



**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE
CITY OF LOS ALTOS, CALIFORNIA AND
XXXXXX
FOR
XXXXXXXX SERVICES FOR
XXXXXXXX**

THIS AGREEMENT is made and entered into as of the _____ day of _____, 2016, by and between the CITY OF LOS ALTOS, a municipal corporation, hereinafter referred to as “**CITY**,” and XXXXXXX, a xxx, hereinafter referred to as “**CONSULTANT**.”

RECITALS

WHEREAS, CITY desires to retain a qualified consulting firm to perform XXXXXXX and XXXXXXX to produce a xxxxxxx; and

WHEREAS, CITY has determined that CONSULTANT possesses the skills, experience and certifications required to provide the services required by the CITY; and

WHEREAS, CONSULTANT is an independent consultant providing similar professional services to numerous other cities; and

WHEREAS, CITY desires to retain CONSULTANT to provide professional services under the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises identified herein, the parties mutually agree as follow:

1. SCOPE OF SERVICES.

A. CONSULTANT. CONSULTANT shall assist the CITY by executing the following scope of services in a satisfactory and proper manner in accordance with requirements provided by the City Manager, or his designee. Services will include, but not be limited to, the items noted in CONSULTANT’S proposal Exhibit A

B. CITY. CITY will provide all xxxxxxx. (this section if needed)

2. SCHEDULE. Services of CONSULTANT are to commence upon the execution of this Agreement and shall continue in full force and effect until it is terminated. It is intended that the termination of this Agreement be contemporaneous with final acceptance of all services described in Exhibit A by the Los Altos City Manager or designee. CONSULTANT shall meet the completion date as indicated on Exhibit A.

3. **TERM.** The term of this Agreement shall continue in full force and effect for the (example: FY2017/18 and FY2018/19 years, and can be extended for two additional years for a total of five years.) Changes in Scope of Services and Payment Schedule, Exhibit A, can be amended, as needed, thirty (30) days prior to the expiration of each fiscal year. If the Agreement is terminated, it is intended that the termination of the Agreement be contemporaneous with final acceptance of all services by CITY.
4. **COMPENSATION.** CONSULTANT will perform the work outlined above and will invoice CITY upon completion of the project. CONSULTANT's total compensation, including reimbursed expenses, for the services set forth for the Contract shall not exceed \$x,xxx as outlined in Exhibit A.

Suggested samples of COMPENSATION language _____

Example 1

- A. **Compensation.** The compensation shall be paid to CONSULTANT based on the following hourly rates guide:

| | |
|-------------|-------------------|
| Consultant | \$xxx/hour |
| Partner | \$xxx/hour |
| Xxx process | \$xx,x00 flat fee |
| Yyy process | \$x,x00 |

The total contract value is anticipated not to exceed \$xx,x00.

- B. **Method of Payment.** As a condition precedent to any payment to CONSULTANT under this Agreement, CONSULTANT shall submit monthly to the CITY a statement of account which clearly sets forth the designated items of work for which the billing is submitted. Each statement of account shall also include a detailed record of the month's actual reimbursable expenditures.

CITY shall review CONSULTANT's monthly statement and pay CONSULTANT for services rendered hereunder at the rates if acceptable and in the amounts provided hereunder on a monthly basis in accordance with the approved monthly statements. Payment will be made according to the CITY's standard Payment Schedule and Terms.

Example 2

- A. **Compensation.** The professional fee for the xxxx will be \$xx,x00 for the Scope of Work articulated in this quote. This fee includes all onsite visits for the purpose of meeting with the Client as well as xxxxxxxxxx.

| REIMBURSABLE EXPENSES | NOT TO EXCEED (NTE) |
|--|---------------------|
| Advertising | \$ xxx |
| Brochure & mailing | \$x,x00 |
| Misc. supplies/administrative expenses | \$ xx0 |
| Printing & FedEx | \$ xxx |
| Xxxxxxxxxxxx | \$ xxx |
| Consultant travel | \$x,x00 |

Project expenses (NTE)

\$x,x00

Reimbursable expenses are not included in the professional fees. Professional fees and expenses are typically billed on a monthly basis as work is completed and expenses are incurred.

