

RESOLUTION NO. 118 -23  
OF THE GOVERNING BODY OF THE  
YAVAPAI-APACHE NATION

**A Resolution Authorizing Cliff Castle Casino to Execute a Master Service Agreement  
and Statement of Work with Zion and Zion, LLC for Marketing Agency Services**

- WHEREAS:** The Yavapai-Apache Tribal Council ("Council") is authorized to represent the Yavapai-Apache Nation ("Nation") and act on all matters that concern the health and welfare of the Nation, and to make decisions not inconsistent with or contrary to the Constitution of the Yavapai-Apache Nation ("Constitution") as provided under Article V(a) of the Constitution; and
- WHEREAS:** The Council is authorized to "manage all tribal economic affairs and enterprises" and to "appropriate and regulate the use of tribal funds" as provided under Article V (i) and (k), respectively, of the Constitution; and
- WHEREAS:** The Council is responsible for approving contracts that exceed \$100,000 as provided under Section 302 of the Cliff Castle Casino Business Code, Title 36; and
- WHEREAS:** The Casino General Manager recommends that the Casino enter into a Master Service Agreement and Statement of Work with Zion and Zion, LLC for marketing agency services for a one-year term starting August 1, 2023 for the fees set forth in the Statement of Work (Master Service Agreement and Statement of Work are attached to this Resolution as Exhibit A); and
- WHEREAS:** Fees under the Master Service Agreement and Statement of Work shall be funded from the Casino's approved Operating Budgets.

**NOW THEREFORE BE IT RESOLVED** that the Yavapai-Apache Nation Tribal Council, in Council assembled, at which a quorum is present, hereby authorizes the Cliff Castle Casino to execute a Master Service Agreement and Statement of Work with Zion and Zion, LLC for marketing agency services for a one-year term starting August 1, 2023 and for the fees set forth in the Statement of Work in accordance with the terms and conditions set out in the Master Service Agreement and Statement of Work attached to this Resolution as Exhibit A.

**BE IT FINALLY RESOLVED** that the Casino General Manager is hereby authorized to execute the above-referenced Agreement on behalf of the Cliff Castle Casino.

**CERTIFICATION**

I hereby certify that the foregoing resolution was adopted by an affirmative vote of the Tribal Council, with a quorum in attendance, presented for approval on July 11 2023, by a vote of 9 9 in favor, 0 opposed and 0 abstaining, pursuant to the authority contained under the Constitution of the Yavapai-Apache Nation as cited above.

  
Tanya Lewis, Chairwoman

**ATTEST:**

Karla Reimer  
Karla Reimer, Council Secretary

Approved as to Form:

Lisa Estensen  
Office of the Attorney General

# EXHIBIT A

Master Service Agreement and Statement of Work  
Between Cliff Castle Casino Hotel and Zion and Zion, LLC  
Marketing Agency Services

## MASTER SERVICE AGREEMENT

This Master Service Agreement ("Agreement"), takes effect August 1, 2023 ("Effective Date"), regardless of the date that it is fully executed and is entered into by and between Zion & Zion, LLC, an Arizona limited liability company, ("Agency") and Cliff Castle Casino Hotel, ("Client"). From time to time herein, Agency and Client shall collectively be referred to as "Parties," and shall be individually referred to as a ("Party").

### 1. SERVICES

#### A. Scope.

As directed by Client, Agency shall render services to Client pursuant to one or more work orders, written schedules, statements of work, project proposals, other project order documents, or definitive agreements, all of which are incorporated herein by reference, for ordering services, which document may specify the services, applicable fees, scope of work, and/or appropriate project timelines, as well as any terms and conditions which differ from or add to the general provisions of this Agreement (each an "SOW"), as mutually agreed upon in writing from time to time by the Parties pursuant to this Agreement (services described in each SOW or definitive agreement are collectively referred to as the "Services"). Each SOW shall specify the Services to be provided by Agency and other particulars that shall govern the Services rendered under each SOW.

#### B. SOW Authorization and Modification.

The SOW(s) and definitive agreements are to be signed on behalf of Client exclusively by authorized individuals of Client. Any deviation from or modification to a SOW or definitive agreement must be mutually agreed upon in writing and signed by an authorized representative of the Parties. In the event of any conflict or inconsistency between the provisions of an SOW and the provisions of this Agreement, the provisions of the SOW shall govern and control with respect to the interpretation of that SOW; provided, however, that the provisions of the SOW shall be so construed as to give effect to the applicable provisions of this Agreement to the fullest extent possible. The Parties also agree that Client may request ad hoc work to be performed by Agency via email that is outside an existing SOW and provided that Agency agrees via email to perform said work, the terms of this Agreement will apply where no formal SOW exists.

