

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18<sup>th</sup> Street, Merced, California 95340, (hereinafter referred to as "City") and Graphic Solutions, LTD, a California Corporation, whose address of record is 2952 Main Street, San Diego, California 92113 (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to provide entry signs at the gateways into the City of Merced; and,

WHEREAS, Consultant represents that it possesses the professional skills to provide a comprehensive design scheme for entry signs and graphics program in connection with said project.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the City Manager or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in within ninety (90) days from the date of execution of this Agreement. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Fourteen Thousand Nine Hundred Dollars (\$14,900.00) plus the not to exceed sum of One Thousand Dollars (\$1,000) for any outside services/expenses or in-house expenses identified as "Reimbursables" on page 6 of Exhibit A.

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.

- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is



based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: Kelly Turner 9/10/18  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer



CONSULTANT  
GRAPHIC SOLUTIONS, LTD,  
A California Corporation

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

Its: \_\_\_\_\_  
(Title)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

Its: \_\_\_\_\_  
(Title)

Taxpayer I.D. No. 95-3148035

ADDRESS: 2952 Main Street  
San Diego, CA 92113

TELEPHONE: (619) 239-1335  
FAX: (619) 235-6018  
E-MAIL: simon@graphicsolutions.com

## **PROPOSAL AND CONTRACT**

6 July 2018

City of Merced  
678 West 18<sup>th</sup> Street  
Merced, CA 95340

Attention: Mr. Steve Carrigan, City Manager

**RE: MERCED ENTRY SIGNS**

### **SCOPE OF WORK**

Working in close coordination with the CITY STAFF, Graphic Solutions will provide the following services:

#### **Phase I. Planning and Research**

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##### **Part One. Planning**

- A. Review results of recent "Welcome Sign Contest."
- B. Meet with the City and perform site study and photo documentation of existing site conditions of up to six different welcome sign locations.  
(Site Visit #1)

#### **Phase II. Concept Design**

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- A. Interpreting results of recent "Welcome Sign Contest," create preliminary concept designs (up to three different) considering applicability to up to six City entry/identification sign locations:
  - 1. Highway 99 Northbound at Campus Parkway
  - 2. Highway 99 Southbound at 16<sup>th</sup> Street exit
  - 3. Gateway sign for downtown
  - 4. Highway 140 at Bradley overpass
  - 5. Highway 59 at Mission
  - 6. Highway 140 at Massasso St.

Preliminary concepts to include indications for sizes, materials, colors, lighting and sign locations.



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**EXHIBIT A**



- B. Forward preliminary concepts to City staff for review and comment.
- C. Adjust concept designs per City comments (one round of adjustments).
- D. Forward adjusted concepts to City staff for review and approval.
- E. Consult with City as City circulates concepts for community and stakeholder input—to select preferred design for City Welcome Signs.
- F. Prepare preliminary budgetary estimates for subsequent design phases, fabrication and installation of preferred option.
- G. Prepare presentation of preferred option.
- H. Attend one meeting to present preferred option and budgetary estimates.

**TOTAL ESTIMATED FEES for Phases I and II are \$14,900 plus expenses**

**NOTE:** Up to (2) meetings and (1) concurrent site visit are included in the fee estimate. Additional meetings, site visits and/or services will be at the client's request and will be billed on a time and materials basis as an addition to the fee estimate shown above.

### **SUBSEQUENT PHASES**

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Subsequent Phases can be provided by addendum or separate contract in addition to the scope of work outlined above and may include:

### **Phase III. Design Development / Construction Documents**

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- A. Based on approved concept design and existing improvement plans, prepare design intent drawings (11" x 17") and construction specifications sufficient for fabrication and installation by qualified local sign fabricator, including:
  - Schematic Sign Location Plan
  - Control dimensions
  - Call-outs for materials, finishes, typestyles, and lighting effects
  - Color specifications
  - Elevations, side and top views where appropriate



- Structural Engineering

(Does not include camera-ready artwork/patterns, sections, construction details or civil engineering, which are to be provided by sign fabricator or others as part of the shop drawing submittal.)