Total cost of professional fees and expenses will not exceed \$xx,x00. The advertising expense listed above reflects online and print advertising in the xxxxxxxx. Additional advertising will be handled directly by the CITY.

Xxxxxx will serve as the lead consultant and primary contact for this service. Xxxxxx as support staff will also be engaged in the successful completion of this agreement.

- B. **Method of Payment.** As a condition precedent to any payment to CONSULTANT under this Agreement, CONSULTANT shall submit monthly to the CITY a statement of account which clearly sets forth the designated items of work for which the billing is submitted. Each statement of account shall also include a detailed record of the month's actual reimbursable expenditures.

CITY shall review CONSULTANT's monthly statement and pay CONSULTANT for services rendered hereunder at the rates if acceptable and in the amounts provided hereunder on a monthly basis in accordance with the approved monthly statements. Payment will be made according to the CITY's standard Payment Schedule and Terms.

End of Example

5. **OWNERSHIP OF WORK.** All documents furnished to CONSULTANT by CITY and all reports and supportive data prepared by CONSULTANT by this Agreement are CITY's property, for the exclusive use of the CITY, shall be given to CITY at the completion of CONSULTANT services. CITY shall be granted xxx

CONSULTANT may contract with others to provide xxxx (if needed)

6. **COMPLIANCE WITH LAW.** CONSULTANT shall use due professional care to comply with all applicable federal, state and local laws, codes, ordinances and regulations. CONSULTANT represents to CITY that it has, and will maintain through the term of the Agreement, all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required for CONSULTANT to practice its profession. CONSULTANT shall maintain a City of Los Altos Business License.
7. **INSURANCE.** CONSULTANT shall procure and maintain for the duration of the contract insurance as described in Exhibit B against claims for injuries to persons or damages to property with may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, his agent, representatives, employees or subcontractors.

8. **RELATIONSHIP BETWEEN THE PARTIES.** CONSULTANT is, and at all times shall remain, an independent contractor, not an agent or employee of the CITY. CONSULTANT shall be solely responsible for all acts of its employees, agents or sub-consultants, including any negligent acts or omissions. CONSULTANT shall have no authority to act on behalf of the CITY or to bind the CITY to any obligation whatsoever, unless the CITY provides prior written authorization to CONSULTANT. As an independent contractor, CONSULTANT shall not be entitled to any benefit, right or compensation from the CITY other than those provided for in this Agreement.
9. **INDEMNIFICATION.** To the fullest extent permitted by law, CONSULTANT shall defend at its own defense through counsel approved by CITY, indemnify and hold harmless CITY, its officers, representatives, agents and employees, volunteers against any and all suits, damages, costs, fees, claims, demands, causes of action, liabilities, losses and expenses, including without limitation, reasonable attorneys' fees, to the extent arising or resulting directly or indirectly from all acts or omissions to act of CONSULTANT or CONSULTANT'S officers, assistants, subcontractors, employees or agents rendering services under this agreement, including all claims relating to the injury or death of any person or damage to any property, excluding, however, such liability, claims, losses, damages, or expenses arising from CITY'S gross negligence or willful misconduct.
10. **TERMINATION OF AGREEMENT.** Notwithstanding any other provision of this Agreement, the CITY may terminate this Agreement without cause at any time upon giving ten days written notice to CONSULTANT. In the event of such a termination, CONSULTANT shall be entitled to any compensation owed for services rendered up to the effective date of termination.
11. **WRITTEN NOTIFICATION.** Any notice, demand, request, consent, approval, or communications that either party desires or is required to give to the other party shall be in writing and either served personally or sent by prepaid, first class mail. Any such notice, demand, etc., shall be addressed to the other part at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within 48 hours from the time of mailing it mailed as provided in this section.

