

PROFESSIONAL SERVICES CONTRACT NO. 051515

OPERATIONAL REVIEW CONSULTANT

This Agreement is made by and between TD Government Solutions, Inc., hereinafter referred to as "Consultant," whose address is P.O. Box 4194, Apache Junction, Arizona, 85118 and Gila County, a political subdivision of the State of Arizona, hereinafter referred to as "County," whose main offices are located at 1400 E. Ash Street, Globe, AZ 85501. Consultant and County together shall be referred to as "Parties".

RECITALS

The Parties recite and declare:

- A. County is desirous of employing Consultant as an independent consultant based on Consultant's education and work experience in the field of county management, program administration, finance, auditing, and delivery of county services.
- B. Consultant is desirous of acting as an independent consultant for County.

For the reasons cited above, and in consideration of the mutual covenants contained within this Agreement, Consultant and County agree as follows:

SECTION ONE
EMPLOYMENT AS CONSULTANT

- A. Consultant shall provide services to the County on an as needed basis. Consultant shall spend time on site in County offices as needed to do research, collect information, interview County staff and present findings and recommendations to County. Consultant may do research, data analysis and report preparation off site. Consultant shall respond to reasonable requests for advice, consultation and take action on matters of concern to County whether Consultant is physically located at the county offices or elsewhere. When not physically at the county offices, Consultant shall be available for consultation by electronic communications technology.
- B. County, acting by and through its Manager, shall have the power to determine the specific duties to be performed by Consultant and the terms for performance of such duties. These duties include the following:
 - Provide general consulting services for Gila County Departments including management audits, departmental performance reviews, employee training, employee performance reviews and analysis of county affiliated organizations as directed by the County Manager;

Section One (continued)...

- Identify the Gila County Department's internal performance and operational strengths and weaknesses, including staffing levels and equipment needs;
- Evaluate the data obtained for evidence of possible deficiencies such as: insufficient internal controls, duplicative effort, wasteful or unnecessary spending, fraud, lack of compliance with federal, state or local laws/regulations and failure to follow management policies and procedures;
- Recommend changes and corrective actions to achieve efficiencies and improve operations;
- Assist the County Manager in identifying the ideal qualifications and characteristics of the ideal candidate for the Director of the Department;
- Review other areas as deemed necessary or as requested by the County Manager.

SECTION TWO
RELATIONSHIP

- A. The relationship of Consultant to County is that of an independent contractor.
- B. Nothing contained in this Agreement shall be deemed to create any association partnership, joint venture, or relationship of principal and agent or employer and employee between the parties hereto or to provide either party with the right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party.
- C. Consultant shall be solely responsible to pay all required taxes or deductions associated with Consultant's performance under this Agreement, including but not limited to, all withholding, social security, and worker's compensation.

SECTION THREE
COMPENSATION

- A. For services under and pursuant to this Agreement, Consultant shall be paid \$100 for each hour worked (billable hours), whether on site or off site.
- B. Consultant shall be paid mileage, including from Consultant's home to County offices, at the federal mileage rate allowance for business, which is set of this Agreement at \$.56 cents per mile.
- C. Consultant shall be reimbursed for hotel lodging, only if necessary and pre-approved by the County Manager.

Section Three (continued)...

- D. Payment for Consultant' services and associated expenses shall be made monthly in accordance with all of the provisions hereof and upon receipt of a properly completed invoice of billable hours, demand for payment of mileage accompanied by odometer mileage records and demand for payment of lodging expenses accompanied by receipts evidencing same.
- E. The total contract amount shall not exceed \$25,000.00, without prior written approval from the County.
- F. County reserves the right to withhold any or all payments or portions thereof for Consultant's failure to perform in accordance with any provision of this Agreement or any modifications hereof.