### 2. TERM AND TERMINATION

#### A. Term.

The term of this Agreement shall commence on the Effective Date hereof and shall continue for one (1) year ("Term"). Notwithstanding the foregoing, the Term shall extend through any term set forth in any SOW entered into during the Term so that this Agreement may cover any SOW.

#### B. Termination.

Termination Upon Breach. In the event that either Party materially breaches any material provision of this Agreement or any SOW executed in connection herewith and fails to (i) remedy such breach within thirty (30) calendar days; or (ii) where additional time is reasonably required, commence good faith efforts to remedy such breach within thirty (30) calendar days, of receipt of written notice from the non-breaching Party, then the non-breaching Party may immediately terminate the SOW, or, if applicable, this Agreement. In addition to all other rights and remedies at law or in equity, the non-breaching Party shall have the right to terminate this Agreement effective immediately upon the giving of written notice to such effect to the breaching Party. Either Party may terminate this Agreement and any SOW then in effect upon written notice to the other Party in the event the other Party (i) discontinues its business; (ii) files a petition for bankruptcy; (iii) becomes insolvent; or (iv) makes an assignment for the benefit of creditors.

Mutual Agreement to Terminate. The Parties may mutually agree in writing, at any time, to terminate this Agreement or any SOW unless otherwise prohibited therein.

Termination for Convenience. Either Party may terminate this Agreement at any time with or without cause with sixty (60) days' prior written notice.

C. Survival.

In the event of any termination of this Agreement or any SOW for any reason, all provisions of this Agreement or the SOW, as applicable, whose meaning requires them to survive shall survive the expiration or termination.

D. Effect of Termination.

Upon termination of this Agreement or any SOW for any reason, the Parties shall cooperate in good faith with respect to (i) the timely and effective transfer to the other Party of any Confidential Information (as defined below), data, or other information in such Party's possession or control, wherever situated, including, but not limited to, any data or other information under the control or possession of any third-party service provider described in this Agreement; and (ii) for a period of thirty (30) calendar days, other commercially reasonable post-termination transition efforts that are not unduly burdensome or inappropriate in light of the reason for termination. Client shall pay Agency all amounts due and owing under this Agreement or the terminated/expired SOW for services completed prior to the termination date.

3. AGENCY COMPENSATION

A. Fees for Services.

Client shall pay Agency the fees, charges, costs, and other amounts set forth in each SOW (collectively, the "Fee"). Any amendment to or change request with respect to any SOW may result in an increase in Fees. Unless otherwise specified in the applicable SOW, actual and reasonable expenses incurred by Agency in connection with the Services shall be charged to Client.

B. Hourly Rates.

For SOWs where no hourly rate schedule is provided, this Section 3(B) defines Agency's hourly rates for Agency's services.

Agency's hourly rates are shown in the following ("Rate Table"). These rates will remain in effect with no increase for the Initial Term, and then will increase eight percent (8%) over each previous year's rates each year thereafter. Agency reserves the right to classify its employees as it sees fit and to change the structure shown in the Rate Table to introduce additional tiers as Agency may deem necessary to align its employees and services with Client's needs. After-hours work, urgent and emergency requests may be logged at one and one half (1.5) times the actual hours spent at Agency's discretion.

Rate Table:

Agency ("Executive") personnel are defined as those Agency employees with Director, Senior Director and higher titles including but not limited to VP, SVP, and CxOs, as well as Agency's outside consultants. In select cases certain highly compensated personnel may also fall into this tier. These personnel are billed at three hundred and fifty dollars (\$350) per hour.

Agency ("Management and Sr Technical") personnel are defined as those who are both: (1) not already included in any prior definitions in this Section 3(B); and (2) have titles including but not limited to

Associate Director, Senior Analytics, Solutions Architects as well as department heads. These personnel are billed at two hundred and ninety-five dollars (\$295) per hour.

Agency ("Senior") personnel are defined as those who are both: (1) not already included in any prior definitions in this Section 3(B); and (2) where one or more of the following applies: (i) the person has a title that includes Senior in the title name; (ii) the person operates in a strategic capacity; (iii) the person's area of expertise is technical or digital. Examples include but are not limited to Agency's web developers, analysts, marketing automation team members and digital media team members. These personnel are billed at two hundred and fifty dollars (\$250) per hour.

Agency ("Mid-Level") personnel are defined as those who are both: (1) not already included in any prior definitions in this Section 3(B); and (2) do not meet the definition of Support below. These personnel are billed at one hundred and ninety-five dollars (\$195) per hour.

Agency ("Support") personnel are defined as those who are both: (1) not already included in any prior definitions in this Section 3(B); and (2) have titles with Assistant or Coordinator in their respective titles. These personnel are billed at one hundred and forty-five dollars (\$145) per hour.

