

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of December, 2017, by and between the City of Waukesha, Wisconsin, ("City") and Patrick Ibarra, dba The Mejorando Group, a sole proprietorship ("Consultant"), to provide professional services ("Project").

WHEREAS, the City desires to retain a consultant to furnish professional services and to make payment for the same in accordance with the terms and conditions set forth in this Agreement, including all attachments and addenda, which are appended hereto by mutual agreement of the parties; and

WHEREAS, Consultant is willing and able to furnish the services desired by the City and represents and warrants that he and any subcontractors or individuals hired by Consultant to provide such services have the professional skill and expertise necessary to provide the services in a timely and complete manner;

NOW, THEREFORE, the City agrees to retain and does hereby retain Consultant and Consultant agrees to provide the services required according to the following terms and conditions and for the consideration hereinafter set forth:

1. CONSULTANT'S DUTIES: Consultant agrees to perform the following professional services in connection with the Project:

See attached Exhibit A, which is incorporated into this Agreement by reference.

2. COMPENSATION: In accordance with the terms and conditions of this Agreement, the City shall compensate Consultant for its professional services as follows:

The total compensation under this contract shall not exceed \$23,000, except for reimbursement of reasonable and customary travel-related expenses, which shall not exceed \$3,000.00. Should the City request additional services beyond those specified in Section 1, Consultant's Duties, Consultant shall charge, and the City shall pay, a rate as mutually agreed upon in writing prior to Consultant performing the additional services.

3. DATES OF SERVICE: The Project begins December 1, 2017 and shall be completed on or before April 30, 2018, subject to section 9.

4. CITY'S OBLIGATIONS: The City shall furnish the Consultant with all data, information and other supporting services specified in Exhibit A.

5. PRE-APPROVAL OF SUBCONTRACTORS: Consultant shall not hire any subcontractors, or employ any other person in the performance of the services described in Exhibit A, without the prior written approval of the City Administrator. All subcontractors or individuals employed by the consultant on this project shall sign an agreement to be bound by the same terms of this Contract.

6. CONFIDENTIALITY: Consultant, and any subcontractors or individuals hired by Consultant to perform the services under this Agreement, shall keep any information concerning City matters confidential and agree that they will not make any statement, give an interview or provide any information to any person, corporation or other entity, including without limitation any media source, in relation to the project or the services to be provided under this Agreement without the prior written consent of the City. Consultant, and any subcontractors or individuals hired by Consultant, agree not to disclose to any other person or entity (unless required by law) any confidential information concerning City matters during and after this Agreement. Consultant acknowledges and agrees that any materials submitted by him to the City will become public records, and will be available for public viewing under Wisconsin's open records law.

7. NOTICES: All notices to the other party required under this Agreement shall be in writing and sent by first class certified mail, postage prepaid, return receipt requested, addressed to the following personnel:

If to City of Waukesha:

City of Waukesha
201 Delafield Street
Waukesha, WI 53186

If to Consultant:

Patrick Ibarra
The Mejorando Group
7409 North 84th Avenue
Glendale, AZ 85305

8. UNCONTROLLABLE FORCES: The City and Consultant shall exert all efforts to perform their respective responsibilities under this Agreement. However, neither party shall hold the other party responsible for inability to render timely performance if such inability is a direct result of a force beyond its control, including but not limited to the following: strikes, lockouts, embargoes, failure of carriers, inability to obtain transportation facilities, acts of God or the public enemy, or other events beyond the control of the other or the other's employees and agents.

9. INDEMNIFICATION: Consultant shall defend, indemnify, and hold the City, its officers and employees harmless from any and all loss, damage, claim for damage, liability, expense, or cost, including reasonable attorney fees, which arise out of, or are in any way connected with the performance of work under this Agreement by Consultant, or any subcontractors or individuals hired by Consultant, and from all claims by Consultant's employees, sub-contractors and agents for compensation for services rendered to Consultant in the performance of this Agreement, notwithstanding that the City may have benefited from their services. This indemnification provision shall only apply to any and all negligent acts or omissions, willful misconduct or negligent conduct, whether active or passive, on the part of

Consultant or Consultant's employees, sub-contractors or agents. This section shall survive the expiration or early termination of the Agreement.

