



AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is effective as of November 1, 2014, between the CITY of Walnut, a municipal corporation ("CITY") and MORSE PLANNING GROUP, Sole Proprietorship ("CONSULTANT"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This AGREEMENT shall commence on November 1, 2014 and shall remain and continue in effect until tasks described herein are completed, but in no event later than October 31, 2016, unless sooner terminated pursuant to the provisions of this AGREEMENT.

2. SERVICES

CONSULTANT shall perform the tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. CONSULTANT shall complete the tasks according to the schedule of performance which is set forth in Exhibit B.

3. PERFORMANCE

CONSULTANT shall at all times faithfully, competently and to the best of his/her/its ability, experience, and talent, perform all tasks described herein. CONSULTANT shall employ, at a minimum, generally accepted industry standards and practices utilized by persons engaged in providing same or similar services as are required of CONSULTANT hereunder in meeting its obligations under this AGREEMENT.

4. CITY MANAGEMENT

CITY's designated representative shall represent CITY in all matters pertaining to the administration of this AGREEMENT, review and approval of all products submitted by CONSULTANT, but not including the authority to enlarge the Tasks to Be Performed or change the compensation due to CONSULTANT. City Council shall be authorized to act on CITY's behalf and to execute all necessary documents which enlarge the Tasks to Be Performed or change CONSULTANT's compensation, subject to Section 5 hereof.

5. PAYMENT

(a) The CITY agrees to pay CONSULTANT in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit C. This amount shall not exceed one-hundred eleven thousand three-hundred dollars (\$ 111,300) for the total term of the AGREEMENT unless additional payment is approved as provided in this AGREEMENT.

(b) CONSULTANT shall not be compensated for any non-contemplated services rendered in connection with its performance of this AGREEMENT unless such additional services are authorized in advance and in writing by CITY. CONSULTANT shall only be compensated for any additional services in the amounts and in the manner as agreed to by CITY and CONSULTANT.

(c) CONSULTANT will submit invoices monthly for actual services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the CITY disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within ten (10) days of receipt of an invoice of any disputed fees set forth on the invoice.

6. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

(a) The CITY may at any time, for any reason, with cause, suspend or terminate this AGREEMENT, or any portion hereof, by serving upon the CONSULTANT written notice. Upon receipt of said notice, the CONSULTANT shall immediately cease all work under this AGREEMENT, unless the notice provides otherwise.

(b) In the event this AGREEMENT is terminated pursuant to this Section, the CITY shall pay to CONSULTANT the actual value of the agreed work performed up to the time of termination. Upon termination of the AGREEMENT pursuant to this Section, the CONSULTANT will submit an invoice to the CITY pursuant to Section 5.

7. DEFAULT OF CONSULTANT

(a) The CONSULTANT's failure to comply with the provisions of this AGREEMENT shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this AGREEMENT, CITY shall have no obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and can terminate this AGREEMENT immediately by written notice to the CONSULTANT. If such failure by the CONSULTANT to make progress in the performance of work hereunder arises out of causes beyond the CONSULTANT's control, and without fault or negligence of the CONSULTANT, it shall not be considered a default.

(b) If the CITY determines that the CONSULTANT is in default in the performance of any of the terms or conditions of this AGREEMENT, there shall be cause to serve upon the CONSULTANT a written notice of the default. The CONSULTANT shall have ten (10) working days after service of said notice in which to cure the default by rendering a satisfactory performance. In the event that the CONSULTANT fails to cure its default within such period of time, CITY shall have the right, notwithstanding any other provision of this AGREEMENT, to terminate this AGREEMENT without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this AGREEMENT.

8. OWNERSHIP OF DOCUMENTS

(a) CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by CITY that relate to the performance of services under this AGREEMENT. CONSULTANT shall maintain adequate records of services

provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of CITY or its designees at reasonable times to such books and records; shall give CITY the right to examine and audit said books and records; shall permit CITY to make transcripts there from as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this AGREEMENT. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

(b) Upon completion of, or in the event of termination or suspension of this AGREEMENT, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this AGREEMENT shall become the sole property of the CITY and may be used, reused, or otherwise disposed of by the CITY without the permission of the CONSULTANT. With respect to computer files, CONSULTANT shall make available to the CITY, at the CONSULTANT's office and upon reasonable written request by the CITY, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

(c) CITY shall have sole determination of the public's rights to documents under the Public Records Act, and any third-party requests of CONSULTANT shall be immediately referred to CITY, without any other actions by CONSULTANT.