#### C. Commission and Fees.

For SOWs where no commission schedule is provided, this Section 3(C) defines the commission schedule.

Media buying is billed separately by Agency. Agency will charge a commission on third-party expenses and traditional media of fifteen percent (15%) of Gross (defined by example below), ("Traditional Commission"). Agency will charge a commission on digital media of twenty percent (20%) of Gross ("Digital Commission"). Together, Traditional Commission and Digital Commission are referred to as ("Commission"). Any media billed to Agency by Agency's managed service provider sister company ZDSP already includes costs for ZDSP's services and technology. Agency will treat invoices from ZDSP as Net (defined by example below) costs and will add Digital Commission to invoiced amounts. Agency will also add Digital Commission to any media platform fees incurred by Agency to facilitate efficient media management including but not limited to ad serving, data warehousing, ETL, attribution, and reporting. Agency will take over all existing Client media, and all media will be billed through Agency.

An example of the calculation of commission and how Gross is calculated and how gross relates to Net is as follows. This is being provided in the event that Client is unfamiliar with how gross versus net functions:

Example Scenario 1: Client authorizes Agency to proceed with a total ten thousand dollar (\$10,000) digital budget for a given month to cover both Agency's commission and spend on media. This amount is the ("Gross"). The net, ("Net"), portion of the Gross is eight thousand dollars (\$8,000), which will be paid to a provider such as Google or ZDSP. The commission, in this case the Digital Commission, portion of the Gross is twenty percent (20%), two thousand dollars (\$2,000).

Example Scenario 2: Client authorizes Agency to proceed with a digital media spend budget for a given month, not including Agency's services, of eight thousand dollars (\$8,000), which will be paid to a provider such as Google or ZDSP. The Net portion of the Client's spend is eight thousand dollars (\$8,000). The Gross is calculated as Net divided by one minus the commission, in this case the Digital Commission, i.e.  $\text{Net} / (1 - 20\%) = \text{Gross}$ . The commission is then calculated as the Digital Commission times the Gross, i.e.  $20\% \times \text{Gross}$ .

For any media planning conducted by Agency that has been authorized by Client, Agency shall invoice Client for the time invested by Agency in said media planning in the event that Client does not place all or some of the media. Said invoicing shall be limited to making up the shortfall in Commission that would be equivalent to the Agency having placed said media and having earned commission on said media. Agency also

reserves the right to invoice Client for media planning and buying time that is in excess of that covered by the Commission.

D. Invoicing and Payment.

Unless otherwise stated in a SOW, exhibit, or definitive agreement, Agency shall invoice Client on a monthly basis. Client shall pay Agency within thirty (30) calendar days from the date of invoice for any of the Services and expenses provided or incurred hereunder.

For any SOW where a monthly payment schedule or Retainer is specified, Agency will submit its invoice for these services one month in advance of the service month unless Client is set up to pay invoices via credit card, in which case Agency will charge client's credit card and generate a paid invoice on or about the start of the service month. Invoices are subject to a three percent (3%) late fee for each thirty (30) days overdue. All payments shall be made in U.S. dollars. For any SOW where a total Project Budget is defined with no set payment schedule, Agency may, in the event that the project specified in said SOW is delayed by Client, issue invoices for prorated portions of any remaining amount of the Project Budget such that Agency has invoiced the full Project Budget by the time the Project Completion Date defined in said SOW arrives. Agency may occasionally request prepayment of certain items at Agency's discretion. Unused Project Budget or Retainer payments do not carry over past the term defined in an SOW.

Agency will invoice Client for media once Agency creates media insertion orders. Client may request that media insertion orders as backup at Client's request. Agency will reconcile actual media invoices against Agency's media insertion orders as actual media invoices become available. Client may also request that Agency send actual media invoices to Client once they become available so that Client may perform its own reconciliation.

4. APPROVALS

A. Purchasing.

Agency shall provide Client with cost estimates for all costs over five hundred dollars (\$500), for Client's review and written approval prior to Agency making any commitments relating to such projects. An email from Client's designated representative constitutes appropriate written approval for purposes of this Section 4(A).

B. Approvals.

Agency shall at all times secure appropriate prior approval from Client's designated representative(s) for the content of all advertising, copy for published materials, press releases, and other materials produced and/or placed by the Agency on Client's behalf. If any Client employee or Client contractor represents to Agency that said employee or contractor has approval authority on behalf of Client, Agency will not necessarily contest said representation. It is therefore incumbent upon Client to indicate if Agency should not accept approvals except from specific representatives designated by Client.

