

AGREEMENT TO PERFORM PROFESSIONAL SERVICES

This agreement for the provision of Senate Bill 90 (SB 90) state mandated reimbursement claiming services (“Agreement”) is made and entered in this 3rd day of September, 2019 (“Effective Date”), by and between the City of Redlands, a municipal corporation (“City”) and MGT of America Consulting, LLC (“Consultant”). City and Consultant are sometimes individually referred to herein as a “Party” and, together, as the “Parties.” In consideration of the mutual promises contained herein, City and Consultant agree as follows:

ARTICLE 1 – ENGAGEMENT OF CONSULTANT

- 1.1 City hereby engages Consultant to provide Senate Bill 90 (SB 90) state mandated reimbursement claiming services for City (the “Services”).
- 1.2 The Services shall be performed by Consultant in a professional manner, and Consultant represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional consultants in the industry providing like and similar types of Services.

ARTICLE 2 – SERVICES OF CONSULTANT

- 2.1 The Services that Consultant shall perform are more particularly described in Exhibit “A,” entitled “Scope of Services,” which is attached hereto and incorporated herein by reference.
- 2.2 Consultant shall comply with applicable federal, state and local laws and regulations in the performance of this Agreement including, but not limited to, State prevailing wage laws.

ARTICLE 3 – RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant information in its possession that may assist Consultant in performing the Services.
- 3.2 City designates Farrah Jenner, Assistant Finance Director, as City’s representative with respect to performance of the Services, and such person shall have the authority to transmit instructions, receive information, interpret and define City’s policies and decisions with respect to performance of the Services.

ARTICLE 4 – PERFORMANCE OF SERVICES

- 4.1 Consultant shall perform and complete the Services in a prompt and diligent manner in accordance with the schedule set forth in Exhibit “B,” entitled “Project Schedule,” which is attached hereto and incorporated by reference.
- 4.2 The term of this Agreement shall be for a period of three (3) years from the Effective Date of this Agreement (the “Initial Term”). The City shall have the option to extend the Initial Term of this Agreement by two (2) additional one-year terms (each, an “Extended Term”),

on the same terms and conditions, by providing written notice to Consultant at least thirty (30) days prior to the expiration of the Initial Term or any Extended Term.

- 4.3 If Consultant's Services include deliverable electronic visual presentation materials, such materials shall be delivered in a form, and made available to the City, consistent with City Council adopted policy for the same. It shall be the obligation of Consultant to obtain a copy of such policy from City staff.

ARTICLE 5 – PAYMENTS TO CONSULTANT

- 5.1 The total annual compensation for Consultant's performance of the Services shall not exceed the amount of nineteen thousand five hundred dollars (\$19,500) for a period of three years after the Effective Date, with two additional one-year renewal options bringing the total to an amount not-to-exceed thirty-three thousand one hundred fifty dollars (\$33,150). City shall pay Consultant on a fixed fee basis, all expenses included in the fixed fee. Consultant shall bill equal amounts twice each fiscal year accordance with Exhibit "C" entitled "Project Costs and Hourly Rates" attached hereto and incorporated herein by reference.
- 5.2 Consultant shall submit monthly invoices to City describing the Services performed during the preceding month. Consultant's invoices shall include a brief description of the Services performed, the dates the Services were performed, the number of hours spent and by whom, and a description of reimbursable expenses related to the Services. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice.
- 5.3 Any notice or other communication required, or which may be given, pursuant to this Agreement, shall be in writing. Any such notice shall be deemed delivered (i) on the date of delivery in person; (ii) five (5) days after deposit in first class registered mail, with return receipt requested; (iii) on the actual delivery date if deposited with an overnight courier; or (iv) on the date sent by facsimile, if confirmed with a copy sent contemporaneously by first class, certified, registered or express mail; in each case properly posted and fully prepaid to the appropriate address set forth below, or such other address as a Party may provide notice in accordance with this section:

City

Farrah Jenner, Assistant Finance Director
City of Redlands
35 Cajon Street
P.O. Box 3005 (mailing)
Redlands, CA 92373

Consultant

J. Bradley Burgess
MGT of America Consulting, LLC
4320 West Kennedy Boulevard
Tampa, FL 33609
bburgess@mgtconsulting.com

ARTICLE 6 – INSURANCE AND INDEMNIFICATION

- 6.1 The following insurance coverage required by this Agreement shall be maintained by Consultant for the duration of its performance of the Services. Consultant shall not perform

any Services unless and until the required insurance listed below is obtained by Consultant. Consultant shall provide City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services. Insurance policies shall include a provision prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City.

