



DESTINATION SERVICES
PROFESSIONAL DESTINATION
CONSULTING SERVICES

YOUNG
strategies, inc.

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05/16/16

City of Broken Arrow Tourism Asset Inventory Market Research Strategic Planning

Consulting Services Agreement

May 17, 2016

Proposal prepared and submitted by:

**Young Strategies, Inc.
Berkeley W. Young, President
byoung@youngstrategies.com
704-677-4018**

**Destination Services, LLC
Stephen Powell, President
stephenlpowell@sbcglobal.net
314-575-8416**

CONSULTING SERVICES AGREEMENT

This Consulting Services Agreement (“**Agreement**”) is entered into this 17th day of May, 2016 (“**Effective Date**”) between **City of Broken Arrow (“COBA”)** and **Young Strategies, Inc.**, with offices at P.O. Box 38306, Charlotte, NC 28278 (“**CONSULTANT**”). Consultant is in the business of research, strategic planning, and consulting for the travel industry. COBA desires to engage Consultant to provide services to it. This Agreement sets forth the general terms and conditions applicable to all Statements of Work issued under this Agreement. “**Parties**” means COBA and Consultant and “**Party**” means either of them individually.

1. Services

1.1 Services. All services performed or deliverables required under this Agreement will be performed or delivered in accordance with Exhibit I, or as supplemented in accordance with individual Statements of Work (“SOWs”).

1.2 Statement of Work (“SOW”) Issuance. Each SOW will be governed by this Agreement and in the format presented in Exhibit I. No SOW may change any of the terms of this Agreement as they apply to other SOWs, unless expressly intended by way of an amendment to this Agreement.

2. Changes to SOWs

2.1 The COBA Project Manager for a SOW may direct changes in the SOW. If any change causes an increase or decrease in the cost of, or the time required for, performing the SOW, an equitable adjustment will be made to the SOW price, delivery dates or both. Any adjustment must be mutually agreed to by the Parties in writing.

3. Work Guidelines and Personnel

3.1 Project Managers. Each Party will designate a Project Manager for this Agreement or each SOW to serve as the primary contact between the Parties. Performance of the Services will be coordinated between the designated Project Managers.

3.2 Consultant Personnel. Consultant will assign qualified personnel to perform the Services under this Agreement and each SOW and will ensure that its personnel devote sufficient time and effort to performing the Services as necessary to complete all Services in accordance with this Agreement and each SOW. Consultant will use its best efforts to ensure the continuity of Consultant's personnel performing the Services.

3.3 Key Personnel. The Parties may designate certain Consultant personnel critical for the successful performance of the Services as “**Key Personnel.**” **Key Personnel** are deemed to be Stephen Powell, CEO of Destination Services LLC and Berkeley W. Young, President of Young Strategies, Inc. Consultant will assign the Key Personnel to perform the Services and will not reassign or remove any Key Personnel without the prior written consent of COBA's Project Manager, which consent will not be unreasonably withheld.

3.4 Adherence to Delivery Schedule. If Consultant reasonably believes that it will be unable to meet the Delivery Schedule or any portion thereof Consultant will promptly notify COBA of the anticipated delay and take prompt corrective action to comply with the Delivery Schedule (including without limitation working overtime or providing additional personnel or equipment or other resources).

3.5 Independent Contractor. Nothing in this Agreement will be construed to place Consultant and COBA in an agency, employment, franchise, joint venture, or partnership relationship. Neither Party has the authority to obligate or bind the other in any manner, and nothing contained in this Agreement will give rise or is intended to give rise to rights of any kind to any third parties. Neither Party will make any representation to the contrary. The Parties agree that Consultant will perform its obligations under this Agreement as an independent contractor. Consultant retains the right to exercise full control of, supervision over and responsibility for Consultant's performance hereunder, including the employment, direction, compensation and discharge of Consultant's personnel, as well as compliance with workers' compensation, unemployment, disability insurance, social security, withholding and all other laws, rules, codes, regulations and ordinances governing such matters.

