided hereunder), Consultant's Information and Client Content. By way of illustration, but not limitation, Confidential Information includes, without limitation, information regarding (i) all of the computer software and technologies, systems, structures, architectures, processes, formulae, compositions, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods, and information and databases developed, acquired, owned, produced or practiced at any time by a Disclosing Party or any affiliate thereof, software programs and documentation licensed by third parties to a Disclosing Party, and any other similar information or material; (ii) Client lists, telemarketing lists, vendor lists, employee personnel information and policies and procedures; (iii) a Disclosing Party's products and services; (iv) business or financial information directly or indirectly related to a Disclosing Party's companies and investments; and (v) other processes and procedures employed by a Disclosing Party.

4.3 Notwithstanding Section 4.2, Confidential Information shall not include information: (i) in the public domain (other than as a result of a breach of this Agreement); (ii) in a Receiving Party's possession prior to its receipt from Disclosing Party pursuant to this Agreement; (iii) independently developed by a Receiving Party or known through a party other than Disclosing Party, which party has no duty of confidentiality to Disclosing Party, as demonstrated by written record; or (iv) disclosed pursuant to applicable law or regulation or by operation of law, provided that the Receiving Party may disclose only such information as is legally required, and provided further that the Receiving Party shall provide reasonable notice to the Disclosing Party of such requirement and a reasonable opportunity to object to such disclosure.

4.4 Obligations. Receiving Party agrees to hold all Confidential Information in strict confidence and shall not, without the express prior written permission of Disclosing Party: (i) disclose any Confidential Information to third parties or (ii) use the Confidential Information for any purpose other than to perform its obligations under this Agreement or for the purpose expressly set forth in the applicable Statement of Work. Without limiting the generality of the foregoing, Receiving Party shall be permitted to disclose Confidential Information only to its officers, employees and consultants who have an absolute need to know such Confidential Information and who are informed of and agree to be bound by the confidentiality obligations set forth herein; provided that Receiving Party will be liable for breach by any such person or entity. Receiving Party shall not make any copies of the Confidential Information except as necessary for the performance of its obligations under this Agreement and for its officers, employees, consultants, attorneys and accountants with a need to know. Any copies which are made shall be identified as belonging to Disclosing Party and marked "confidential," "proprietary" or with a similar legend. Receiving Party shall use commercially reasonable efforts to assist Disclosing Party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, Receiving Party shall promptly advise Disclosing Party in the event that it learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Section 4, and shall cooperate in seeking injunctive relief against any such person.

4.5 Title. Except as otherwise provided herein, title or the right to possess Confidential Information as between the parties shall remain in Disclosing Party. Receiving Party shall not gain any interest or rights in or to the Confidential Information by virtue of its being disclosed to Receiving Party.

4.6 Return of Confidential Information. Unless the Receiving Party has a license to use the Confidential Information pursuant to Section 3, upon any termination of this Agreement, or at any time upon Disclosing Party's request, Receiving Party shall promptly, at Disclosing Party's option, either return or destroy all (or, if Disclosing Party so requests, any part) of the Confidential Information previously disclosed, and all copies thereof, and Receiving Party shall certify in writing as to its compliance with the foregoing.

4.7 Confidentiality of Agreement. Client and Consultant will not disclose the terms and conditions of this Agreement to anyone other than their respective attorneys, accountants and other professional advisors, except as required by applicable law or regulation or by operation of law, provided that each party may disclose only such information as is legally required, and

provided further that each party shall provide the other with reasonable notice of such requirement and a reasonable opportunity to object to such disclosure.

4.8 Injunctive Relief. The parties agree that, in the event of any breach of any provision hereof, the non-breaching party will not have an adequate remedy in money or damages. The parties therefore agree that, in such event, the non-breaching party shall be entitled to obtain injunctive relief against such breach in any court of competent jurisdiction, without the necessity of posting a bond even if otherwise normally required. Such injunctive relief will, in no way, limit the non-breaching party's right to obtain other remedies available under applicable law.

## 5. Indemnification.

5.1 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 Consultants negligent performance of professional services under this Agreement or in any applicable Statement of Work and that of its sub-consultants 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 sub-consultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts in connection with the professional services provided under this Agreement or in any applicable Statement of Work 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 negligence.