SECTION FOUR
DURATION AND TERMINATION

- A. This Agreement shall commence upon May 13, 2015 and shall terminate May 12, 2016. Contract deliverables will be completed by deadlines and dates mutually agreed upon by Consultant and County during the contract period.
- B. In addition to terminating at the end of such period, this Agreement may be terminated as follows:
 - (i) By County or Consultant upon five (5) day written notification.
 - (ii) By mutual agreement of the parties.
 - (iii) If, through any cause, Consultant shall fail to fulfill in a timely and proper manner his or her obligations under this Agreement, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this contract, County shall thereupon have the right to terminate, specifying the effective date thereof at least five (5) days before the effective date of such termination.
 - (iv) This Contract may be terminated in whole or in part by County in accordance with this clause if funding of County under a federal, state, or local grant or budgetary allocation is discontinued. Termination for convenience shall be effected by delivery to the Consultant at least five (5) working days prior to the termination date of a Notice of Termination for Convenience specifying the extent to which performance shall be terminated and the date upon which termination becomes effective.

SECTION FIVE
CONFIDENTIALITY

- A. For the purposes of this Agreement, the term "Confidential Information" means all information disclosed to, or acquired by, the Consultant, its employees or agents in connection with, and during the term of this Agreement, including, without limiting the generality of the foregoing:
- (i) all items and documents prepared for, or submitted to, the Consultant in connection with this Agreement, and
 - (ii) all information specifically designated by the County as confidential;
- (iii) but shall not include any information which was known to the Consultant, its employees or agents prior to the date hereof, or which was publicly disclosed otherwise than by breach of this Agreement.
- B. Consultant acknowledges that pursuant to the performance of its obligations under this Agreement, it may acquire Confidential Information. The Consultant covenants and agrees, during the Term and following any termination of this Agreement, to hold and maintain all Confidential Information in trust and confidence for the County and not to use Confidential Information other than for the benefit of the County. Except as authorized in writing by the County, the Consultant covenants and agrees not to disclose any Confidential Information, by publication or otherwise, to any person other than those persons whose services are contemplated for the purposes of carrying out this Agreement, provided that such persons may agree in writing to be bound by, and comply with the provisions of this paragraph. The Consultant shall obtain similar covenants and agreements to those contained in this paragraph for the benefit of the County from each of its employees or agents who are, or may be, exposed to Confidential Information.

SECTION SIX
WARRANTIES

Consultant represents and warrants as follows:

- A. That Consultant is under no obligation or restriction, nor will Consultant assume any such obligation or restriction, which would in any way interfere or be inconsistent with, or present a conflict of interest concerning the services to be furnished by Consultant under this Agreement.

Section Six (continued)...

- B. That all items delivered to the Consultant pursuant to this Agreement are original and that no portion of such items, or their use or distribution, violates or is protected by any copyright or similar right of any third party.
- C. That any information disclosed by the Consultant to the County is not confidential and/or proprietary to the Consultant and/or any third party.
- D. That all work and services performed under this Agreement shall be done in a good and workmanlike manner in accordance with the standards in the trade or industry.

SECTION SEVEN
COMPLIANCE WITH LAWS

- A. Consultant agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations, codes and executive orders in the performance of its obligations under this Agreement, including those governing equal employment opportunity, immigration, nondiscrimination, affirmative action and the following:
 - (i) **AMERICANS WITH DISABILITIES ACT REQUIREMENTS:**
County is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities and services. County Consultants, subconsultants, vendors, and/or suppliers are subject to this ADA policy. All individuals having a County contractual agreement must make the same commitment. Your acceptance of this Contract acknowledges your commitment and compliance with ADA.
 - (ii) **WRITTEN ACKNOWLEDGEMENT OF FEDERAL OR STATE FUNDING (IF APPLICABLE):**
All published materials, including printed products, publications, articles, medial events, news releases, written material related to public appearances or interviews, public service announcements or other activity related to this project shall reflect the relationship between County and the Federal or State awarding agency, and shall reflect the following statement in legible, easily readable print: *"This is being funded by a Contract under a grant to County from N/A_____. Funding is not an endorsement of any products, opinions or services. All N/A_____ funded programs are extended to the public on a non-discriminatory basis"*.
 - (iii) **NON-DISCRIMINATION REQUIREMENTS:**
The Consultant, in compliance with Title VI of the Civil Rights Act of 1964, its amendments and other applicable regulations, statutes and executive orders, agrees that it shall not discriminate against any employee, subconsultant, applicant for employment or subconsultant bidder because of race, color, religion, sex, age, national origin, or disability.