9. INDEMNIFICATION

(a) Indemnification for Professional Liability. When the law establishes a professional standard of care for CONSULTANT's services, to the fullest extent permitted by law, CONSULTANT shall indemnify, protect, defend and hold harmless CITY and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or sub-consultants (or any entity or individual that CONSULTANT shall bear the legal liability thereof) in the performance of professional services under this AGREEMENT. With respect to the design of public improvements, the CONSULTANT shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit D without the written consent of the CONSULTANT. CONSULTANT shall not be liable to any third parties for any liability exempted by statute.

(b) Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, CONSULTANT shall indemnify, defend and hold harmless CITY, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this AGREEMENT by CONSULTANT or by any individual or entity for which CONSULTANT is legally liable, including but not limited to officers, agents, employees or sub-consultants of CONSULTANT. CONSULTANT shall not be liable to third parties for any liability exempted by statute.

(c) General Indemnification Provisions. CONSULTANT agrees to obtain executed indemnity AGREEMENTs with provisions identical to those set forth here in this section from each and every sub-consultant or any other person or entity involved by, for, with or on behalf of CONSULTANT in the performance of this AGREEMENT. In the event CONSULTANT fails to obtain such indemnity obligations from others as required here, CONSULTANT agrees to be fully responsible according to the terms of this section. Failure of CITY to monitor compliance with these requirements imposes no additional obligations on CITY and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend CITY as set forth here is binding on the successors, assigns or heirs of CONSULTANT and shall survive the termination of this AGREEMENT or this section.

10. INSURANCE

CONSULTANT shall maintain, prior to the beginning of and for the duration of this AGREEMENT, insurance coverage as specified in Exhibit F attached hereto and incorporated as part of this AGREEMENT. By executing this AGREEMENT, CONSULTANT confirms that he/she/it has reviewed and approved the requirements of Exhibit F.

11. INDEPENDENT CONSULTANT

(a) CONSULTANT is and shall at all times remain as to the CITY a wholly independent CONSULTANT. The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the CITY. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatsoever against CITY, or bind CITY in any manner.

(b) No employee benefits shall be available to CONSULTANT or its personnel in connection with the performance of this AGREEMENT. Except for the fees paid to CONSULTANT as provided in the AGREEMENT, CITY shall not pay salaries, wages, or other compensation to CONSULTANT for performing services hereunder for CITY. CITY shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing services hereunder.

12. LEGAL RESPONSIBILITIES

The CONSULTANT shall keep informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this AGREEMENT. The CONSULTANT shall at all times observe and comply with all such laws and regulations. The CITY, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

13. NOTICES

Any notices which either party may desire to give to the other party under this AGREEMENT must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable

To CITY: City of Walnut
Attention: City Clerk
21201 La Puente Road
P.O. Box 682
Walnut, CA 91789

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AGREEMENT based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. Any amendments to this AGREEMENT must be in a writing of equal dignity.

18. CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

CONSULTANT is bound by the contents of CITY's Request for Proposal, Exhibit "D" hereto and incorporated herein by this reference, and the contents of the proposal submitted by the CONSULTANT, Exhibit "E" hereto. In the event of conflict, the requirements of CITY's Request for Proposals and this AGREEMENT shall take precedence over those contained in the CONSULTANT's proposals.

19. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this AGREEMENT on behalf of CONSULTANT warrants and represents that he/she has the authority to execute this AGREEMENT on behalf of the CONSULTANT and has the authority to bind CONSULTANT to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CITY OF WALNUT

By: Nancy Tragan
[City Designee] Mayor

Attest: Terese DeDea

City Clerk

Approved As To Form:

[Signature]
City Attorney

CONSULTANT

By: Collette L. Morse
(Signature)

Collette L. Morse, AICP
(Typed Name)

Its: Principal
(Title)

EXHIBIT A

TASKS TO BE PERFORMED

SEE ATTACHED PROPOSAL.

EXHIBIT B

SCHEDULE OF PERFORMANCE

SEE ATTACHED PROPOSAL.

EXHIBIT C

PAYMENT SCHEDULE

SEE ATTACHED PROPOSAL.

EXHIBIT D

REQUEST FOR PROPOSAL

SEE ATTACHED PROPOSAL.