4. Term and Termination

4.1 Term of Agreement. This Agreement will commence on the Effective Date and remain in effect thereafter unless terminated by either party with at least 60 days notice of termination to the other party or otherwise terminated in accordance with the terms of this Agreement. This Agreement will continue to govern SOWs entered into before the end of the Term where completion of those SOWs extends beyond the Term.

4.2 Termination for Convenience. Notwithstanding any firm time period or quantity in an SOW, COBA may terminate this Agreement or any SOW, in whole or in part, at any time with or without cause upon 10 days' prior written notice.

4.3 Termination for Cause. The non-breaching Party may terminate this Agreement or any SOW, in whole or in part, if the other Party commits a material breach and the breaching Party fails to remedy the breach within 30 calendar days following receipt of written notice specifying the grounds for the breach. A material breach includes, but is not limited to, late delivery or delivery of nonconforming Deliverables or Services. The solvent Party may terminate this Agreement or any SOW immediately upon written notice if the other Party becomes insolvent or if any petition is filed or proceedings commenced by or against such Party relating to bankruptcy, receivership, reorganization, assignment for the benefit of creditors or a similar proceeding.

4.4 Effect of Termination. If COBA terminates this Agreement or any SOW for convenience or cause, COBA's sole liability to Consultant, and Consultant's sole and exclusive remedy, is payment for Deliverables received and accepted and Services completed and accepted by COBA before the termination. Upon termination, COBA may require Consultant to transfer title and deliver to COBA any Deliverables and work in progress. COBA will pay the Agreement or SOW price or equitable portion thereof for those Deliverables or work in progress.

5. Pricing, Expenses, Invoicing and Payment Terms

5.1 Pricing. Consultant will perform the Services and deliver the Deliverables at or below the prices stated in Exhibit II or the applicable SOW.

5.2 Invoicing. Consultant will submit invoices describing the Services, Deliverables and the payments due. Payment terms are net 30 days from receipt of a proper invoice and conforming Services and Deliverables.

6. Records and Audit

Consultant will maintain suitably detailed records as may be necessary to adequately reflect Consultant's compliance with the terms of this Agreement and will require its sub-tier Consultants to do the same. Consultant and its sub-tier Consultants will permit COBA's auditors to have access at all reasonable times to such records. Consultant and each sub-tier Consultant will also furnish other information as may be needed by COBA or its representatives in auditing compliance with the terms of this Agreement or any SOW. If, as a result of an audit, any invoice submitted by Consultant is found to be in error, an appropriate adjustment will be made by Consultant or COBA, as the case may be. Consultant will promptly correct any other Consultant deficiencies discovered as a result of the audit.

7. Acceptance

Consultant will notify COBA's Project Manager in writing when Deliverables have been delivered or the Services have been completed and are ready for acceptance. If COBA determines that the Deliverables or Services are not in conformity with this Agreement, then COBA will, by written notice to Consultant: (a) terminate this Agreement or any SOW, in whole or in part, for cause under the Termination for Cause clause; (b) accept the Deliverables or Services, in whole or in part, at an equitable reduction in price; or (c) reject the Deliverables or Services, in whole or in part. If COBA rejects the Deliverables or Services under subsection (c), then Consultant will, at Consultant's expense and in a timely manner, at COBA's option, re-perform the non-conforming Deliverables or Services so that they conform to the requirements of this Agreement.

8. Warranties and Remedies

8.1 General Warranties. Consultant warrants that: (a) each of its personnel has the proper skill, training and background necessary to accomplish his or her assigned tasks; (b) all Services will be performed in a competent and professional manner, by qualified personnel under the direction and control of Consultant, and in accordance with the highest standards in the industry provided by reputable service providers performing services of a similar nature; (c) there will be no encumbrances on any Deliverable and COBA will receive free and clear title to all Deliverables; (d) the performance, use or commercialization of the Deliverables and Services do not infringe the intellectual property or other rights of any third party or utilize misappropriated third party trade secret information; (e) COBA has the right to use for any purpose any ideas, methods, techniques, materials and information provided to it or otherwise obtained by COBA as a result of this Agreement without restriction, liability or obligations, except as may be specified in this Agreement or any SOW

8.2 COBA Materials. Title to any material or technical data that COBA pays for or is provided to Consultant by or on behalf COBA, including replacements ("COBA Property"), will remain or vest with COBA.

