

**Subrecipient Agreement
between
City of Flagstaff
and
Joy Cone Company**

This Agreement (“Agreement”) is entered into this _____ day of _____, 2013, by and between the City of Flagstaff (“City”), an Arizona municipal corporation with offices at 211 West Aspen Avenue, Flagstaff, Arizona, and Joy Cone Company (“Subrecipient”), an Arizona corporation with its primary place of business at 2843 W Shamrell Boulevard , Flagstaff, Arizona. The City and Subrecipient may also be referred to as “Party” or “Parties” in this Agreement.

RECITALS

1. The City of Flagstaff has entered into an Grant Agreement with the Arizona Commerce Authority, a copy of which is attached as **Exhibit A**, to oversee and discharge certain funds, granted through the 2013 Rural Economic Development Grant, for the Joy Cone Company Project (the “Project”).
2. Joy Cone Company has the ability and the willingness to carry out the Project in a timely manner.

1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to specify the responsibilities and procedures for the parties.

2. TERM OF AGREEMENT, TERMINATION AND AMENDMENTS

This Agreement shall become effective on _____ and shall terminate on _____. The following obligations of Subrecipient will survive termination of this Agreement: Sections 5, 8, 9.1 (with respect to final report), 9.2, 10, 11, 13, 16-23 (inclusive) and 26-33 (inclusive).

3. DESCRIPTION OF SERVICES

The Subrecipient shall provide the services for the City as approved in the grant application titled “Joy Cone Company” and funded for up to One Hundred Thousand Dollars (\$100,000), as may have been modified by the award letter. Services shall be completed on or before _____, 2014.

4. CITY DISBURSEMENTS TO SUBRECIPIENT

The City shall:

- 4.1 Provide up to One Hundred Thousand Dollars (\$ 100,000) to Subrecipient for services provided under Section 3.

4.2 City will disburse funds to Subrecipient on a reimbursement basis only, conditioned upon receipt of proof of payment and applicable, accurate and complete reimbursement documents, as deemed necessary by the City, to be submitted by Subrecipient. Payments will be contingent upon receipt of all reporting requirements of Subrecipient under this Agreement.

5. FISCAL RESPONSIBILITY

The funds disbursed by the City under this Agreement shall be used only for the project as described in Subrecipient's grant application. Any modification to quantity or scope of work must be approved in writing by City. Should the project not be completed, Subrecipient shall reimburse unspent funds provided by the City under this Agreement to the City immediately upon demand by the City. If the project is completed at a lower cost than originally budgeted, the amount reimbursed to Subrecipient shall be the amount actually spent by Subrecipient in accordance with the approved application. If any expenditure by Subrecipient under this Agreement is disallowed by an audit exemption or by the City or the State, Subrecipient shall reimburse funds for the disallowed expenditure directly to the City immediately upon demand by the City. The Subrecipient shall also abide by the General Provisions in the Grant Agreement between the Arizona Commerce Authority and the City of Flagstaff, Contract #REDG-13-003, a copy of which is attached as **Exhibit A** and incorporated in this Agreement by reference.

6. PROGRAMMATIC MONITORING

The Subrecipient agrees to terms specified in A.R.S. § 35-214 and § 35-215.

6.1 During the term of this Agreement, Subrecipients will be monitored periodically by City staff, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring can involve aspects of the work involved under this contract including but not limited to the review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. All on-site monitoring shall take place during normal business hours, upon advance written notice, on dates and at times as mutually agreed upon by the City and Subrecipient.

7. DEBARMENT CERTIFICATION

Subrecipient agrees to comply with the Federal debarment and suspension regulations as outlined in the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions."

8. FUNDS MANAGEMENT

Subrecipient must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with other sources. Subrecipient must manage funds according to

applicable Federal regulations for administrative requirements, costs principles, and audits. Subrecipient must maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are: Financial Management, Procurement, Personnel, Property, and Travel. A system is adequate if it is written, followed consistently (it applies to similar items), and consistently applied (it applies to all sources of funds).

