

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (this "Agreement") made the ___ day of _____, 2019, between the City of San Luis, Arizona, a municipal corporation of the State of Arizona ("CITY"), and Matrix Design Group, Inc., a Colorado corporation, authorized to do business in the State of Arizona ("CONSULTANT"). CONSULTANT and CITY may be referred to singularly as the "Party" and collectively as the "Parties."

RECITALS

The Parties entered into this Agreement based on the following facts, understandings and intentions of the Parties:

- A. CITY has determined that it is in the public interest to proceed with the work described below in Section One (the "Project"); and
- B. CITY issued a Request for Proposals (the "RFP"), seeking proposals from vendors for professional consulting services, which RFP is attached hereto as Exhibit 1; and
- C. CONSULTANT has made a Proposal ("Proposal") to the CITY to provide such professional services, which Proposal is attached hereto as Exhibit 2; and
- D. CITY desires to engage CONSULTANT and CONSULTANT agrees to render professional services to perform certain specific duties and produce the specific work as set forth in the Proposal; and
- E. CONSULTANT represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. CONSULTANT further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing introduction and Recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the CITY and the CONSULTANT hereby agree as follows:

SECTION ONE.

DESCRIPTION OF PROJECT

The Project is described in the attached Exhibit 1 and Exhibit 2, January 31, 2019, proposal for the City of San Luis General Plan Update by Matrix Design Group, Inc.

**SECTION TWO.
PROPOSAL SUBMITTAL**

The Parties mutually agree that the attached Exhibit 1 and Exhibit 2 as described in Section One above is incorporated in this Agreement by this reference.

**SECTION THREE.
SCOPE OF WORK**

CONSULTANT shall provide the Services as set forth in the Scope of Work described in the Proposal and RFP attached to and incorporated in this Agreement by this reference.

**SECTION FOUR.
SCOPE OF WORK—ADDITIONAL SERVICES**

CITY and CONSULTANT understand that it may be necessary, for CONSULTANT to perform or secure the performance of consulting and related services other than those set forth in the proposal. If the CITY requests additional services, CONSULTANT shall advise CITY in writing of the need for additional services and the cost and estimated time to perform the services. CONSULTANT shall not proceed to perform any such additional service until CITY has determined that such service is beyond the scope of the basic services to be provided by CONSULTANT and has given its written authorization to proceed. Written approval for performance and compensation for additional services may be granted by San Luis Director of Planning and Zoning(referred to as the “Director of Planning and Zoning”) or the San Luis City Manager. Except as stated in this paragraph, any additional service shall require a written amendment to this Agreement and shall be subject to all the provisions of this Agreement.

**SECTION FIVE.
AUTHORITY OF THE DIRECTOR OF PLANNING AND ZONING**

CONSULTANT shall perform all necessary services provided under the Agreement and outlined in the proposal and shall do, perform, and carry out such work in a satisfactory and proper manner as determined by and to the satisfaction of the Director of Planning and Zoning. The Director of Planning and Zoning reserves the right to make changes, additions or deletions, to the scope of work as deemed to be necessary or advisable to implement and carry out the purposes of the Agreement. The Director of Planning and Zoning is authorized to execute the change orders on behalf of the CITY.

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**SECTION SIX.
RESPONSIBILITY OF CONSULTANT**

By executing this Agreement, CONSULTANT represents and states to the CITY that he possesses or will arrange to secure from others all necessary professional capabilities, experience, resources and facilities necessary to provide to CITY the services contemplated under this Agreement. CONSULTANT further warrants that he will follow the current generally accepted practices of the profession to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the Project for which services are rendered under this Agreement.

**SECTION SEVEN.
INDEPENDENT CONTRACTOR**

The Parties to this Agreement agree that CONSULTANT, his employees, agents and subcontractors shall be independent contractors with regard to the providing of services under this Agreement and that CONSULTANT, CONSULTANT's employees, agents and subcontractors shall not be considered to be employees or agents of CITY for any purpose and will not be entitled to any of the benefits CITY provides for its employees. Rights of the CONSULTANT as independent contractor include but are not limited to control of the work, manner and methods of the work, and the right to contract with other employers.

Rights of the CITY include but are not limited to inspection and approval of the work and the right to contract with others to perform the work.

**SECTION EIGHT.
MATERIALS AND EQUIPMENT**

CONSULTANT shall furnish at his own expense all materials and equipment necessary to carry out the terms of this Agreement.

**SECTION NINE.
DIGITAL FILES**

CONSULTANT shall furnish copies of all deliverables in digital format. Files shall be compatible with the current versions used by CITY. All other deliverables shall be in accordance with the RFP and Proposal.