9. Intellectual Property Ownership

9.1 Ownership of Work Product. The exclusive right, title and interest in and to all works performed under this Agreement, and all materials and Deliverables prepared or developed as a result of Services performed will vest in COBA.

9.2 Consultant's Pre-Existing Works. Nothing contained in this Agreement will be construed to restrict, impair or deprive Consultant of any of its rights or proprietary interest in technology or products which existed prior to and independent of the performance of Services under this Agreement ("**Consultant Pre-Existing Works**").

10. Indemnification and Remedies

10.1 General Indemnification. Consultant will, at its expense, defend and indemnify COBA and its subsidiaries, affiliates, and agents and their respective officers, directors, shareholders, and employees, and COBA's customers (collectively, "**Indemnitees**") from and against any and all loss, cost, expense, damage, claim, demand, or liability, including reasonable attorney and professional fees and costs, incurred by or demanded of an Indemnitee ("**Loss**") arising out of, resulting from or occurring in connection with Consultant, its sub-tier contractor or agent's negligence, willful misconduct, or breach of the terms of this Agreement. All COBA remedies set forth in this Agreement are in addition to, and will in no way limit, any other rights and remedies that may be available to COBA at law or in equity.

10.2 Intellectual Property Indemnification. Consultant will, at its expense, defend and indemnify the Indemnitees from and against any and all Loss arising out of, resulting from, or occurring in connection with any claim, demand or allegation that the performance, use or commercialization of the Services or Deliverables: (a) infringe a claim of patent, copyright or trademark; (b) unlawfully disclose or use confidential or trade secret information; or (c) violate any other third party intellectual property right. If any injunction or restraining order is issued, Consultant will, at its expense, obtain for Indemnitee either the right to continue to use and commercialize the Services and Deliverables and the allegedly misappropriated trade secrets, or replace or modify the Services and Deliverables to make them non-infringing.

10.3 Right to Defend. Consultant will have the right to conduct the defense and settlement of any claim or action described in this Indemnification and Remedies Section, but in no event will Consultant enter into any settlement without COBA's prior written consent, which consent will not be unreasonably withheld. COBA may participate in the defense or negotiations to protect its interests.

11. Confidential Information

11.1 Confidential Information. All information, including without limitation specifications, samples, drawings, materials, know-how, designs, processes, Work Product, and other technical, business, or financial information, that: (a) is observed by Consultant or is supplied to Consultant by or on behalf of COBA; or (b) Consultant designs, develops, or creates in connection with this Agreement; and (c) all derivatives of (a) and (b) that Consultant has or will design, develop or create; are "**Confidential Information**" of COBA. All rights to Confidential Information belong exclusively to COBA, with COBA having the sole right to obtain, hold, and renew, in its own name or for its own benefit, patents, copyrights, registrations, or other appropriate protection.

11.2 Personnel Data. Consultant will: (a) treat all COBA personnel and prospective COBA personnel data including but not limited to names, identification numbers, social security numbers and personal and professional history, as Confidential Information; (b) use this data only for the limited purpose of providing Services under this Agreement and not use or permit any third party to use this data for any purpose, including but not limited to commercial marketing, promotions and sales; and (c) not permit any subsidiary, affiliate or division of Consultant to use the data in a manner prohibited by this Confidential Information Section. All personnel data will be used in accordance with all applicable data protection legislation and regulations.

11.3 Disclosure. Confidential Information may not be used by Consultant for any purpose other than for performing this Agreement, may not be disclosed to any third party, and will be returned to COBA upon the earlier of COBA's written request or completion of this Agreement. If, with COBA's prior written approval, Consultant furnishes Confidential Information to a sub-tier Consultant, Consultant will bind the sub-tier Consultant to confidentiality requirements substantially identical to those set forth in this Agreement and Consultant will remain responsible to COBA for any breach thereof by its personnel or sub-tier Consultants. Consultant will provide Confidential Information only to its employees who have a business need for the information in order to perform this Agreement and who are bound in writing to confidentiality obligations no less protective than those contained herein. No disclosure, description or other communication of any sort will be made by Consultant to any third party of the existence of this Agreement, including its terms and conditions, the substance of any discussions or negotiations concerning this Agreement, or either Party's performance under this Agreement.