10. WAIVER OF TERMS AND CONDITIONS: The failure of the City or Consultant to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

11. INDEPENDENT CONTRACTOR: Consultant shall at all times during Consultant's performance of the services retain Consultant's status as independent contractor. Consultant's employees and contractors shall under no circumstances be considered or held to be employees or agents of the City and the City shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or Consultant.

12. GOVERNING LAW AND VENUE: The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Wisconsin, with venue in the City of Waukesha. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in the City of Waukesha. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other Court.

13. OWNERSHIP OF RECORDS AND REPORTS: All of the files, reports, documents, information and data prepared or assembled by Consultant under this Agreement shall remain the property of the City and shall be forwarded to the City upon request.

14. NONASSIGNMENT: This Agreement has been entered into based upon the personal reputation, expertise and qualifications of Consultant. Neither party to this Agreement shall assign its interest in the Agreement, either in whole or in part. Consultant shall not assign any monies due or to become due to it hereunder without the prior written consent of the City.

15. ENTIRE AGREEMENT: This Agreement and any attachments represent the entire agreement between the City and Consultant and supersede all prior negotiations, representations or agreements, either expressed or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become part hereof, and shall supersede any inconsistent provision herein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

16. SEVERABILITY: If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law, the validity of the remaining portions and provisions hereof shall not be affected.

17. AMERICANS WITH DISABILITIES ACT: This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFF Parts 35 and 36. (Non-Discrimination: The Consultant shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans with Disabilities Act. The Consultant shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)

18. FEDERAL REGULATIONS: Non-Federal entities are prohibited from contracting with or making sub-awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred. Consultant acknowledges, by signature to this agreement, that: Consultant is not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Wisconsin or any of its political subdivisions; Consultant's principals are not currently suspended or debarred from contracting with the federal government or any of its agencies or the State of Wisconsin or any of its political subdivisions.

19. INSURANCE. Consultant shall maintain insurance of the following kinds and for not less than the following limits, at Consultant's sole expense, at all times during the performance of the Work. Policies shall be occurrence, and not claims-made, policies, except for errors and omissions policies. Consultant shall obtain an endorsement making the City an additional insured and loss payee, and Consultant's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Consultant shall deliver a certificate of insurance to City showing that all requirements of this section are met.

Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate per project.

Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.

Umbrella, \$5,000,000.

Worker compensation, statutory requirements.

Professional liability-errors and omissions, \$2,000,000, with extended-reporting period endorsement.

20. RECORD KEEPING. Consultant shall keep all documents and records generated in the performance of the Work for no less than 7 years after completion of the Work, and shall make them available to the City at the City's request. Consultant acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.

21. GOVERNMENTAL IMMUNITIES AND NOTICE REQUIREMENT PRESERVED.

Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed by their duly authorized representatives as of the day and year first above written.

CONSULTANT:

Patrick Ibarra

CITY:

By Shawn N. Reilly, Mayor

Gina L. Kozlik, City Clerk

Richard L. Abbott, Finance Director
To certify funds availability

Exhibit A

Scope of Work

A. Obtain Input.

- 1) Essential to ensure the content of the Strategic Planning process is aligned with the expectations of members of the governing body, individual interviews/meetings will be held with each member. The purpose of each one-on-one meeting is to elicit their perspectives about a variety of issues that will/may serve as the focus of the Strategic Planning process, specifically their expectations, opinions about past efforts at creating strategic plans and identifying goals he/she would like to be accomplished in the next five years.
- 2) Interviews and meetings will also be conducted with the City Administrator and department directors, to obtain their perspectives about a variety of issues that will/may serve as the focus of the strategic planning process. Conferring with key stakeholders prior to the actual Advance meeting can be quite beneficial in generating positive support for the meeting, as well as to better determine which issues should be addressed at the meeting.
- 3) In order to incorporate input from key community stakeholders (i.e. downtown business owners, neighborhood associations, etc.) three to four meetings will be held with approximately 5 to 10 people in attendance at each of the meetings. Input from community leaders is valuable to consider during the strategic planning process.
- 4) After the meetings, a summary of the meetings will be provided, that captures common themes and serve as the backdrop of the meeting agenda. The summary will be reviewed with Mayor Reilly and the City Administrator.