- A. Workers' Compensation and Employer's Liability insurance in the amount that meets statutory requirements with an insurance carrier acceptable to City, or certification to City that Consultant is self-insured or exempt from the workers' compensation laws of the State of California. Consultant shall execute and provide City with Exhibit "D" entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference prior to performance of the Services.
 - B. Comprehensive General Liability insurance with carriers acceptable to City in the minimum amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, for public liability, property damage and personal injury is required. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
 - C. Business Auto Liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit bodily injury liability and property damage liability. This coverage shall include all Consultant owned vehicles used in connection with Consultant's provision of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. City shall be named as an additional insured and such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
 - D. Consultant is expressly prohibited from assigning or subcontracting any of the Services without the prior written consent of City. In the event of mutual agreement by the Parties to assign or subcontract a portion of the Services, Consultant shall add such assignee or subcontractor as an additional insured to the insurance policies required hereby and provide City with the insurance endorsements prior to any Services being performed by the assignee or subcontractor.
- 6.2 Consultant shall defend, indemnify and hold harmless City and its elected officials, employees and agents from and against any and all claims, losses or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by any negligent act or omission by, or the willful misconduct of, Consultant, or its officers, employees and agents in performing the Services.

ARTICLE 7 – CONFLICTS OF INTEREST

- 7.1 Consultant covenants and represents that it does not have any investment or interest in any real property that may be the subject of this Agreement or any other source of income, interest in real property or investment that would be affected in any manner or degree by the performance of Consultant's Services. Consultant further covenants and represents that

in the performance of its duties hereunder, no person having any such interest shall perform any Services under this Agreement.

7.2 Consultant agrees it is not a designated employee within the meaning of the Political Reform Act because Consultant:

A. Does not make a governmental decision whether to:

- (i) approve a rate, rule or regulation, or adopt or enforce a City law;
- (ii) issue, deny, suspend or revoke any City permit, license, application, certification, approval, order or similar authorization or entitlement;
- (iii) authorize City to enter into, modify or renew a contract;
- (iv) grant City approval to a contract that requires City approval and to which City is a party, or to the specifications for such a contract;
- (v) grant City approval to a plan, design, report, study or similar item;
- (vi) adopt, or grant City approval of, policies, standards or guidelines for City or for any subdivision thereof.

B. Does not serve in a staff capacity with City and in that capacity, participate in making a governmental decision or otherwise perform the same or substantially the same duties for City that would otherwise be performed by an individual holding a position specified in City's Conflict of Interest Code under Government Code section 87302.

7.3 In the event City determines that Consultant must disclose its financial interests, Consultant shall complete and file a Fair Political Practices Commission Form 700, Statement of Economic Interests, with the City Clerk's office pursuant to the written instructions provided by the City Clerk.

ARTICLE 8 – GENERAL CONSIDERATIONS

8.1 In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.

8.2 Consultant shall not assign any of the Services, except with the prior written approval of City and in strict compliance with the terms and conditions of this Agreement. Any assignment or attempted assignment without such prior written consent may, in the sole discretion of City, result in City's immediate termination of this Agreement.

8.3 Consultant is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor its agents shall have control over the conduct of Consultant or Consultant's employees, except as herein set forth. Consultant shall supply all necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Consultant are for its account only, and in

no event shall Consultant or personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of City. Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind City to any obligation.

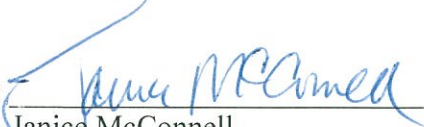
- 8.4 This Agreement may be terminated by City, in its sole discretion, by providing not less than five (5) days prior written notice to Consultant of City's intent to terminate. If this Agreement is terminated by City, an adjustment to Consultant's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Consultant at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Consultant. Upon receipt of a termination notice, Consultant shall immediately discontinue its provision of the Services and, within five (5) days of the date of the termination notice, deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of project related data, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in performing the Services. Consultant shall be compensated on a pro-rata basis for Services completed up to the date of termination.
- 8.5 Consultant shall maintain books, ledgers, invoices, accounts and other records and documents evidencing costs and expenses related to the Services for a period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement. Such books shall be available at reasonable times for examination by City at the office of Consultant.
- 8.6 This Agreement, including the Exhibits incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, written proposals or verbal agreements relating to such matters are superseded by this Agreement. Except as otherwise provided for herein, any amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.
- 8.7 This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 8.8 If one or more of the sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate the remaining sentences, clauses, paragraphs or sections contained herein, unless to do so would deprive a Party of a material benefit of its bargain under this Agreement.

IN WITNESS WHEREOF, duly authorized representatives of City and Consultant have signed in confirmation of this Agreement.