12. Insurance

Consultant will maintain and carry liability insurance which includes commercial general liability coverage, automobile liability coverage.

13. Miscellaneous

13.1 Entire Agreement and Modifications. Exhibits I and II to this Agreement are incorporated by reference. This Agreement contains the entire agreement between the Parties and supersedes and replaces any prior or inconsistent agreements, negotiations, representations or promises, written or oral, between the Parties respecting the subject matter hereof. Neither Party has relied on any promises, inducements nor representations by the other, except those expressly stated in this Agreement. No modification of this Agreement will be binding on either Party unless set forth in a writing signed by an authorized representative of both Parties specifically stating it is amending this Agreement. No course of dealing, prior dealings, usage of trade or course of performance will be used to modify, supplement or explain any terms used herein.

13.2 Waiver. The failure of either Party to enforce at any time any of the provisions of this Agreement will not be construed to be a continuing waiver of any provisions in the Agreement, nor will any such failure prejudice the right of the Party to take any action in the future to enforce any provisions in this Agreement.

13.3 Assignment and Subcontracting. Consultant will not assign this Agreement or any rights or obligations under this Agreement or subcontract all or any material aspect of the work called for without the prior written approval of COBA. COBA specifically approves the following subcontractor: Destination Services LLC. COBA may assign this Agreement or any rights or obligations under this Agreement to any successor to all or substantially all of the assets of the business to which this Agreement relates without Consultant's consent and upon written notice to Consultant.

13.4 Notices. All notices and invoices relating to this Agreement ("**Notices**") must be in writing. Notices to the Parties will be sent to their respective addresses appearing below:

If to COBA:

City of Broken Arrow
P.O. Box 610
Broken Arrow, OK 74013
Attention: Lori Hill, COBA Tourism Director
e-mail: lhill@brokenarrowok.gov

If to Consultant:

Young Strategies, Inc.
P.O. Box 38306
Charlotte, NC 28278
e-mail: byoung@youngstrategies.com

13.5 Advertising. Consultant will not use COBA's name or marks or refer to or identify COBA in any advertising or publicity releases or promotional or marketing materials without COBA's prior written approval.

13.6 Force Majeure. Neither Party will be in default for any delay or failure to perform due to causes beyond its control and without its fault or negligence ("**Force Majeure Event**"), but any delay or failure to perform caused by the default of a sub-tier Consultant of Consultant will be excused only if (a) it is beyond the control of both Consultant and its sub-tier Consultant(s) and without the fault or negligence of any of them, and (b) the services to be furnished cannot be obtained from other sources in sufficient time to permit Consultant to meet the Delivery Schedule.

13.7 Compliance. Consultant personnel will observe and comply with all applicable national, state and local laws, regulations and ordinances in performing this Agreement.

13.8 Governing Law and Forum. This Agreement will be governed by the laws of the State of North Carolina.

13.9 Consultant hereby waives its right to file a lien against any property or assets of COBA or otherwise encumber such in a summary or other proceeding. Consultant will indemnify and hold COBA harmless for any liens or claims filed by Consultant's sub-tier contractors or agents against COBA relating to amounts owed by Consultant to its sub-tier contractor or agents.

13.10 Counterparts. This Agreement may be signed in one or more counterparts (including faxed or electronically scanned copies), each of which will be deemed one and the same original. Reproductions of this executed original (with reproduced signatures) will be deemed to be original counterparts of this Agreement.

AGREED TO:

CITY OF BROKEN ARROW

By: _____

(Signature)

(Printed Name)

Title: _____

Date: _____

AGREED TO:

YOUNG STRATEGIES, INC.

By: _____



(Signature)

(Printed Name)

Title: President

Date: May 3, 2016

EXHIBIT I

STATEMENT OF WORK

Proposed Project Outline, Time Frame and Deliverables

STATEMENT OF METHODOLOGY

Part One: Asset Inventory and Market Research (4-5 months)

A. Client Meeting, Destination and Organization Review:

- Four-day site visit and meetings –Berkeley Young and Steve Powell will visit Broken Arrow to tour the area, meet with civic/community leaders and the City of Broken Arrow staff, gain market knowledge first-hand and meet key travel industry leader/partners.
- Meetings with the City of Broken Arrow staff will include a detailed review of project objectives, current marketing programs and project materials needed for the research study.