9. REPORTING REQUIREMENTS

Regular reports by Subrecipient shall include:

- 9.1 Progress Reports.** Subrecipient shall provide quarterly programmatic reports to the City within five (5) working days of the last day of the month in which services are provided. The Subrecipient shall use the form provided by the City to submit quarterly programmatic reports. The report shall contain such information as deemed necessary by the City. If the scope of the project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report should be marked as final and should be inclusive of all necessary and pertinent information regarding the project as deemed necessary by the City. Quarterly programmatic reports shall be submitted to the City until the entire scope of the project is completed. Notwithstanding anything to the contrary in this Section 10, the City shall not request, and Subrecipient shall not be required to provide, any of Subrecipient's confidential or proprietary information in reports provided to the City, including without limitation, any information regarding research collaborators, research plans or any data, results or other information resulting from Subrecipient's performance of research or any other activities relating thereto.
- 9.2 Financial Reimbursements.** Subrecipient shall provide as frequently as monthly, but not less than quarterly, requests for reimbursement. Reimbursements shall be submitted with the Reimbursement Form provided by the City staff. Subrecipient shall submit a final reimbursement for expenses received and invoiced prior to the end of the termination of this Agreement no more than forty-five (45) days after the end of the Agreement. Requests for reimbursement received later than the forty-five (45) days after the Agreement termination will not be paid. The final reimbursement request as submitted shall be marked FINAL, and include a copy of the Property Control Form. All reports shall be submitted to the contact person as described in Section 29, NOTICES, of this Agreement.

10. ASSIGNMENT AND DELEGATION

Subrecipient may not assign any rights under this Agreement without the express, prior written consent of the City.

11. AMENDMENTS

Any change in this Agreement including but not limited to the Description of Services and budget, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by the duly authorized representatives of

Subrecipient and the City. Any such amendment shall specify: 1) an effective date; 2) any increases or decreases in the amount of Subrecipient's compensation if applicable; 3) be titled as an "Amendment," and 4) be signed by the parties identified in the preceding sentence. Subrecipient understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.

12. OFFSHORE PERFORMANCE OF WORK PROHIBITED

Due to security and identity protection concerns, all services under this Agreement shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision applies to work performed by subcontractors at all tiers.

13. AGREEMENT RENEWAL

This Agreement shall not bind nor purport to bind the City for any contractual commitment in excess of the original Agreement period.

14. RIGHT TO ASSURANCE

If the City in good faith has reason to believe that Subrecipient does not intend to, or is unable to perform or continue performing under this Agreement, the City may demand in writing that Subrecipient give a written assurance of intent to perform. If Subrecipient fails to provide written assurance within the number of days specified in the demand, the City at its option may terminate this Agreement.

15. CANCELLATION FOR CONFLICT OF INTEREST

Pursuant to A.R.S. § 38-511, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of City is an employee or agent of the other party in any capacity or a consultant to the other party to the Agreement with respect to the subject matter of the Agreement, this Agreement may be canceled for conflict of interest.

16. AVAILABILITY OF FUNDS

Every payment obligation of the City under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If the funds are not allocated and available for the continuance of this Agreement, the City may terminate this Agreement at the end of the period for which funds are available. City will provide thirty days written notice and shall pay Subrecipient for termination costs as allowable under Cost Principles (OMB Circular A-122).

17. FORCE MAJEURE

If either party hereto is delayed or prevented from the performance of any act required in this Agreement by reason of acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of such act will

be excused for the period of the delay.

18. PARTIAL INVALIDITY

Any term or provision of this Agreement that may be declared contrary to any current or future law, order, regulation, or rule, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.

19. MEDIATION AND VENUE

19.1 **Mediation.** If a dispute arises out of or relates to this Agreement, and if the dispute cannot be settled through negotiation within forty-five (45) days of notification of the dispute, the parties agree first to try in good faith to resolve the dispute by mediation before resorting to litigation or some other dispute resolution procedure. Mediation shall be self-administered and conducted in Flagstaff, Arizona, under the CPR Mediation Procedures established by the CPR Institute for Dispute Resolution, 366 Madison Avenue, New York, NY 10017, (212) 949-6490, www.cpradr.org, unless other procedures are agreed upon by the parties. The parties shall select one or more trained mediators acceptable to all parties. Each party agrees to bear its own costs in mediation. The parties will not be obligated to mediate if an indispensable party is unwilling to join the mediation. This Agreement does not constitute a waiver of the parties' right to initiate legal action if a dispute is not resolved through good faith negotiation or mediation, or if provisional relief is required under the Arizona or Federal Rules of Civil Procedure.

19.2 **Venue.** For purposes of any form of dispute resolution, venue shall be in Coconino County, State of Arizona, or in the District of Arizona if litigation under diversity jurisdiction is involved.

20. GOVERNING LAW

This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona.