- B. Perform site study to verify details of design intent drawings and to investigate/document site conditions at proposed sign locations (Site Visit #2)
- C. Adjust design intent drawings and location plan per results of site study.
- D. Prepare updated budgetary estimates for treated elements
- E. Forward Design Intent Drawings, Construction Specifications, and budgetary estimates to City staff for review and comment.
- F. Adjustments to Design Intent Drawings and Construction Specifications per client comments (one round of adjustments).
- G. Forward final package to City staff for distribution to bidders.

#### **Phase IV. Permit Application Assistance**

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- A. Assist City staff in the preparation of Caltrans permit applications for City entry signs.
- B. Prepare graphics and schematic location maps as deemed appropriate for review by Caltrans.

Note: Caltrans meetings and application fees are the City's responsibility and are to be paid directly to the agency.

#### **Phase V. Construction Administration**

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Provide the following services related to implementation of signage:

Note: Submittals to be delivered to Graphic Solutions' offices.

- A. Review, adjust, and approve submittals from sign contractor:
  - Shop drawings



- Patterns and photo ready art
- Materials and color samples

\*Assumes one comprehensive shop drawing review, one samples review, and one comprehensive pattern review. Requests for additional comprehensive reviews or for subsequent partial reviews will require an adjustment to the contract amount.

- B. Provide responses to Requests for Information (RFI's).
- C. Perform final inspection, create punch list of required corrections and verify compliance with same (**2 site visits**).
- D. Coordination and communications with contractors and/or City staff as identified above.



### ADDITIONAL SERVICES

At the client's request, the following services will be provided in addition to the scope outlined above. Services will be provided on a time and materials basis, plus expenses and may include:

- original logo/identity and camera-ready art
- specifications for use of logo in signage and print applications
- original photography and/or illustration
- additional concept designs for listed sign types or for additional sign types
- additional rounds of adjustments to design concepts
- site visits and/or meetings in addition to those specifically noted in the scope of work
- color renderings/comps other than those specifically noted
- mock-ups, prototypes/scaled models
- additional rounds of budgetary cost estimates for sign fabrication
- construction administration including checking shop drawings and patterns in addition to those specifically noted in the scope of work
- fabrication and installation of signage
- civil, electrical engineering
- landscape architecture





### BILLING RATES

#### Current

Hourly Rates	Billing Classification*
\$160	Principal
\$120	Design Director; Senior Designer; Planning Specialist; Estimator
\$110	Project Manager; Designer; Technical Writer/Copywriter
\$75	Jr Designer
\$60	Production Assistant; Production Coordinator; Clerical/Word Processing

\* Project assignments are made based on employee skill levels and the type of work being performed.

### REIMBURSABLES

Outside Services/Expenses: In addition to fees, Graphic Solutions shall be reimbursed at cost plus 18% for outside services requiring creative/art direction (e.g., professional photography, renderings, copywriting), and for all other outside services or expenses related to the execution of the work, including, but not limited to: blueprints, vellums, photocopies; photographic supplies and processing; photostats, printing, typesetting, word processing; transportation and accommodations; delivery and shipping. Client may elect to be billed directly by suppliers for project-related expenses. If this election is made, Client shall identify, upon execution of this contract, those expenses for which the Client will make payment directly. Client shall provide to Graphic Solutions its account numbers for suppliers identified for direct billing and payment of expenses.