- (iv) **EQUAL EMPLOYMENT OPPORTUNITY:**
Consultant agrees to comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity", and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

- (v) **COPELAND "ANTI KICKBACK" ACT (18 U.S.C. 874 AND 40 U.S.C. 279C):**
If this Contract exceeds all Contracts and sub grants of \$2,000 for construction or Consultant agrees to the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Consultants and Subconsultants on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States:). The Act provides that each Consultant or sub recipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

- (vi) **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 327-333):**
If this Contract is in excess of \$2,000 for construction or in excess of \$2,500 for other contracts that involve the employment of mechanics or laborers, the Consultant agrees to comply with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each Consultant shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surrounding or under working conditions, which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market or Contracts for transportation or transmission of intelligence.

- (vii) **CLEAN AIR ACT (42 U.S.C. 7401 et seq.) AND THE FEDERAL WATER POLLUTION CONTRACT ACT (33 U.S.C. 1251 et seq.) AS AMENDED:**
If this Contract is in excess of \$100,000 the Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

Section Seven (continued)...

(viii) BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352):

Consultants who apply or bid for an award of \$100,000 or more complete the attached required certification. The Consultant certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

(ix) DEBARMENT AND SUSPENSION (E.O.'S 12449 AND 12689):

No Contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.'s 12549 and 12 689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and Consultants declared ineligible under statutory or regulatory authority other than E.O. 12549. If this Contract exceeds \$25,000.00, the Consultant shall complete the attached required certification regarding its exclusion status and that of its Consultant employees.

(x) DAVIS-BACON ACT:

As amended (40 U.S.C. 276a to a-7) - When required by Federal program legislation, all construction contracts awarded by the recipients and sub recipients of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, Consultants shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, Consultants shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

- B. Consultant further agrees to hold harmless and indemnify the County against any loss or damage to include reasonable attorney's fees that may be sustained by reason of the failure of the Consultant or its employees, agents or subconsultants to comply with said laws, ordinances, rules, regulations, codes and executive orders.

SECTION EIGHT
NOTICES

All notices, requests, demands or other communications required by this Agreement or desired to be given or made by either of the parties to the other hereto shall be given or made by personal delivery or by mailing the same in a sealed envelope, postage prepaid, certified or registered mail, return receipt requested, and addressed to the parties at their respective addresses set forth above or to such other address as may, from time to time, be designated by notice given in the manner provided in this paragraph. Any notice or communication mailed as aforesaid shall be deemed to have been given and received on the third business day next following the date of its mailing. Any notice or writing delivered to a party hereto shall be deemed to have it been given and received on the day it is delivered, provided that if such day is not a business day, then the notice or communication shall be deemed to have been given and received on the business day next following such date.

SECTION NINE
INSURANCE

- A. The Consultant will be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith whether owned by the Consultant or by County. The Consultant assumes all risks of direct and indirect damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, in connection in any way whatsoever with the contracted work. The Consultant shall, during the continuance of all work under this Agreement maintain appropriate insurance required by federal, state and local laws.

- B. The Consultant will be responsible for its work and every part thereof, and for all materials, tools, equipment, appliances, and property of any and all description used in connection therewith whether owned by the Consultant or by County. The Consultant assumes all risks of direct and indirect damage or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the Contract, in connection in any way whatsoever with the contracted work. The Consultant shall, during the continuance of all work under this Agreement maintain appropriate insurance required by federal, state and local laws.