CITY: City of Los Altos
Christopher Jordan, City Manager
1 N. San Antonio Road
Los Altos, CA 94022

CONSULTANT: XXX
Contact
Address
Address

12. **PARTIAL INVALIDITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
13. **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision of the Agreement.

14. **NO IMPLIED WAIVERS.** The failure of either party at any time to require performance by the other party of any provisions hereof shall not affect in any way the full right to require such performance at any time thereafter. Nor shall the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.
15. **ASSIGNMENT.** The parties recognize that a substantial inducement to CITY for entering into this Agreement is the professional reputation, experience and competence of CONSULTANT. CONSULTANT, therefore, shall not assign, delegate, nor transfer any rights or obligations pursuant to this Agreement, except as specified in this Agreement, without the prior written consent of CITY. Any assignment of any right or obligation or subcontracting of any work without CITY consent shall be void and of no effect.
16. **TAXES.** CONSULTANT agrees to file tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement, and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. CONSULTANT agrees to indemnify and hold CITY harmless from any liability which it may incur to the United States of America or the State of California as a consequence of CONSULTANT'S failure to pay, when due, all such taxes and obligations. In the event CITY is audited for compliance regarding withholding or other applicable taxes, CONSULTANT agrees to furnish CITY with proof of payment of taxes on these earnings.
17. **NONDISCRIMINATION.** CONSULTANT shall not discriminate against any person related to the performance under this Agreement (including any employee or applicant) or the basis of race, color, religious creed, national origin, gender, physical or mental disability, marital status, or sexual orientation.
18. **DEFAULT.** In the event CONSULTANT fails to provide the services set forth in this Agreement due to the fault of CONSULTANT, CITY shall have the right to either do the work itself or hire an outside contractor to perform those services.
19. **VENUE.** In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be held exclusively in a state court in the County of Santa Clara, San Jose, California.
20. **CONSTRUCTION.** To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in the manner that avoids any violation of statute, ordinance, regulation or law.
21. **AMENDMENT.** This Agreement constitutes the complete and exclusive statement of the Agreement to CITY and CONSULTANT. It may be amended or extended from time-to-time by written agreement of the parties hereto.
22. **INTEGRATION.** This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by CONSULTANT for CITY, and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any

modification of this Agreement shall be effective only if it is in writing, signed by the party to be charged.

23. EXECUTION. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement it shall not be necessary to produce or account for more than one such counterpart.

24. IN WITNESS WHEREOF, the CITY and CONSULTANT have executed this Agreement as of the date first above written.

APPROVED AS TO CONTENT:

Director

APPROVED AS TO FORM:

City Attorney

AGREED:

Christopher Jordan
City Manager

CONSULTANT:

XXX
Title

EXHIBIT B
INSURANCE

CONSULTANT shall provide his insurance broker(s)/agent(s) with a copy of these requirements and request that they provide Certificates of Insurance complete with copies of all required endorsements to: **Director of Community Development , City of Los Altos, 1 N. San Antonio Rd., Los Altos, CA 94022**

Minimum Scope of Insurance

Coverage shall be *at least as broad as*:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 0001 covering CGL on an “occurrence” basis, including products-completed operations, personal & advertising injury, with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant’s profession, with limit no less than **\$1,000,000** per occurrence or claim, \$2,000,000 aggregate.

Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy, with endorsements under CG 20 26, with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations.

Primary Coverage. For any claims related to this contract, the Consultant’s insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant’s insurance and shall not contribute with it.

Notice of Cancellation. Each insurance policy required above shall be endorsed to state that coverage shall not be canceled except after thirty (30) days’ prior written notice (10 days for non-payment) has been given to the City.

Waiver of Subrogation. Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this

waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Claims Made Policies. If any of the required policies provide claims-made coverage:

5. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
6. Insurance must be maintained and evidence of insurance must be provided *for at least three (3) years after completion of the contract work.*
7. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of *three (3)* years after completion of contract work.

Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.