B. Lodging Market Analysis - Lodging Survey, STR Analysis and Hotelier Interviews:

- YS/DS will survey all lodging properties in Broken Arrow to determine market segmentation, primary feeder markets, walk-in occupancy, and taxable room percentages.
- Interviews with Broken Arrow area hoteliers and innkeepers.
- Smith Travel Research (6-year trend report) - detailed analysis of the Broken Arrow market statistics and trends by geographic area and lodging type including ADR, RevPAR, Supply & Demand as well as annual, monthly and weekly occupancy analysis.
- Comprehensive lodging market analysis for the Broken Arrow meetings/group/sports market.

C. Visitor Profile Research by Market Segment (online surveys & intercept interviews):

- Purpose: You must understand the profile and planning behavior of the visitor segments in order to drive increased visitation. Surveys will document the size (universe) of the potential market from each of the identified group segments, identify the perceptions of Broken Arrow as a destination, and assess satisfaction levels, expenditures (economic impact) and unmet needs.
- The segments recommended to be surveyed (pending Client approval) include: leisure travelers (day-trip & overnight), meeting/convention attendees; cultural travelers, individual business travelers, team sports travelers. NOTE: partnership from City of Broken Arrow staff, hoteliers, attractions and other travel related businesses in sending survey links to 2015/16 Broken Arrow visitors and inquirers is essential to the success of this research. Survey links can be deployed on social media platforms and in emails directly to Broken Arrow visitors and inquirers.
- Intercept interviews with visitors will be conducted at specific times during the study to provide balanced data collection from attendees at events.
- Final Report Data to Include (Segmented by Market):
 - Profile of overall size (universe) of each identified group segment
 - Profile of current and most likely potential groups by segment
 - First time vs. repeat group patterns
 - Rank order of desired new products
 - Most effective outreach messages and methods with ROI of current marketing

D. Community Leader & Broken Arrow Resident Surveys - SWOT Analysis/Gap Analysis

- YS/DS will survey local travel industry and community leaders to identify destination strengths, weaknesses, opportunities and threats. Strategies will be recommended to overcome any market challenges and a product develop plan will be prepared to address issues within the destination.
- YS/DS will survey residents of Broken Arrow to determine community values, priorities, perception and value of core services, desired tax policy and effectiveness of municipal operations in Broken Arrow.

Part Two: Strategic Planning (2 months)

E. Strategic Planning Workshop

YS/DS project team leaders will conduct a planning workshop with any selected Broken Arrow community/civic/travel industry leaders desired. The format of the session will include:

- Presentation of all project research segments in detail with analysis.
- Analysis of the Broken Arrow market as a travel destination by segment (leisure, business, sports, meetings, etc.).
- Proposed research identified recommendations for Broken Arrow sales and marketing programs.
- Staff, board and leader input and discussions of research and recommended strategies.

F. Strategic Action Plan

Based on research findings a comprehensive, written strategic action plan for Broken Arrow will be completed. This plan will include an analysis of each market segment targeted in the study with action steps for growth in each.

- Cultural Assets Inventory
- Sports assets inventory
- Conference/Meeting/Events Assets Inventory
- Community SWOT/Gap analysis
- Direct sales efforts and/or incentives required.
- Marketing and promotions needed to target each segment.
- New product development/infrastructure anticipated and/or needed to remain competitive.
- Branding analysis and recommendations regarding future branding.
- Specific recommendations and conclusions for improving Broken Arrow's competitive position as well as the number of room nights booked and ROI.
- On-going research and tracking.

Research Study Deliverables

- PowerPoint presentation of research findings and recommendations to Broken Arrow travel industry leaders in planning workshop format.
- A digital format final report including all research segments and written recommendations.
 - Asset inventories
 - Research data and analysis
 - Strategic Action plan

CONSULTANT shall not perform any work outside said scope without the prior written approval of COBA.