SECTION TEN
INDEMNIFICATION

Consultant shall indemnify, keep and save harmless County, its agents, officials, employees and volunteers against claims of injuries, death, damage to property, patent claims, suits, liabilities, judgments, cost and expenses which may otherwise accrue against County in consequence of the granting of this Agreement or which may otherwise result there from, if it shall be determined that the act was caused through negligence or error, or omission of the Consultant or his or her employees, or that of a subcontractor or his or her employees, if any; and the Consultant shall, at his or her own expense, appear, defend and pay all charges of attorneys and all costs and other expenses arising there from or incurred in connection therewith; and if any judgment shall be rendered against County in any such action, the Consultant shall, at his or her own expense, satisfy and discharge the same. Consultant expressly understands and agrees that any performance bond or insurance protection required by this Agreement, or otherwise provided by the Consultant, shall in no way limit the responsibility to indemnify, keep and save harmless and defend County as herein provided.

SECTION ELEVEN
MISCELLANEOUS

Arbitration. Pursuant to Section 12-1518 of the Arizona Revised Statutes, the parties acknowledge and agree that they will be required to make use of mandatory arbitration of any legal action that is filed in the Arizona Superior Court concerning a controversy arising out of this Agreement if required by Section 12-133 of the Arizona Revised Statutes.

Assignment. The rights of each party to this Agreement may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior express and written consent of the other party.

Cancellation. This Agreement is subject to cancellation as provided in A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of County is, at any time while this Agreement or any extension thereof is in effect, an employee or agent of the other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement.

Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

Audits/access to records. Consultant shall maintain books, records, and documents of all costs and data in support of the services provided. County or its authorized representative shall have the right to audit the books, records, and documents of the Consultant. These provisions for an audit shall give County unlimited access during normal working hours to the Consultant's books and records under the conditions stated above. Unless otherwise provided by applicable statute, the Consultant, from the effective date of final payment or termination hereunder, shall preserve and make available to County for a period of three (3) years thereafter, at all reasonable times at the office of the Consultant but without direct charge to County, all its books, records, documents, and other evidence bearing on the costs and expenses of the services relating to the work hereunder. In addition, if this Agreement is funded under a grant from a Federal agency, the Federal awarding agency, the comptroller, General of the United States, or any of their duly authorized representative, shall have access to any books, documents, papers, and works of the Consultant, which are directly pertinent to a specific Federally funded program for the purpose of making audits, examinations, excerpts and transcriptions.

Construction. In this Agreement, except as otherwise expressly provided, all words and personal pronouns relating thereto shall be read and construed as the number and gender of the party or parties referred to in each case require and the verb shall be read and construed as agreeing with the required word and pronoun.

Costs of Enforcement. In the event any action is commenced by a party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorney fees and costs from the party not prevailing.

Entire Agreement. This Agreement sets forth the entire Agreement between the parties hereto in connection with the subject matter hereof and supersedes all previous understandings, communications, arrangements and discussions, whether oral or written, with respect to the subject matter hereof.

Equitable Remedies. Consultant and County each expressly acknowledge that damages alone will be an inadequate remedy for any breach or violation of any of the provisions of this Agreement, and that either of them, in addition to all other remedies hereunder, shall be entitled, as a matter of right, to injunctive relief, including specific performance in any court of competent jurisdiction.

E-verify Requirements. To the extent applicable under A.R.S. § 41-4401, the Parties warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). The Parties or their subconsultant's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by either entity. The Parties retain the legal right to randomly inspect the papers and records of the other Party or subconsultant employee to ensure that the Party and its subconsultants are complying with the above-mentioned warranty. The Parties and their subconsultants warrant to keep the papers and records open for random inspection during normal business hours by the Parties. The Parties and any subconsultant and its subconsultants shall cooperate with Party's random inspections including granting a Party entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential. The Parties shall include the foregoing paragraph in all contracts with its subconsultants under this Agreement.

