



Memorandum

To: Mayor and Town Council

From: Patty McKenny, Town Clerk

Date: August 7, 2018

Subject: Professional Services Agreement with Interpacific Network Corporation (Souichi Nakamura, Principal)

I. SUMMARY

Please find attached a professional services agreement with Interpacific Network Corporation for consulting services associated with the Global Friendship Exchange Program. The agreement outlines the town's business relationship with Souichi Nakamura serving as the town's program advisor on such current and future programming with Japan, both Nagano and Yamanouchi-machi.

As you may recall, Souichi Nakamura, the principal of the company, was appointed by Governor Shuichi Abe, Governor of Nagano and Mayor Takefushi, Yamanouchi-machi, to serve as their representative in the planning of the town's Japan exploration visit in January 2018. Mr. Nakamura was actively involved in the planning and implementation of the visit serving as a guide and translator for the Vail delegation.

In moving this Global Friendship Exchange programming forward, it has been deemed there would be a need to continue the business relationship with Mr. Nakamura in a similar capacity, to serve as the town's program advisor and point of contact for Japan on such programming and activities. "Exhibit A" addresses the scope of services and compensation schedule and hourly fee. Mr. Nakamura has been working with staff on the current Japan student exchange visit occurring this week. He will be providing translation assistance and advisement at the business meeting occurring the morning of August 7 and attending the evening council meeting. There are no budgetary implications with the approval of the agreement for 2018.

II. ACTION REQUESTED

Staff requests Town Council consideration of the professional services agreement in an effort to solidify the business arrangement with Mr. Nakamura and continue to work towards future friendship exchange programming with Japan.

Attachment:

✓ Professional Services Agreement

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2018, by and between the Town of Vail, 75 South Frontage Road, Vail, Colorado 81657, a Colorado municipal corporation (the "Town"), and Interpacific Network Corporation, an independent contractor with a principal place of business at 3278 S. Wadsworth Blvd., #1-148, Denver, Colorado 80227 ("Contractor") (each individually a "Party" and collectively the "Parties").

WHEREAS, the Town requires services; and

WHEREAS, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required services.

NOW THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF SERVICES

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon seven (7) days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

III. COMPENSATION

A. In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor an amount associated with the per program estimates as completed by town staff and contractor. If expenses exceed original cost estimates the town will be responsible for compensating the contractor accordingly. This amount shall include all fees, costs and expenses incurred by Contractor. Contractor shall not be paid until the Scope of Services is completed to the satisfaction of the Town.

B. Notwithstanding the maximum amount specified in this Section, Contractor shall be paid only for work performed. If Contractor completes the Scope of Services for less than the maximum amount, Contractor shall be paid the lesser amount, not the maximum amount.

IV. RESPONSIBILITY

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in good standing, required by law.

B. The work performed by Contractor shall be in accordance with generally accepted practices and the level of competency presently maintained by other practicing contractors in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

C. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

V. OWNERSHIP

Any materials, items, and work specified in the Scope of Services, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

VI. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

VII. INSURANCE

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and one million dollars

(\$1,000,000) general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least thirty (30) days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VIII. INDEMNIFICATION

Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

IX. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment to confirm the employment eligibility of all employees who are newly hired to perform work under this Agreement.

B. Prohibited Acts. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement, or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. Verification.

1. If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

2. Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

3. If Contractor obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien who is performing work under this Agreement, Contractor shall: notify the subcontractor and the Town within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under this Agreement; and terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subsection 1 hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under this Agreement; except that Contractor shall not terminate the subcontract if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under this Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Agreement.

E. Affidavits. If Contractor does not have employees, Contractor shall sign the "No Employee Affidavit" attached hereto. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the "Department Program Affidavit" attached hereto.

X. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Eagle County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers or employees.

J. Rights and Remedies. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first set forth above.

TOWN OF VAIL, COLORADO

Greg Clifton, Town Manager

ATTEST:

Patty McKenny, Town Clerk

APPROVED AS TO FORM:

J. Matthew Mire, Town Attorney

By: _____
President

STATE OF COLORADO)
) ss.
COUNTY OF _____)

____ The foregoing instrument was subscribed, sworn to and acknowledged before me this
day of _____, 2017, by _____ as
_____.

My commission expires:

(S E A L)

Notary Public

**EXHIBIT A
SCOPE OF SERVICES**

**Town Council Program
Town of Vail
Scope of Services
July 2018**

General Scope:

The following is a scope of services being provided by Interpacific Network Corporation to the Town of Vail (hereafter "Client"):

Serves as Town of Vail's Program Advisor and contact for all business related to the implementation of the Town of Vail Global Friendship Exchange Program and implementation of the Agreement and Memo of Understanding with Nagano Prefecture and Yamanouchi-town, Japan, see attached documents.

The scope of the "Advisor" includes the following:

- Assist town staff in identifying and developing recommendations on programming that promotes the global friendship exchange program supporting the town's international resort presence.
- Assists town staff in identifying and developing recommendations about economic development (tourism and marketing), environmental sustainability and transportation initiatives and objectives that align between Japan and Vail. Assists with identifying measures of success of such exchange programming.
- Serves as the primary contact for Japanese officials (both public and private sector) when there are proposals for new business and exchange programming with the Town of Vail.
- Assists with promoting future business development between Japan and Vail with efforts to research and makes recommendation about aligning Vail with other Colorado communities and State of Colorado Tourism Office who are already working with Japan officials.
- Makes best effort to serve as town's translator on all Japan related business and travel advisor and hour tour representative on future trips to Japan with Vail delegations making recommendations about travel arrangement, business protocol and business contacts.
- Assists town staff with memos and presentations, attends council meetings and related Global Friendship Exchange functions as necessary.

Compensation:

Interpacific Network Corporation will perform this scope of work on an as needed basis as determined by the Town, with a fee schedule outlined below.

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|---|----------------------------|
| ▪ Global Friendship Exchange Program (GFEP) | Hourly Rate of \$125 |
| ▪ Travel for Global Friendship Exchange | Expenses related to travel |

All work performed under this agreement will be completed by Souichi Nakamura, principal of Interpacific Network Corporation. Costs will be estimated on a per program basis by town staff and the program advisor, Mr. Nakamura. Payments will be made to Interpacific Network

Corporation upon receipt of an invoice from the vendor for services completed the previous month. The Town shall follow-up with payment to be processed during the next payable billing cycle and within 30 days.

Annual fees are anticipated in the range of \$5,000 to \$10,000 depending on the number of exchange programs implemented.

Schedule:

Interpacific Network Corporation has continued working with the town and Japan programming in recent months. The consulting role will be required throughout 2018 in an effort to implement the Global Friendship Exchange Program; two visits from Japan representatives and officials are occurring in August and September. Renewal of the agreement will be automatic upon approval of a Global Friendship Exchange Program budget appropriation for the upcoming year.