**SECTION TEN.
EMPLOYMENT OF PERSONNEL**

CONSULTANT shall provide experienced and qualified personnel to carry out the work to be performed by CONSULTANT under this Agreement and shall be responsible for and in full control of the work of such personnel.

**SECTION ELEVEN.
TIME OF PERFORMANCE**

Subject to the provisions of this Agreement, CONSULTANT agrees to perform the Project in accordance with the Proposal. The services of CONSULTANT are to be undertaken and completed in such a sequence as to assure their expeditious completion in light of the purpose of this Agreement.

**SECTION TWELVE.
COMPENSATION**

Subject to the provisions of this Agreement, CONSULTANT agrees to perform the work and services specified and outlined in the Proposal for \$181,953. CONSULTANT shall prepare invoices in accordance with this Agreement and shall submit to CITY once a month covering the amount and value of the Project satisfactorily performed by CONSULTANT up to the date of such invoice. CITY shall reimburse CONSULTANT for work satisfactorily performed on a time and materials basis. Satisfactory performance will be determined as described in Section Five.

**SECTION THIRTEEN.
ASSIGNMENT**

CONSULTANT shall not assign any duties, responsibilities or obligations under this Agreement without the prior written consent of CITY.

**SECTION FOURTEEN.
INDEMNIFICATION**

To the fullest extent permitted by law, CONSULTANT agrees to indemnify, protect, defend and hold harmless CITY, its Mayor, Council Members, any and all of its officers, directors, officials, employees, agents, insurers, and indemnitors ("Indemnified Parties") for, from and against any and all suits, claims, losses, liabilities, damages, costs, expenses and debt, including reasonable attorneys' fees and costs incurred by the CITY which arise out of, attributable to or caused in whole or in part by acts or omissions of CONSULTANT (or its officers, directors, shareholders, agents or employees) including but not limited to injuries to CONSULTANT's employees who may or may not be covered by CONSULTANT's workers' compensation insurance; except, to the extent such suits, claims, losses, liabilities, damages, costs, expenses and debt result from acts or omission of the CITY and all Indemnified Parties. This indemnification provision shall apply to suits, claims, losses, liabilities, damages, costs, expenses and debt that are not otherwise covered by the CITY's Liability Insurance provided for by the Arizona Municipal Risk Pool.

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**SECTION FIFTEEN.
INSURANCE**

A. Insurance Requirements.

Prior to the beginning and throughout the duration of the work, CONSULTANT will maintain insurance in conformance with the requirements set forth below. CONSULTANT will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth in this Section Fifteen, then such coverage shall be amended to do so. CONSULTANT acknowledges that the insurance coverage and policy limits set forth in this Section Fifteen constitute the minimum amount of coverage required. Any insurance proceeds in excess of the limits and coverage required in this Agreement, and which is applicable to a given loss, will be available to CITY.

Without in any way limiting CONSULTANT’s liability pursuant to the indemnification described above, CONSULTANT shall maintain, during the term of this Agreement, the following types and amounts of insurance:

<u>Coverage Type</u>	<u>Coverage Amounts -Minimum Limits</u>
<u>Commercial General Liability, including:</u> Premises and Operations Contractual Liability Personal-Injury Liability Independent Contractors Liability	\$1,000,000 Combined Single Limit, per occurrence and \$2,000,000 general aggregate

Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits

<u>Comprehensive Automobile Liability</u> (including, owned, non-owned and hired autos)	\$1,000,000 Combined Single Limit, per Occurrence
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If CONSULTANT owns no vehicles, then this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If CONSULTANT or CONSULTANT’s employees use personal motor vehicles in any way on this Project, then CONSULTANT shall obtain evidence of personal

motor vehicle liability coverage for each such person.

<u>Workers' Compensation and Employer's Liability</u>	Statutory, \$1,000,000
<u>Professional Liability</u>	\$1,000,000 per claim and \$2,000,000 annual aggregate

Except for Workers Compensation and Professional Liability Insurance coverage, such insurance shall include additional endorsements naming CITY and its directors, officers, employees and agents as additional insured with respect to liabilities arising out of the performance of services under this Agreement. CONSULTANT shall provide CITY with certificates of insurance documenting that the CONSULTANT has obtained the above coverages. Such certificates shall include the required provisions and endorsements required by this Agreement. Such Certificates shall include a statement that insurance may not be canceled without 30-days prior written notice to CITY by first class mail, postage prepaid, 10 days of notice in the event that cancellation is due to nonpayment of premium.

B. Certificates of Insurance and Endorsements.

CONSULTANT will file a certificate of insurance and endorsement naming CITY as an additional insured under General Liability and Auto Liability, if applicable. Such liability insurance maintained by CONSULTANT shall be primary and non-contributory and any coverage maintained by CITY shall not be expected to contribute to any claims arising from the work under this Agreement. The CONSULTANT shall file these certificates with CITY within 10 days of execution of this Agreement and prior to engaging any operation or activities set forth in this Agreement. The foregoing policies shall provide that no cancellation, major change in coverage, or expiration by the insurance company or the insured during the term of this Agreement shall occur without 30 days' written notice to CITY prior to the effective date of such cancellation or change in coverage.