EXHIBIT E

PROPOSAL SUBMITTED BY CONSULTANT

SEE ATTACHED PROPOSAL.

EXHIBIT F

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of Work, CONSULTANT will maintain insurance in conformance with the requirements set forth below. CONSULTANT acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CITY in excess of the limits and coverage required in this AGREEMENT and which is applicable to a given loss, will be available to CITY.

[Note: Minimum limit for each coverage may be verified with Risk Manager]

Insurance Requirements. Without limiting CONSULTANT's indemnification of CITY, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this AGREEMENT, policies of insurance of the type and amounts described below and in a form satisfactory to CITY. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with an assigned policyholders' rating of A or higher and Financial Size Category Class VII or higher in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the CITY's Risk Manager. CONSULTANT shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:
 - a. General Liability: Insurance Services Office form CG 00 01.
 - b. Automobile Liability: Insurance Services Office form number CA 00 01 covering bodily injury and property damage for all activities of the CONSULTANT arising out of or in connection with Work to be performed under this AGREEMENT, including coverage for any owned, hired, non-owned or rented vehicles.
 - c. Professional Liability: Errors and omissions liability insurance appropriate to the CONSULTANT's Services to be performed in connection with this AGREEMENT.
 - d. Workers' Compensation: Insurance as required by Section 3700 of the Labor Code of State of California, and Employer's Liability Insurance covering all persons providing services on behalf of the CONSULTANT and all risks to such persons under this AGREEMENT.
2. Minimum Limits of Insurance. CONSULTANT shall maintain limits of insurance no less than:
 - a. General Liability: \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability.
 - b. Automobile Liability: \$1,000,000 combined single limit for each accident.
 - c. Professional Liability (Errors & Omissions): \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date or retroactive date must be before the effective

date of this AGREEMENT and CONSULTANT agrees to maintain continuous coverage through a period of no less than three years after completion of the services required by this AGREEMENT.

- d. **Workers' Compensation and Employer's Liability: Statutory Limits for Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 policy limit.**
3. Other Provisions. Insurance policies required by this AGREEMENT shall contain the following provisions:
- a. All Policies.
 - i. **Proof of Insurance.** CONSULTANT shall provide certificates of insurance to CITY as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by CITY's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with CITY at all times during the term of AGREEMENT. CITY reserves the right to require complete, certified copies of all required insurance policies, at any time.
 - ii. **Duration of Coverage.** Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Consultant, his agents, representatives, employees or sub-consultants.
 - iii. **CITY's Rights of Enforcement.** In the event any policy of insurance required under this AGREEMENT does not comply with these specifications or is canceled and not replaced, CITY has the right but not the duty to obtain the insurance it deems necessary and any premium paid by CITY will be promptly reimbursed by CONSULTANT or CITY will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, CITY may cancel this AGREEMENT.
 - iv. **Enforcement of Agreement Provisions (non estoppel).** CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the CITY to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the CITY nor does it waive any rights hereunder.
 - v. **Requirements not limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, waiver of any coverage normally provided by insurance or to fulfill the indemnification provisions and requirements of this AGREEMENT. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.
 - vi. **Notice of cancellation.** Each insurance policy required by this Exhibit "F" shall be endorsed and state the coverage shall not be cancelled by the insurance agent,

broker, or either party to this AGREEMENT. CONSULTANT agrees to provide CITY with a thirty (30) day notice of cancellation or nonrenewal of coverage for each required coverage.

- vii. **Agency's right to revise requirements.** The CITY reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the CITY and CONSULTANT may renegotiate CONSULTANT's compensation.
 - viii. **Self-insured retentions.** Any deductibles or self-insured retention must be declared to and approved by CITY. CITY reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by CITY.
 - ix. **Timely notice of claims.** CONSULTANT shall give CITY prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's performance under this AGREEMENT, and that involve or may involve coverage under any of the required liability policies.
 - x. **Additional insurance.** CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of work.
- b. General Liability and Excess Liability Coverage.
- i. **Additional insured status.** Policies shall provide or be endorsed to provide that CITY and its officers, officials, employees, and agents shall be additional insureds under such policies.
- c. Workers' Compensation and Employer's Liability Coverage.
- i. **Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this AGREEMENT shall be endorsed to waive subrogation against CITY, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against CITY, and shall require similar written express waivers and insurance clauses from each of its sub-consultants.