## 6. Term and Termination.

6.1 Term. The term of this Agreement (the "Term") shall commence upon the Effective Date and shall continue in full effect until terminated by the parties. This Agreement shall be terminable at will by either party upon thirty (30) days written notice to the other, provided however, that the terms and conditions of this Agreement will continue to govern any outstanding Statements of Work despite such termination. The specific term and termination rights for Statements of Work shall be set forth in each Statement of Work. The Agreement and any or all outstanding Statements of Work may be terminated immediately by either party for cause upon an event of default by the other party. "Default" is defined as (i) any material failure by a party to comply with or to perform any material nonpayment provision or condition of this Agreement and the continuance of such failure for a period of thirty (30) days after notice thereof to such party or the failure to comply with or to perform any material nonpayment provision under any other agreement or understanding between the parties; or (iii) A party becomes insolvent, is unable to pay its debts when such debts become due, or is the subject of a petition in bankruptcy, whether voluntary or involuntary, or of any other proceeding under bankruptcy, insolvency or similar laws; or makes an assignment for the benefit of creditors; or is named in, or its property is subject to a suit for appointment of a receiver; or is dissolved or liquidated.



6.2 Rights Upon Termination. In the event that this Agreement or any Statement(s) of Work are terminated by either party pursuant to this Section 6, Client shall have no right to use or exploit in any manner, the Deliverables or the Consultant's Information related to such Statement(s) of Work unless Client has paid the full fees related thereto. In the event of any termination of this Agreement, Consultant and Client shall promptly comply with Section 4.6 regarding return or destruction of Confidential Information.

#### 7. Independent Contractor.

Consultant (including any and all employees, agents, consultants or subcontractors of Consultant), in performance of this Agreement, is acting as an independent contractor and not as an employee or agent of Client. Consultant shall have exclusive control of the manner and means of performing its obligations under this Agreement. Each party shall be solely responsible for its employees and payment of their salaries (including withholding of appropriate payroll taxes), workers' compensation, disability, health insurance and other benefits. Nothing in this Agreement shall be construed as making either party the agent of the other party, as granting to the other party the right to enter into any contract on behalf of the other party, or as establishing a partnership, franchise or joint venture between the parties. Under no circumstances shall the employees of one party be deemed to be employees of the other party for any purpose.

#### 8. Security Rules.

Each party agrees to comply with the other party's reasonable security rules and measures when on the other party's premises and to instruct all of its personnel who enter upon the other party's premises to comply with such security rules and measures. Each party agrees, at its own cost and expense, to provide the other party with sufficient work space and supplies solely for the purpose of each party's performance of its obligations under this Agreement.

#### 9. Force Majeure.

Neither party shall be deemed in default or otherwise liable for any delay in or failure of its performance under this Agreement or any Statement of Work (other than payment obligations) by reason of any Act of God, fire, natural disaster, accident, riot, act of government, strike or labor dispute, shortage of materials or supplies, failure of transportation or communication or of suppliers of goods or services, or any other cause beyond the reasonable control of such party. Performance times shall be considered extended for a period of time equivalent to the time lost because of such delay.

#### 10. Arbitration.

Except for attempts by Consultant to collect amounts owed under this Agreement or a Statement of Work, which may be pursued, among other ways, through the federal and state judicial systems, any dispute between the parties arising out of or relating to this Agreement or a Statement of Work, or the breach thereof, shall be referred to arbitration by either party hereto and finally settled by arbitration in accordance with the rules of the American Arbitration Association as the exclusive method of dispute resolution. The arbitration panel shall consist of three (3) arbitrators, one to be appointed by each party and the third to be appointed by the first

two arbitrators so selected. The arbitration shall take place in Phoenix, Arizona. The arbitration award shall be final, binding upon the parties, not subject to any appeal, and shall deal with the question of costs of arbitration and all matters related thereto. Judgment upon the award rendered may be entered by any court having jurisdiction, or application may be made to such court for judicial recognition of the award or an order of enforcement thereof, as the case may be.

11. Intentionally Left Blank.

12. Notices.

All notices, consents and approvals, including notices of address changes, required or permitted to be given by either party under this Agreement shall be in writing and shall be deemed given when delivered in person or sent by registered or certified mail or by reputable overnight commercial delivery to the address set forth on page 1.