**SECTION SIXTEEN.
COMPLIANCE WITH LAWS AND REGULATIONS**

Services performed by CONSULTANT pursuant to this Agreement shall be performed in accordance with full compliance to all applicable federal, state, and CITY laws and any rules or regulations promulgated under such laws including but not limited to the following Arizona required provisions:

A. Conflict of Interest

CONSULTANT declares that he presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of

the services under this Agreement. CONSULTANT further declares that in the performance of this Agreement no subcontractor or person having such interest shall be employed. CONSULTANT certifies that, if he hires any employee, no one who has or will have any financial interest in this Agreement is an officer or employee of CITY. The Parties agree that in the performance of the services under this Agreement CONSULTANT shall at all times be deemed an independent contractor and not an agent or employee of CITY. Under Arizona law, rules and regulations, no member, official or employee of the CITY shall have any personal interest, direct or indirect in this Agreement, nor shall any such member, official or employee participate in any decision relating this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to the cancelation provisions of A.R.S. §38-511.

B. Employment Eligibility

CONSULTANT hereby warrants that it complies with all federal immigration laws and regulations that relate to its employees and with A.R.S. § 23-214 relating to verification of employment eligibility. A breach of this warranty shall be deemed a material breach of this Agreement. CITY retains the legal right to inspect the papers of CONSULTANT to ensure that CONSULTANT complies with this warranty.

C. Boycott

CONSULTANT certifies that it does not participate in, and agrees not to participate in during the term of this Agreement a boycott of Israel under A.R.S. § 35-393.01.

D. San Luis Business License

CONSULTANT shall obtain a San Luis Business License.

**SECTION SEVENTEEN.
INSPECTION OF WORK**

CITY's representative or his or her designee shall at all times have the right to inspect the work, services or performance of CONSULTANT. CONSULTANT shall furnish all reasonable aid and assistance required by the CITY for proper examination of the work or services. Such inspection shall not relieve the CONSULTANT of any obligation to perform such services in accordance with the law or this Agreement.

**SECTION EIGHTEEN.
NO WAIVER**

CONSULTANT agrees that any waiver by CITY of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONSULTANT shall not be deemed to be a waiver of any term or condition of this Agreement.

**SECTION NINETEEN.
ATTORNEYS' FEES; COURT VENUE**

Should either Party to this Agreement commence legal action against the other (including a formal judicial proceeding, mediation or arbitration), the case shall be handled in Arizona or the United States District Court for the District of Arizona at the election of the plaintiff in such legal action. The Parties waive any right to object to such a venue. Nothing in this paragraph will be deemed to have authorized the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action. The Party prevailing in such action shall be entitled to reasonable attorneys' fees which shall be fixed by the judge, mediator or arbitrator hearing the case and such fees shall be included in the judgment, together with all costs.

**SECTION TWENTY.
NOTICES**

All notices to be given under this Agreement, or which may be given by either Party to the other, shall be considered validly given and fully received when made in writing and delivered or refused delivery by means of prepaid service by:

- deposit in the United States Postal Service by certified mail, return receipt requested, and postage prepaid,
- personal delivery by a process server or
- sent by a nationally recognized courier (e.g., Federal Express, UPS)

and addressed to the respective Parties as follows:

If for the CITY -

City Manager
City of San Luis
P.O. Box 1170(by United States Postal Service)
1090 East Union Street (by personal process or courier)
San Luis, Arizona 85349

Copy to

San Luis City Attorney
City of San Luis
P.O. Box 1170
San Luis, Arizona 85349

If to the CONSULTANT-

Vice President Celeste Werner, AICP
Matrix Design Group, Inc.

2020 N. Central Avenue, Suite 1140
Phoenix, Arizona 85004

or such other addresses as either Party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten (10) days before the date on which the change is to become effective.

**SECTION TWENTY-ONE.
TERMINATION**

This agreement is effective as of the date first above written and shall continue until the services and Project are completed and delivered to the CITY. Either Party may terminate this Agreement upon 30 days' written notice to the other Party. In the event of such termination, CITY shall pay CONSULTANT for all services performed to the satisfaction of CITY to the date of receipt of notice of termination. An itemized statement of the work performed to the date of termination shall be submitted to CITY. In ascertaining the services actually rendered under this Agreement up to the date of termination, consideration shall be given to both completed work and work in the process of completion and to complete and incomplete documents whether delivered to CITY or in the possession of CONSULTANT.