In-House Expenses: Graphic Solutions shall be reimbursed at a flat rate for certain in-house expenses in accordance with the following schedule:

• Large format digital output	\$ 4.00 per sq. ft.
• Digital color proofs up to 8-1/2" x 14"	\$ 5.00 each
• Matte board	\$ 5.00 per board
• PMS paper	\$ 5.00 per sheet
• Photocopies for copy counts exceeding 50 pages	\$ 0.15 per page
• Compact Disk	\$ 10.00
• Thumb/Zip/Jump Drive	\$ 5.00 each
• Comb Binding	\$ 5.00 per set



#### ADA COMPLIANCE

Graphic Solutions has researched the requirements of the Americans with Disabilities Act (ADA) as it affects signage, and every effort has been made to ensure that your signage meets those requirements. However, ADA compliance is the responsibility of the facility owner and/or owner's representative. Graphic Solutions, its officers and employees assume no legal responsibility for compliance with ADA and no warranty is either expressed or implied by presentation of bid documents, proposals, contracts, designs or signage. No liability is assumed for the outcome of decisions made on the basis of information provided by Graphic Solutions. Consultation with legal counsel is recommended for those affected by ADA.

#### CONTRACT TERMS AND CONDITIONS

The client shall provide Graphic Solutions all necessary drawings and information regarding site or building conditions which affect the signing. The client and Graphic Solutions shall mutually participate in development of all sign wording, with final approval by the client. This proposal does not include the cost of models, color renderings, or slide presentations, which will be provided only at the request and approval of the client.

Graphic Solutions provides electronic files in Illustrator for the Macintosh as a standard format. Preparation of files for other formats or platforms may affect schedule and/or incur additional fees. Graphic Solutions is not responsible for fonts needed for accurate reproduction.

This is a limited contract. This proposal covers only the services outlined in the scope of work. If the scope of work changes, approved revisions or additions will be charged for on a time and materials basis (current hourly rates plus reimbursable expenses) and as an addition to the original contract. Conference reports, letters, memoranda, and other written notification of additions or revisions are considered extensions to this contract.

The billing rates outlined in this proposal represent the current hourly rates in force at the time the proposal is presented. Billing rates are updated periodically and may change during the course of the proposal or contract period, in which case the most current adjusted rates shall apply. Estimated fees are to cover services outlined in the scope of work and may be billed in their entirety as a fixed fee upon satisfactory completion of the scope.

Any retainer paid to Graphic Solutions upon execution of the contract shall be deposited and held until work is deemed complete or substantially complete, at which time the retainer amount shall be credited on the final invoice and/or refunded by check to the client.



Graphic Solutions carries Workman's Compensation in the amount of one million dollars (\$1,000,000.00) and General Liability Insurance in the amount of two million dollars (\$2,000,000.00) general aggregate with one million dollars (\$1,000,000.00) per occurrence. Unless otherwise specified herein, premiums for any additional types of coverage that may be required or for limits in excess of standard coverage for Workman's Compensation and General Liability Insurance shall be paid by the Client as an addition to the contract amount stated herein.

The client agrees to include the name of Graphic Solutions in all client press releases associated with image development, graphic design, sign planning, and other work performed by Graphic Solutions for the client or project. When the project development team is listed in press releases, the client agrees to include Graphic Solutions' name as part of the team.

Graphic Solutions has permission to utilize prepared designs, images of the final product, and the client's name for marketing purposes.

Termination of contract: Assuming just cause, either party reserves the right to terminate this agreement after giving ten (10) days written notice to the other. Graphic Solutions shall be paid for services and reimbursables incurred under this contract up to the date that such written notice is received, but not to exceed the agreed upon design fee.

Title to all work provided by us shall remain in the Seller until all payments are made as stipulated. All payments are payable at the office of Graphic Solutions, Ltd., 2952 Main Street, San Diego, CA 92113, within thirty days of client's receipt of invoice. Should default be made in payment of any installment, the whole sum shall become due at option of Seller. In the event Seller shall employ an attorney to recover work provided, or collect on sums due under this agreement, Buyer agrees to pay in addition to all sums found due from Seller, a reasonable attorney's fee. All overdue payments under this agreement shall be subject to a service charge at the rate of one and one-half percent (1-1/2%) per month.

For:		For:	GRAPHIC SOLUTIONS, LTD
By:		By:	
			Simon Andrews
Date:		Date:	