C. Client Designated Representative.

Client's designated representative shall be:

Name: James Gibson      and      Rojelio Rubio  
Title: Director of Marketing      General Manager

Client may designate a replacement representative in the case where Client's designated representative has moved on to another position, on prior written notice to Agency, which may include email notification.

## 5. PROPRIETARY RIGHTS; CONFIDENTIALITY; DATA MAINTENANCE

### A. Confidential Information and Proprietary Information.

Each Party acknowledges that it shall have access to certain confidential information of the other Party, including the terms and conditions of this Agreement. "Confidential Information" includes all non-public, confidential, or Proprietary Information disclosed by the other Party or identified by a Party as confidential. Each Party's Confidential Information shall (i) remain the sole property of that Party and (ii) be used by the other Party only as described herein and may not be disclosed, provided, or otherwise made available to any other third Party except that such Confidential Information may be disclosed to the other Party's employees or agents who have a need to know in the scope of their work during the time they are performing services under this Agreement and are under the other Party's security and control. Confidential Information does not include (i) information that the recipient can establish was already known to the recipient at the time it was disclosed in connection with this Agreement, (ii) information that is developed independently by the recipient or received from another third Party lawfully in possession of the information and having no duty to keep the information confidential, (iii) information that becomes publicly known other than by a breach of this Agreement, or (iv) information disclosed in accordance with a valid court order or other valid legal process. Each Party agrees to hold the Confidential Information of the other Party in the strictest confidence and not to copy, reproduce, distribute, publish, or disclose such Confidential Information to any person except as expressly permitted by this Agreement. "Proprietary Information" includes all trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trade marks), services marks, trade names, internet domain names, copyrights (including rights in computer software), moral rights, database rights, design rights, rights in know-how, rights in inventions (whether patentable or not) including, but not limited to, any and all renewals or extensions thereof, and all other proprietary rights (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world, including, but not limited to, any and all renewals or extensions thereof owned by a Party. The Parties acknowledge that each Party's Confidential Information is owned solely by such Party and that the other Party has no right of ownership in the Confidential Information of the other Party.

### B. Data, File and Software: Maintenance, Availability and Destruction.

Data, files or software created by Agency for Client or acquired by Agency for Client or provided to Agency by Client, including, but not limited to design files, software, fonts, research data, photography, video, and web code will occupy space on Agency's servers. Agency reserves the right to transfer parts or all of Client's data, files, and software to Client in order to free up capacity on Agency's servers. Client must communicate in writing to Agency within thirty (30) calendar days after receipt of the transferred data, files, and software if it believes that any data, files or software are missing from said transfer, corrupt, or in any way unavailable or inaccessible. Client agrees that any Client data, files or software that are destroyed or unrecoverable due to technical or natural causes such as partial or complete failure of a storage medium, including but not limited to hard drives, DVDs, CDs, and USB drives, or because of environmental factors, including but not limited to fire or water damage, regardless of how caused, are not the responsibility of Agency. Client agrees that Agency will not be held liable for any damages resulting from such loss of Client data, files or software, and Agency will not be responsible for recreating or reacquiring any data, files or software resulting from such loss.

### C. Use and Disclosure.

Each Party shall use the Confidential Information only for the purpose of performing its duties and exercising its rights within the course and scope of this Agreement, and/or as authorized by this Agreement, and shall make no use or disclosure of Confidential Information, in whole or in part, for any other purpose. Each Party agrees to preserve the confidential and proprietary nature of the Confidential Information at all times and agrees that it shall not sell, sublicense, or otherwise make the other Party's Confidential Information available to any unauthorized party. Each Party shall not disclose any Confidential Information except as provided herein. Each Party represents and warrants that it has not disclosed another Party's Confidential Information prior to the Effective Date.

D. Remedies.

The Parties acknowledge and agree that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination or use of the Confidential Information would destroy or diminish the value of such information. The damages to the disclosing Party that would result from the unauthorized dissemination or use of the Confidential Information would be impossible to calculate. Therefore, the Parties hereby agree that the disclosing Party shall be entitled to injunctive relief, without any requirement to post a bond or other security, preventing the dissemination or use of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether in law or in equity. The disclosing Party shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief.

6. INDEMNIFICATION

A. Mutual Indemnification.

Agency covenants and agrees to indemnify, defend, and hold harmless Client, and its officers, directors, agents and employees, from and against any and all claims, demand, costs, expenses, judgment, losses, suits and damages arising out of or connected with any breach of this Agreement by Agency, its agents, employees, licensees of any covenant or agreement made by Agency pursuant to this Agreement. Client covenants and agrees to indemnify, defend, and hold harmless Agency and its shareholders, officers, directors, agents and employees, from and against any and all claims, demands, costs, expenses, judgments, losses, suits and damages arising out of or connected with any breach by Client, its agents, employees, licensees of any covenant or agreement made by Client pursuant to this Agreement.