B. Design and Facilitate Strategic Planning Workshop

- 5) Incorporating the themes from the interviews and meetings and proven approaches to effective strategic planning processes, the meeting agenda will be prepared and finalized with the City Administrator.
- 6) Facilitate a two-day Strategic Planning Advance Workshop involving Mayor Reilly, members of the governing body, City Administrator and department directors.

While the input has not yet been gathered for this strategic planning process, here is a sample agenda from previous strategic planning sessions.

- a) “Why Strategic Planning? Its Value and Purpose” – Examine the intent supporting Strategic Planning and the benefits to be realized from its implementation.
- b) “Headwinds: Review external and internal factors” - Similar to an environmental scan and a SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis, several external and internal factors will be systematically examined to determine their individual and collective impact on the operations of the City both at the present and in the future. These factors include: 1) External: Political, Social,

Legal, Economic, Technological, and Environmental; and 2) Internal: Mission, Culture, Size, and Operations.

Types of questions that may be asked during this segment may include:

- What types of services will residents require in the future that are not already provided? What might be required to fund and staff these services?
 - Which city processes and practices might need to change to serve a larger population?
 - What types of infrastructure additions or expansions will be required to handle our anticipated growth? What financial resources are required to fund this work?
 - What can we do to make our community more attractive for business expansion or development opportunities?
- c) “Present to the Future” activity will establish where the City is now, where it wants to be and the gap between.
- d) Visual Explorer and Vehicle for Vision – Small group exercise to craft a community vision.
- e) Link Mission Statement with Future Potential – responding to the questions:
- What does the City of Waukesha want to be the best at?
 - What are the best indicators of effectiveness?
- f) “Our Strategic Plan” – Develop a Strategic Plan detailing specific goals (short- and long-term), identification of fiscal constraints and opportunities that affect the achievement of proposed goals, linkage with budget priorities and operational plans and tactics necessary to fulfill the strategic plan.

(Optional) Design and facilitate an Advance meeting (possibly the day after the session with the Mayor and City Council) with Executive Leadership Team (ELT) members only to help develop action steps, proposed schedule and resources necessary to achieve the Strategic Plan.

Selection of an experienced facilitator is key as they ensure all points of view are aired and considered. Patrick Ibarra will utilize thought-provoking and relevant exercises to actively engage the group, use consensus decision-making techniques, guide group discussions to stay on track, manage conflict using a collaborative approach, and create an environment where members enjoy a positive, growing experience while they work to attain group goals. He possesses a certification in Facilitation by Development Dimensions International, one of the leaders in the marketplace.

C. Prepare Strategic Planning Report

- 7) The creation of the actual strategic plan report in a document format will be completed shortly after the Advance workshops. A draft report will be reviewed and finalized with the City Administrator and others he designates into final form.
- 8) The Strategic Plan will be presented to the governing body for consideration and adoption.

D. Fees

The Fee to provide services is \$23,000 including reimbursement for travel-related expenses. The breakdown of the Fee is as follows:

- 9) On-site for four days for interviews that includes individual meetings with each member of the governing body and city administrator, small group meetings with department directors and up to four community focus groups, some of which may be held in the evening. Fee is \$250 hourly times 32 hours equals \$8,000.
- 10) Design and facilitate a two-day Advance meeting. Fee is \$4,500 per day times 2 equals \$9,000.
- 11) Preparation of the Strategic Planning Report. \$250 hourly times 12 hours equals \$3,000.
- 12) Travel expenses for two on-site visits is estimated at \$3,000.