13. Severability.

It is the desire and intent of Consultant and Client that the terms and conditions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated to be overly broad, invalid or unenforceable as written, it is the desire and intent of Consultant and Client that the court will revise such provision as it deems necessary to make it consistent with the law and public policy of the jurisdiction and governing law and enforce the provision as so revised. In particular, if any one or more provisions contained in this Agreement shall for any reason be adjudicated to be excessively broad as to duration, geographical scope, activity or subject matter, it is the desire and intent of Consultant and Client that the court shall modify such provisions to reduce their breadth to whatever extent and in whatever manner it deems necessary to render them reasonable and enforceable to the maximum extent compatible with applicable law. In the event that any one or more of the provisions of this Agreement shall be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected.

14. Survival.

In the event of any termination of this Agreement, the parties agree that Sections 2, 3, 4, 5, 6, 7, 10, 12, 16, and 17 shall survive such termination. In addition, certain terms in the Statement of Work shall also survive the termination of the Agreement if so specified therein. In addition, the parties agree that certain other terms and conditions may, by their nature, survive any termination of this Agreement.

15. Waiver.

No waiver or forbearance by either party hereto of any rights hereunder in any particular instance shall act to preclude such party from exercising those rights in any other instance.

16. Assignment.



The parties shall not assign their rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of the other party.

17. Headings.

The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

**IN WITNESS WHEREOF**, the parties to this Agreement have caused it to be duly executed by their respective duly authorized representatives as of the Effective Date.

Client	JOHN LYNCH & ASSOCIATES, LLC
By: _____	By: _____
Name: _____	Name: <u>John H. Lynch</u>
Title: _____	Title: <u>Chief Executive Officer</u>
Date: _____	Date: _____

CLIENT Legal Name ("Client") and Address:	JOHN LYNCH & ASSOCIATES, LLC ("Consultant")
City of Valdez 212 Chenega Avenue Valdez, AK 99686	John Lynch & Associates, LLC 6884 West Briles Rd Peoria, Arizona 85383
Client Signature Contact:	JOHN LYNCH & ASSOCIATES, LLC – Contact Info
Name: Elke Doom Title:  City Manager Telephone:  313.310.0492  Email: <a href="mailto:elkedoom@hotmail.com">elkedoom@hotmail.com</a>	Name: John H. Lynch  Title: Chief Executive Officer  Phone: 623.512.8591  Email: <a href="mailto:john.lynch@johnlynchandassociates.com">john.lynch@johnlynchandassociates.com</a>

### Statement of Work No. 1

This Statement of Work No. 1 ("Statement of Work") is in accordance with and is hereby made a part of the Master Consulting Agreement between Client and John Lynch & Associates, LLC ("Consultant") with an Effective Date of December 5, 2017, (the "Agreement"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement. In the event of a conflict among the terms and conditions of this Statement of Work and the terms and conditions of the Agreement, the terms and conditions of this Statement of Work shall govern and control such conflict. The following services will be provided by Consultant.

#### 1. Description of Services

Provide Senior-level consultants:

- (a) Director of Information Technology: provide executive IT leadership, manage security and infrastructure, strategic planning, resource management, staff leadership and mentoring, project management and budgeting services to Client.
- (b) Senior Network Engineer: provide interim network support services to Client. Assist with strategic planning, implementation and support for all network and telecommunication needs.

#### 2. Fees

In exchange for the services listed in Section 1, the parties agree to the following compensation schedule:

Consulting Fees:

- (a) Consulting rate of One Hundred Seventy-Five Dollars (\$175) per hour.
- (b) Travel rate of Seventy-Five Dollars (\$75) per hour.

Monthly Block Purchase:

N/A

Expenses:

In addition to the consulting fees described above, Client shall reimburse Contractors for all travel, lodging, food and other reasonable out of pocket expenses incurred by Contractors during the course of providing services under this Agreement.

- Mileage will be reimbursed at the Internal Revenue Service (IRS) government rate in effect during time of travel.

The Effective Date of this Statement of Work is December 5, 2017.

**IN WITNESS WHEREOF**, the parties to this Statement of Work have caused it to be duly executed by their respective duly authorized representatives as of the Effective Date.

Client

JOHN LYNCH & ASSOCIATES, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: John H. Lynch

Title: \_\_\_\_\_

Title: Chief Executive Officer

Date: \_\_\_\_\_

Date: \_\_\_\_\_