B. Cooperation and Settlement.

Upon the assertion of any claim or the commencement of any suit or proceeding against any Party indemnified hereunder by any third party that may give rise to indemnification liability of either Party hereunder, the Party indemnified hereunder shall promptly notify the indemnifying Party of the existence of such claim and shall give the indemnifying Party reasonable opportunity to defend and/or settle the claim at its own expense and with counsel of its own selection. The indemnifying Party shall at all times have the right to fully participate in such defense at its own expense and shall not be obligated, against its consent, to participate in any settlement. The Party indemnified hereunder shall make available to the indemnifying Party all books and records relating to the claim, and the Parties agree to render to each other such assistance as may reasonably be requested in order to insure a proper and adequate defense. A Party indemnified hereunder shall not make a settlement of any claims on behalf of an indemnifying Party hereunder without the prior written consent of the indemnifying Party which shall not be unreasonably withheld or delayed.

C. Survival of Provisions.

The provisions of Section 6 hereof shall survive the expiration of this Agreement.

7. LIMITATION OF LIABILITY

EXCEPT AS OTHERWISE SET FORTH EXPLICITLY HEREIN, NEITHER PARTY MAKES ANY ADDITIONAL WARRANTIES OF ANY KIND EXPRESS OR IMPLIED, AND THE WARRANTIES OF TITLE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY EXCLUDED. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR BUSINESS OR LOSS OF DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. EXCEPT FOR EACH PARTY'S INDEMNITY OBLIGATIONS AS SET FORTH IN SECTION 6, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR AMOUNTS IN EXCESS OF THE LESSER OF (I) THE AMOUNTS PAID OR PAYABLE TO AGENCY FOR AGENCY'S SERVICES, EXCLUDING THIRD-

PARTY COSTS, WITHIN THE THREE (3) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CAUSE OF ACTION MINUS ANY AMOUNTS THAT PAID OR PAYABLE BY AGENCY TO ANY THIRD PARTIES WITHIN THE THREE (3) MONTHS PRECEDING THE EVENT GIVING RISE TO THE CAUSE OF ACTION OR (II) ONE HUNDRED THOUSAND UNITED STATES DOLLARS (\$100,000). THE PARTIES ACKNOWLEDGE THEY ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH HEREIN, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE PARTIES AGREE THAT THE LIMITATION AND EXCLUSIONS OF LIABILITY AND DISCLAIMERS SPECIFIED IN THIS AGREEMENT SHALL SURVIVE AND APPLY EVEN IF FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

## **8. OTHER PROVISIONS**

### **A. Protection of Client's Property.**

Agency shall take reasonable precautions to safeguard Client property entrusted to Agency's custody or control, but in the absence of negligence on Agency's part, or willful disregard by Agency of Client's property rights, Agency is not to be held responsible for any loss, damage, destruction or unauthorized use by others of any such property.

### **B. Right to Modify Plans.**

To the extent that it does not conflict with an SOW and if Agency agrees, Client may modify, reject, cancel or stop any and all plans, schedules or work in process. In such event, Agency shall immediately take proper steps to carry out Client instructions. In turn, Client agrees to assume Agency's liability for all authorized and noncancellable commitments as covered by estimates approved by Client in writing; to reimburse Agency for all expenses approved by Client in writing in accordance herewith incurred by Agency; to pay Agency any related service charge in accordance with the provisions of this Agreement; and to indemnify Agency for all claims and actions by third parties for damages and expenses that result from carrying out Client instructions pursuant to this Section 8(B).

### **C. Relationship Between the Parties.**

The Parties are acting hereunder as independent contractors. Agency shall not be considered or deemed to be an employee, joint venture or partner of Client. Agency's personnel shall not be considered employees of Client, shall not be entitled to any benefits that Client grants its employees, and have no authority to act or purport to act on Client's behalf. Neither Client nor Agency has the right, and shall not seek, to exercise any control over the other Party. Each Party shall be solely responsible for hiring, firing, promoting, demoting, rates of pay, paying taxes, benefits and other terms and conditions in regard to its own personnel.

### **D. Services to Client's Designees.**

Should Client direct Agency in writing to make purchases for or render services to third parties, Client and the third party shall be jointly and severally liable to Agency even though Agency may render invoices to, or in the name of, the third party.

### **E. Force Majeure.**

No delay in or failure of performance by either Party under this Agreement will be considered a breach to the extent caused by the occurrence of any event beyond its reasonable control, including, but not limited to, Acts of God, power outages, governmental restrictions, pandemic or epidemic, strike, catastrophe or unusual internet delays, outages, or congestion, denial of service attacks, and other "hacker" activity.