**SECTION TWENTY-TWO.
OWNERSHIP OF DOCUMENTS**

Upon completion, 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 CITY and may be used, reused, or otherwise disposed of by CITY without the permission of CONSULTANT.

When CONSULTANT creates any copyrightable material or invents any patentable property under this Agreement, CITY shall retain a royalty-free, non-exclusive and irrevocable license to reproduce, publish, recover, or otherwise use the materials or property and to authorize others to do the same.

**SECTION TWENTY-THREE.
FUND APPROPRIATION**

The CITY is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the CITY's then current fiscal year. The CITY's obligation under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the CITY concerning budgeted purposes and appropriation of funds. Should the CITY elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose the CITY shall be relieved of any subsequent obligation

under this Agreement. The Parties agree that the CITY has no obligation or duty of good faith to budget or appropriate the payment of this CITY's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The CITY shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The obligation of the CITY to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the CITY. CONSULTANT hereby waives any and all rights to bring any claim against the CITY from or relating in any way to the CITY's termination of this Agreement pursuant to this section. The CITY budgeted \$70,000 for the 2018-19 fiscal year and remaining might be allocated in the 2019-2020 fiscal year.

**SECTION TWENTY-FOUR.
GOVERNING LAW AND SEVERABILITY**

This Agreement shall be administered and interpreted under the laws of Arizona. Jurisdiction of litigation arising from this Agreement shall be in Arizona. If any part of this Agreement is found to conflict with applicable laws, then such part shall be inoperative and void insofar as it conflicts with such laws, but the remainder of the Agreement shall continue to be in full force and effect.

**SECTION TWENTY-FIVE.
MISCELLANEOUS PROVISIONS**

A. Headings

The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of the provisions of this Agreement.

B. Authority

The undersigned represent to each other that they have full power and authority to enter into this Agreement and that all necessary actions have been taken to give full force and effect to this Agreement.

C. No Third-Party Beneficiaries

There are no third-party beneficiaries to this Agreement, and no person or entity not a Party shall have any right or cause of action under this Agreement.

D. No Agency Created

It is not intended by this Agreement to, and nothing contained in this Agreement shall create any agency, partnership, joint venture or other similar arrangement between the Parties.

E. No Personal Liability

No member, official or employee of the CITY shall be personally liable to CONSULTANT, or any successor or assignee, (a) if any default occurs or breach by the CITY, (b) for any amount which may become due to the CONSULTANT or its successor or assign, or (c) under any obligation of the CITY under this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of CONSULTANT under this Agreement shall be limited solely to the assets of CONSULTANT and shall not extend to or be enforceable against: (i) the individual assets of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of CONSULTANT; (ii) the shareholders, members or managers or constituent partners of CONSULTANT; or (iii) officers of CONSULTANT.

F. Survival

All representations and warranties of CONSULTANT, CONSULTANT's indemnity, hold harmless and defense obligations shall survive the expiration or earlier termination of the Agreement.

G. Time is of the Essence

Time is of the essence in this Agreement and CONSULTANT agrees to use the utmost diligence, dispatch and speed to have all the work specified in this Agreement entirely completed on or before November 3, 2020. Unless otherwise specifically provided in this Agreement, any consent to delay in the performance of the CONSULTANT of any obligation shall be applicable only to the particular transaction to which it relates, and it shall not apply to any other obligation or transaction.

H. Further Acts

Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

I. Force Majeure

If CONSULTANT or CITY are prevented or materially restricted from performing any of their obligations under this Agreement by an event of force majeure, then the obligations of each Party shall be suspended or reduced to the extent made necessary by the event. As used in this section, "force majeure" means any act or cause not reasonably within the control of the Party whose ability to perform is impaired and which that Party could not have prevented by the exercise of reasonable diligence. Examples of "force majeure" include, but are not limited to, acts of God, fire, flood, explosions, strikes or labor disputes over which the affected Party has no control, sabotage, riots, civil commotion, acts of civil or military authority, wars or material changes in applicable business laws or regulations.

J. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages

from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all Parties may be physically attached to a single document.

**SECTION TWENTY-SIX.
ENTIRE AGREEMENT**

This Agreement, including its Exhibits, represents the entire understanding of CITY and CONSULTANT as to those matters contained in this Agreement. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in it. This Agreement may not be modified or altered except by amendment in writing signed by both Parties.

[Intentionally left blank, signatures continue on next page]

The Parties have executed this Agreement in Arizona the day and year first above written which is the day the last Party approved this Agreement.

	City of San Luis, Arizona <hr/> Gerardo Sanchez, Mayor
ATTEST: <hr/> Sonia Cornelio, City Clerk	APPROVED AS TO FORM: <hr/> Kay Marion Macuil, City Attorney
	Matrix Design Group, Inc. <hr/> Celeste Werner AICP, Consultant