21. ENTIRE AGREEMENT

This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms in this document. This Agreement and its Exhibits constitute the entire agreement between the parties and may not be changed or added to except by a writing signed by the parties provided, however, that the City shall have the right to immediately amend this Agreement so that it complies with any new legislation, laws, ordinances, or rules affecting this Agreement. Subrecipient agrees to execute any such amendment within ten (10) business days of its receipt.

22. NON WAIVER

Neither party's failure to insist on strict performance of any term or condition of the Agreement

shall be deemed a waiver of that term or condition, even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object.

23. RESTRICTIONS ON LOBBYING

The Subrecipient shall not use funds made available to it under this Agreement to pay for, influence, or seek to influence any officer or employee of any governmental entity.

24. LICENSING

The Subrecipient, unless otherwise exempted by law, shall obtain and maintain all licenses, permits, and authority necessary to perform those acts it is obligated to perform under this Agreement.

25. NON-DISCRIMINATION

Subrecipient shall comply with all State and Federal equal opportunity and non-discrimination requirements and conditions of employment, including the Americans with Disabilities Act, in accordance with A.R.S. title 41, Chapter 9, Article 4 and Executive Order 2009-09.

26. SECTARIAN REQUESTS

Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction in violation of the United States or Arizona Constitutions.

27. ADVERTISING AND PROMOTION OF AGREEMENT

The Subrecipient shall not advertise or publish information for commercial benefit concerning this Agreement without the prior written approval of the City.

28. OWNERSHIP OF INFORMATION, PRINTED AND PUBLISHED MATERIAL

The Funding Agency and the City shall have full and complete rights to reproduce, duplicate, disclose, perform, and otherwise use all report provided to the City under this Agreement in accordance with Section 10 above.

28.1 The Subrecipient agrees that any report furnished to City pursuant to Section 10 herein shall contain the following statement:

"This document was prepared under a grant from the Arizona Commerce Authority, Rural Economic Development Grant. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of the Arizona Commerce Authority."

28.2 The Subrecipient also agrees that one copy of any such report shall be submitted to the City to be placed on file and distributed as appropriate to other potential sub-recipients or interested parties. The City may waive the requirement for submission of any specific

publication upon submission of a request providing justification from Subrecipient.

- 28.3 The City and Subrecipient recognize that activities funded under this Agreement have the potential to become public information. It is also agreed that any report or printed matter provided pursuant to Section 10 of this Agreement is a work for hire and shall not be copyrighted by Subrecipient.

29. INDEMNIFICATION

To the extent permitted by law, each party (as Indemnitor) agrees to indemnify, defend and hold harmless the other party (as Indemnitee) from and against any and all claims, losses, liability, costs, or expenses, including reasonable attorney's fees, (collectively referred to as "Claims") arising out of bodily injury of any person, including death, or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents or employees.

30. TERMINATION

Either party reserves the right to terminate the Agreement in whole or in part due to the failure of the other party to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses and permits or to make satisfactory progress in performing the Agreement. The staff of either party shall provide a written thirty (30) day advance notice of the termination and the reasons for it.

- 30.1 If Subrecipient chooses to terminate the Agreement before the grant purposes have been met then the City reserves the right to collect all reimbursements distributed to Subrecipient that have not been spent and that Subrecipient is not contractually obligated to pay to any third party as of the date Subrecipient receives notice of said termination.

- 30.3 The Subrecipient shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

31. PARAGRAPH HEADINGS

The paragraph headings in this Agreement are for convenience of reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this Agreement or any of its provisions.

32. SPECIAL CONDITIONS

- 32.1 The Subrecipient agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: "**Purchased with funds provided by the Arizona Commerce Authority, Rural Economic Development Grant.**"

- 32.2 The Subrecipient agrees to cooperate with any assessments, state/national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement.

33. NOTICES

Any and all notices, requests, demands, or communications by either party to this Agreement, pursuant to or in connection with this Agreement shall be in writing be delivered in person or shall be sent to the respective parties at the following addresses:

To City:

Grants Manager
City of Flagstaff
211 West Aspen
Flagstaff, AZ 86001

To Subrecipient:

Joe Pozar, Jr.
Joy Cone Company
2843 W Shamrell Boulevard
Flagstaff, AZ 86001

IN WITNESS WHEREOF the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

City of Flagstaff

Joy Cone Company

Kevin Burke, City Manager

David F. George, President/CEO

Attest:

City Clerk

Approved as to form:

City Attorney

Attachments: Exhibit A
 Joy Cone letter, RE: Application of Funds