### **F. Assignment.**

Neither Party shall assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other; which consent shall not be unreasonably withheld except that each Party may transfer this Agreement to any corporate affiliate into which Party has merged or all or substantially all of its assets are transferred.

G. Headings.

The headings appearing in this Agreement are inserted only as a matter of convenience and for reference only and in no way define, limit or describe the scope and intent of this Agreement or any of the provisions hereof. In the event of a conflict between the headings and the content of a section, the content of the section shall control.

H. Severability.

If any provision of this Agreement is adjudged by a court to be invalid, void, or unenforceable, the Parties agree that the remaining provisions of this Agreement shall not be affected thereby.

I. Notices.

All notices required or permitted under this Agreement with the exception of routine operational communications) shall be in writing and shall be deemed received only if sent by (a) certified or registered first class mail, postage prepaid and return receipt requested, (b) overnight delivery, (c) personal delivery. All notices must be addressed to the Party at an address provided by the Party, the business address associated with the website URL of the Party's company, or at the published business or corporate addresses of the Party. A Party may change its address from time to time upon prior written notice to the other specifying the address and the effective date of the new address. Such notice will be deemed to be given and received and will become effective: (a) on the date on which the notice is delivered, if notice is given by hand delivery; (b) on the date of actual receipt, if the notice is sent by overnight delivery; or (c) on the date on which it is received or rejected as reflected by a return receipt if given by certified or registered United States mail.

J. Delay.

Client acknowledges that delays in Client approval(s) or in Client's provision of content necessary to complete any project(s) will not be cause for any delay in invoicing by Agency and Client will be responsible for timely payment despite these delays.

K. Standard of Care.

Agency shall use commercially reasonable efforts to provide services to Client hereunder in accordance with industry standards. The Agency shall provide its services and meet its obligations under this Agreement in a workmanlike manner, using knowledge and recommendations for performing the service which meet generally acceptable standards in the Agency's industry, community and region, and will provide a standard of care at the least equal to care used by service providers similar to the Agency on similar projects.

L. Ownership.

Agency shall maintain control and possession of any content developed or managed for Client until all financial obligations on the part of Client are complete in regards to the specific content. Thereafter, all content created by Agency specifically for Client shall become property of Client with the exception of Agency's proprietary and/or intellectual property including, but not limited to: online marketing accounts, campaigns, bidding strategies, keyword lists, negative keyword lists, online ad copy and associated technology behind landing pages and online campaign destination sites and pages.

M. Technology.

Any solutions implemented by Agency for Client will utilize technology of Agency's choosing. Incorporation by Agency of any specific technologies requested by Client are at Agency's discretion and if agreed to by Agency, may cause Client to incur additional costs. For any website that Agency develops for Client, Agency will provide Client with web hosting environment specifications so that Client may arrange web hosting that meets said specifications.

No particular speed or load time can be guaranteed by Agency for any software, website or app that Agency develops. Any particular specifications related to speed or load time that are requested by Client will be accommodated by Agency based the available hours and funds that have been allocated in the relevant SOW.

("Test Browsers") are defined as: (1) on a desktop, the latest two major versions of each of the following: Microsoft Edge, Firefox, Chrome and Safari; (2) on a mobile device, the latest two major versions of each of the following: Safari, Samsung Internet and Chrome; where the latest version of each is defined as the most recent version of each browser that is available on Agency's cross-browser testing platform as of the date that Agency begins testing. Client acknowledges that Agency's testing generally begins at some time before launch of the website solution and that if Client requires browsers to be tested that were not available when Agency began testing, that this will be done if Agency agrees and at additional cost to Client.

("Current Plug-Ins") are defined as the set of website plug-ins such as WordPress plug-ins that Agency has decided to use when implementing a website solution for Client where the version of each plug-in that Agency uses is the version that is available on the date that Agency first starts development work to include said plug-in. Client acknowledges that Agency's development work to include plug-ins generally begins at some time before launch of the website solution and that if Client requires plug-in versions to be included that were not available when Agency began development work, that this will be done if Agency agrees and at additional cost to Client.

N. Accessibility.

Any website solutions implemented by Agency for Client will not take into account WCAG (Web Content Accessibility Guidelines) or any other accessibility recommendations current or future unless explicitly stated elsewhere in this Agreement or in an SOW. Client acknowledges that said guidelines contain ambiguity and that in the event that this Agreement or a particular SOW does include provisions for Agency to adhere to accessibility guidelines, Agency's efforts to do so are on a good faith best-effort basis and that to the extent that Client's desires Agency to comply beyond this, Client agrees to pay any additional costs of Agency attempting to do so.