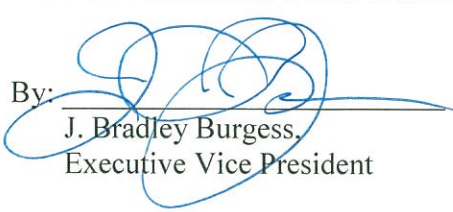
CITY OF REDLANDS

MGT OF AMERICA CONSULTING, LLC

By:


Janice McConnell,
Assistant City Manager

By:


J. Bradley Burgess,
Executive Vice President

Attest:


Jeanne Donaldson, City Clerk

EXHIBIT "A"

SCOPE OF SERVICES

MGT of America Consulting, LLC will provide the City with the following services as part of this project:

- Identify all possible SB 90 claiming opportunities.
- Provide claiming summaries and data collection guides to assist the City with understanding all of the eligible components of each program.
- Provide on-site interview between our staff and key department staff to ensure that each department understands precisely what data is required, and what the internal deadlines are for submission. The Consultant will also help departments to understand the appropriate levels of documentation required for each claim the City files.
- Prepare indirect cost rate proposals (ICRPs) for all departments filing SB 90 claims in a given year. ICRPs will only be prepared and used if they produce an indirect cost rate greater than 10%.
- Complete elements of each SB 90 claim and will produce an original hard copy for the State Controller and Adobe PDF form claims which will be emailed to the City for review and signature in advance of the claiming deadline.
- Prepare and file all eligible SB 90 claims for fiscal year 2018-19 and the subsequent two fiscal years, 2019-20 and 2020-21, with two additional one (1) year options for the subsequent fiscal years with the California State Controller's Office.
- Prepare and file all eligible SB 90 claims for all new or first-time mandates, which have claiming instructions issued by the State Controller's office during fiscal year 2018-19 and the subsequent two Fiscal Years, 2019-20 and 2020-21, with two additional (1) year options for the subsequent fiscal years.
- Assist the City with payment tracking.
- Assist the City with knowledge transfer and training related to the SB 90 process at the State level and also related to other local agencies in California, provide proactive news that could affect the SB 90 process, reports, and the earliest notification of new SB 90 claims possible.

EXHIBIT "B"

PROJECT SCHEDULE

Proposed Project Timeline and Schedule

TYPICAL SCHEDULE

JULY - OCT	OCT - DEC	DEC-JAN	FEB
Meet with the City SB 90 Coordinator & Departments	All mandate specific claim & financial data due to MGT	MGT distribute draft claims and ICRPs for City review	Claims to City for final review & signature
MGT Begin data collection & follow up on eligible activities	MGT Claim Preparation: Compile data, calculate indirect cost rates, process data & prepare claims	Edits and changes to draft claims due to MGT	Hand Deliver Claims to State Controller

EXHIBIT "C"

PROJECT COSTS AND HOURLY RATES

Claims Covered	Fee	Payment Terms
FY 2018-19 Annual Claims & New Claims Released During FY 2019-20	Fixed Fee: \$6,500	Payable in two payments: 50% invoiced on September 1st and 50% invoiced on April 1st.
FY 2019-20 Annual Claims & New Claims Released During FY 2020-21	Fixed Fee: \$6,500	Payable in two payments: 50% invoiced on September 1st and 50% invoiced on April 1st.
FY 2020-21 Annual Claims & New Claims Released During FY 2021-22	Fixed Fee: \$6,500	Payable in two payments: 50% invoiced on September 1st and 50% invoiced on April 1st.
Option Year: FY 2021-22 Annual Claims & New Claims Released During FY 2022-23	Fixed Fee: \$6,700	Payable in two payments: 50% invoiced on September 1st and 50% invoiced on April 1st.
Option Year: FY 2022-23 Annual Claims & New Claims Released During FY 2023-24	Fixed Fee: \$6,950	Payable in two payments: 50% invoiced on September 1st and 50% invoiced on April 1st.

EXHIBIT "D"**WORKERS' COMPENSATION INSURANCE CERTIFICATION**

Every employer, except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

CHECK ONE

☒ I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work and activities required or permitted under this Agreement. (Labor Code §1861).

_____ I affirm that at all times, in performing the work and activities required or permitted under this Agreement, I shall not employ any person in any manner such that I become subject to the workers' compensation laws of California. However, at any time, if I employ any person such that I become subject to the workers' compensation laws of California, immediately I shall provide the City with a certificate of consent to self-insure, or a certification of workers' compensation insurance.

I certify under penalty of perjury under the laws of the State of California that the information and representations made in this certificate are true and correct.

MGT of America Consulting, LLC

Date: 8.29.19

By: _____

J. Bradley Burgess, Executive Vice President