Section Eleven (continued)...

Force majeure. Consultant shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Consultant has no control.

Further assurances. The parties hereto covenant and agree that each shall and will, upon reasonable request of the other, make, do, execute or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devices and assurances whatsoever for the better or more perfect and absolute performance of the terms and conditions of the this Agreement.

Governing law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Arizona, and any and all actions instituted for enforcement of this Agreement, or any portion thereof, shall be brought in the courts of the State of Arizona.

Headings. The division of this Agreement into paragraphs and the use of headings are for convenience of reference only and shall not modify or affect the interpretation or construction of this Agreement or any of its provisions.

Modification. No alteration, modification, extension, amendment, waiver or qualification of this Agreement shall be valid unless it is in writing and is executed by both of the parties hereto or an authorized representative thereof.

News release. As a matter of policy, County does not endorse the products or services of a Consultant or Consultant. News releases concerning this Agreement or consultant services hereunder will not be made by Consultant without the prior written approval of County

Records retention. To the extent required by Section 35-214 of the Arizona Revised Statutes. Consultant agrees to retain all records relating to this Agreement and to make those records available at all reasonable times for inspection and audit by County or the Auditor General of the State of Arizona during the term of this Agreement and for a period of five (5) years after the completion of this Agreement. The records shall be provided at a location designated by County upon reasonable notice to Consultant.

Severability. If any paragraph of this Agreement or any portion thereof is determined to be unenforceable or invalid by the decision of any court by competent jurisdiction, which determination is not appealed or appealable, for any reason whatsoever, such unenforceability or invalidity shall not invalidate the whole Agreement, but the Agreement shall be construed as if it did not contain the particular provision held to be invalid and the rights and obligations of the parties shall be construed and enforced accordingly.

Survival of terms. Those provisions of this Agreement that, by their nature, are intended to survive any expiration or termination of this Agreement shall so survive.

Title to and return of property. It is understood that any and all written or descriptive matter or electronic media which has been developed, maintained, prepared, submitted and/or copied by the Consultant in furtherance of this Agreement, or which may contain confidential information, including, but not limited to, all finished or unfinished work or work product, files, lists, papers, documents, data, plans, studies, surveys, drawings, maps, models, reports, tapes, CDs or other such media shall be the sole property of County and that upon any termination of this Agreement for any reason, the Consultant shall promptly deliver same to County without exception or reservation.

Use of Trade Marks, Trade Names, seals, insignia. Consultant shall have no right to use the Trade Marks, Trade Names, seals, insignia, or other like or similar property of the Consultant or to refer to this Agreement or the services provided hereunder, directly or indirectly, in connection with any product, service, promotion or publication without the prior written approval of the County.

Waiver. A waiver by either party to this Agreement of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation thereof.

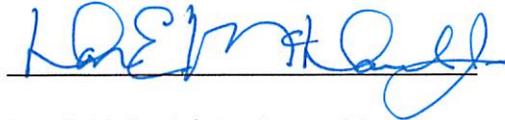
Legal Arizona Workers Act Compliance: Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor shall further ensure that each subcontractor who performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws. County shall have the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws. Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Contractor. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Contractor's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which Contractor shall be entitled to an extension of time, but not costs.

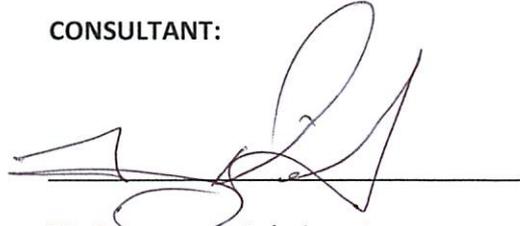
IN WITNESS WHEREOF, each party to this agreement has caused it to be executed as of the date of the last signature below.

GILA COUNTY:



Don E. McDaniel, Jr., County Manager

CONSULTANT:



TD Government Solutions, Inc.

DATE:

5/27/15



Printed Name and Title