O. Errors and Omissions.

Agency will make a good faith effort to avoid introducing errors in its work, however, the large volume of work that Agency will perform for Client comes with the probability of occasional errors occurring in said work. In no event shall Agency be liable for any nonmaterial errors or omissions or consequences related to said errors or omissions in work produced for Client.

P. Technology Platforms Availability.

Agency will work to ensure that technical services such as, but not limited to, web hosting, email and phone tracking are operational. However, as third-party hardware, software and services are involved and some degree of failure is inevitable, said availability cannot be guaranteed.

Q. Talent Usage.

Client acknowledges that some or all of the creative produced for Client by Agency or provided by Client to Agency may contain materials, including but not limited to models, actors, and photography, where the usage rights for said materials may have to be acquired or, if previously acquired, may have an expiration date. For any materials provided by Client to Agency, it is Client's sole responsibility to ensure that any and all usage rights have been acquired and have not expired. Client shall indemnify and hold Agency harmless from, any and all claims, actions, suits, proceedings, expenses, damages, and liabilities, including attorneys' fees, arising out of, or connected with, any violation of usage rights acquired by Client for creative produced by Agency. For any materials developed by Agency for Client, where Client takes over the placing of said materials, it is Client's responsibility to ensure that any usage rights have not expired.

R. Outcomes.

No particular outcomes are guaranteed by Agency in the performance of Agency's work. Agency will perform all of its services on a good faith basis.

S. Non-Solicitation.

For a period of twenty-four (24) months after the expiration of this MSA, Client agrees not to solicit Agency's employees.

T. Time Tracking and Performance of Work.

Agency's employees' and contractors' time is tracked in an online tracking system ("Tracking System"). Parties agree that the Tracking System will serve as proof that Agency has performed any hourly work billed to Client. The amount of detail recorded in the Tracking System includes the date or from time to time the approximate date of the work, the number of hours of work performed, which may be recorded in by Agency as a minimum fifteen (15) minutes on each occasion that time is logged, the category of work, for example "strategy," "web development," "creative," "media," etc. and the name of the Agency employee that performed the work or the Agency employee responsible for any Agency contractor that performed the work. Note that additional detail is not tracked and Client requests for additional detail must be made in advance of the hours being performed, and the level of additional detail must be agreed to by Agency.

U. Travel Costs.

Agency will invoice Client for any reasonable travel costs with no mark up and accompanied by copies of receipts where feasible. Mileage rates will be calculated using the prevailing IRS per mile figure.

V. Jurisdiction and Venue; Choice of Law.

Client is a Subordinate Economic Organization of the Yavapai-Apache Nation ("Nation"), which is a federally recognized Indian Tribe that enjoys sovereign immunity. Client possesses all of the Nation's rights, privileges, and immunities, including, without limitation, the Nation's immunity from suit. In consideration for Agency entering into the Agreement, Client does hereby grant, consent, and agree to a limited waiver of its sovereign immunity from lawsuits as follows: Any and all disputes arising under the Agreement, whether brought by Client or Agency, shall be resolved according to the laws of the Yavapai-Apache Nation (including the laws of the State of Arizona where the laws of the Nation do not address a particular matter), and the Tribal Courts of the Yavapai-Apache Nation shall have exclusive jurisdiction to decide all such actions, as provided hereinafter in this Section. Client and Agency agree that the Yavapai-Apache Nation Tribal Courts shall have personal and subject matter jurisdiction over the resolution of disputes arising under this Agreement as provided in this Section. The Tribal Court's jurisdiction, as limited hereunder, shall not be construed to empower the court to enter a judgment or award that reaches or encumbers the assets or property of the Yavapai-Apache Nation other than those of Client, and only the assets of Client shall be liable for the satisfaction of any such judgment or award. It is acknowledged and agreed between Client and Agency that the right to seek relief in the Tribal Court as provided by this Section of the Agreement shall extend only to Client and Agency and shall

apply only to an action by Client or Agency for any claim for default or breach of the Agreement, and that this right to seek relief in Tribal Court shall therefore not extend to or be effective as to any claim or action brought by any party other than Client or Agency (including without limitation any purported third party beneficiary of the Agreement). The liability of Client for any recovery by Tribal Court action as provided for hereunder shall be limited to actual unpaid contractual obligations (compensatory damages) and/or specific performance, as limited by Section 7 of this Agreement, and shall not in any case include general, consequential, incidental, special, punitive or any other damages, all of which are hereby expressly declared to be outside of the scope of the limited jurisdiction of the Tribal Court as provided for under this Section of the Agreement. This limited waiver of sovereign immunity is not a waiver of the immunity of any tribal official, employee or agent of Client or Yavapai-Apache Nation.