EXHIBIT II

COMPENSATION and DELIVERY

The NOT-TO-EXCEED ESTIMATE for completion of the entire Statement of Work is \$54,160.
 The proposed hourly billing rate for any approved extra work is \$185 per hour.

PROPOSAL COSTS

PROFESSIONAL FEES

- Fees are allocated by research segment as proposed.
- All travel expenses are to be billed as incurred.
- Client is requested to obtain comp. lodging rooms to defray billable travel expenses

<u>Research Project Section</u>	<u>Billing Month (BM)</u>	<u>Fee</u>
A. Project Planning, Project Initiation	May '16	\$ 5,500
B. Destination Site Visit & Reconnaissance Lodging Survey, STR Analysis and Hotelier Interviews	June '16	\$ 6,550
C. Visitor Research 1 (online & intercept surveys):	July '16	\$ 8,375
D. Asset Inventories (Cultural, Sports, Meeting/Events)	Aug '16	\$ 7,280
E. Visitor Research 2 (online & intercept surveys)	Sep '16	\$ 8,675
F. Resident & Community Leader Survey SWOT Analysis/Gap Analysis	Oct '16	\$ 5,280
G. Strategic Planning Workshop	Nov '16	\$ 4,250
H. Strategic Action Plan	Dec '16	<u>\$ 3,850</u>
Research Project Cost		\$49,760
Travel expenses will be billed as incurred and added to project cost		
Site Visit Travel Expense Estimate	(June '16)	\$3,200
Strategic Planning Site Visit Estimate	(Nov '16)	\$1,200

Invoices shall be submitted as detailed in Section 13.4, are to be invoiced at the Completion of each Task, and are payable Net 30 Days.

Project Timeline –

Week	Action Steps	Hours
Weeks 1-3	Contract approved; Project team conference calls with the Broken Arrow for scheduling meetings, reviewing research methodology, etc.	20
Week 4	YS/DS team in Broken Arrow for reconnaissance and meetings YS/DS TEAM Meeting with Staff & Project Leaders Review project goals with staff Meeting with lodging managers to solicit survey participation/distribute survey	260
Weeks	Visitor survey questions & format approved by Broken Arrow YS/DS sends first online surveys out to visitors – continue through March Client sends inquiry databases to YS/DS for Feb. survey deployment YS/DS & Broken Arrow staff review lodging survey non-response & begin calling. Asset Inventories begin	96
Weeks	Online visitor survey continues Online inquiry survey deployed. Lodging survey underway, data and market analysis Current Organizational review	138
Weeks	Online visitor survey continues/Lodging report draft complete Current Organizational review complete Resident & Community leader survey deployed Competitive market analysis complete Research status update to Broken Arrow	60
Weeks	Inquiry/Intercept surveys closed data tabulation begins. Inquiry survey draft report complete Online visitor survey draft report complete Community leader report complete Competitive market report complete	95
Weeks	All data analysis finalized and report sections ready for proof Conference call with Broken Arrow to discuss findings and possible recommendations Draft recommendations and full research report ready for presentation Broken Arrow staff/leaders retreat with Report Presentation	96
Weeks	Final report with recommendations and strategy sent to Broken Arrow	55
	Total Project Team Hours Estimate	820

**CITY OF BROKEN ARROW'S ADDENDUM TO THE YOUNG STRATEGIES, INC.
AGREEMENT BETWEEN YOUNG STRATEGIES, INC. AND
THE CITY OF BROKEN ARROW**

Notwithstanding anything contained in the Agreement to which this Addendum is attached, the following definitions, terms and conditions, including any other provisions listed in the Addendum, shall control to the exclusion of any different or contrary statement contained anywhere else in the Agreement.

Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma without regard to the conflicts of laws or rules of any jurisdiction. The proper venue for any disputes arising hereunder shall be Tulsa County, Oklahoma.

Dated this ____ day of _____, 2016.

Young Strategies, Inc.

Signature

Printed Name

Title (Must be RSM)

City of Broken Arrow, a Municipal Corporation

Signature: City Manager
Michael L. Spurgeon

APPROVED AS TO FORM:

Kim Slinkard, Assistant City Attorney