**9. COMPLETE AGREEMENT**

**A. Complete Agreement.**

The foregoing, together with all definitive agreements executed in connection with this Agreement, the Exhibits, and all executed SOWs constitute the complete integrated agreement between the Parties concerning the subject matter hereof. The same cancel and supersede as of the date hereof any and all prior agreements or understandings between the Parties. These terms may not be waived, changed or modified except in a writing duly signed by the Parties.

**B. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which shall constitute one and the same Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN **WITNESS WHEREOF**, this Agreement has been duly executed and delivered by the authorized signatories of the Parties hereto, to be effective as of the Effective Date.

**ZION & ZION, LLC:**

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

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

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

Email: \_\_\_\_\_

Address: 74 E Rio Salado Pkwy  
Suite 200  
Tempe, AZ 85281

**CLIFF CASTLE CASINO HOTEL:**

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

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

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

Email: \_\_\_\_\_

Address: 555 Middle Verde Road  
Camp Verde, AZ 86322

## STATEMENT OF WORK (#0001)

This Statement of Work ("SOW") adopts and incorporates by reference the terms and conditions of the Master Service Agreement, i.e. the Agreement, by and between Zion & Zion, LLC, an Arizona limited liability company, ("Agency") and Cliff Castle Casino, a Subordinate Economic Organization of the Yavapai-Apache Nation, ("Client"), dated August 1, 2023, as it may be amended from time to time. This SOW is entered into effect as of August 1, 2023 ("Effective Date") regardless of the date that this SOW is executed by the Parties. This SOW is made a part of the Agreement.

Services performed under this SOW shall be conducted in accordance with and be subject to the terms and conditions of this SOW and the Agreement. Capitalized terms used but not defined in this SOW shall have the meanings set forth in the Agreement.

### **TERM; TERMINATION**

The term of this SOW shall commence on the Effective Date hereof and shall continue for twelve (12) months ("Term"). This SOW may be cancelled by either Party with sixty (60) days' notice.

### **COMPENSATION STRUCTURE**

For the purposes of this SOW, a ("Project Budget") that will be applied to services provided by Agency's in-house personnel ("In-House Services") is set at four hundred and eleven thousand two hundred and fifty dollars (\$411,250) and will be applied to a mix of the services described in the In-House Services section below. A separate additional budget ("Third-Party Services Budget") is set at eighty-seven thousand five hundred dollars (\$87,500) for services that Agency will outsource to others, ("Third-Party Services"). A separate additional budget ("Digital And Traditional Media Gross Budget") is set at one million one hundred thousand dollars (\$1,100,000) for the gross cost of all digital and traditional media, ("Digital And Traditional Media"). The Project Budget, Third-Party Services Budget, and Digital And Traditional Media Gross Budget are committed and fixed.

<b>In-House Services</b>	<b>Amount</b>
Branding and Positioning	\$30,000
Creative Concepting & Design Services	\$165,000
Social Media Content Creation and Community Management	\$73,500
Public Relations and Media Relations	\$56,250
Website Maintenance and Updates	\$24,000
Digital & Traditional Media Strategy	\$25,000
Analytics & Reporting	\$37,500
<b>TOTAL</b>	<b>\$411,250</b>

<b>Third-Party Services</b>	<b>Amount</b>
Creative Production (Direction, Talent, Lighting, Location, Editing, Photography, Videography, etc.)	\$82,500
Third-Party Data	\$5,000
<b>TOTAL</b>	<b>\$87,500</b>

<b>Digital And Traditional Media</b>	<b>Amount</b>
Digital and Traditional Media Gross Cost (includes Agency Commission)	\$1,100,000
<b>TOTAL</b>	<b>\$1,100,000</b>

## **INVOICING**

### **For the Project Budget:**

<b>Date Issued</b>	<b>Amount</b>
Four invoices, each issued one month in advance of each of the following, so that payment can be received by the start of the service month—July — October, 2023	\$48,000
Eight invoices, each issued one month in advance of each of the following, so that payment can be received by the start of the service month—November, 2023 – June, 2024	\$27,406.25
<b>TOTAL</b>	<b>\$411,250</b>

### **For Digital And Traditional Media:**

Invoices to be issued when insertion orders are generated.

### **For Third-Party Services:**

Invoices to be issued when Agency contracts for Third-Party Services.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this SOW has been duly executed and delivered by the authorized signatories of the Parties hereto, to be effective as of the Effective Date.

**ZION & ZION, LLC:**

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

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

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

Email: \_\_\_\_\_

Address: 74 E Rio Salado Pkwy  
Suite 200  
Tempe, AZ 85281

**CLIFF CASTLE CASINO HOTEL:**

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

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

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

Email: \_\_\_\_\_

Address: 555 Middle Verde Road  
Camp Verde, AZ 86322