

## **PROVIDER AGREEMENT**

THIS SERVICE PROVIDER AGREEMENT (“**Agreement**”) is entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between CITY OF ALAMEDA, a municipal corporation (the “**City**”), and **CHARLES TODD** an individual, whose address is **1846 SANDALWOOD DRIVE**, Concord, California 94519 hereafter referred to as the Provider, in reference to the following:

### **RECITALS:**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. Chuck Todd as was selected as a professional services provider after an interview on the basis of his references and past work for the City and understanding of the City’s needs.
- C. Provider possesses the skill, experience, ability, background, and knowledge to provide the professional services described in this Agreement on the terms and conditions described herein.
- D. City and Provider desire to enter into an agreement for Professional Design and Creation of Infographics, Design and Artwork for the City Budget, Capital Improvement Budget and other special projects, upon the terms and conditions herein.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

### **1. TERM:**

The term of this Agreement shall commence on the 1 day of June 2019, and shall terminate on the 30 day of June 2021, unless terminated earlier as set forth herein.

This Agreement may be mutually extended on a year-by-year basis, for up to four (4) additional years, at the sole discretion of the Public Works Director or Finance Director, based, at a minimum, upon satisfactory performance of all aspects of this Agreement. The Public Works Director or Finance Director may submit written notice that the Agreement is to be extended at an amount agreed to by the City and the Provider.

### **2. SERVICES TO BE PERFORMED:**

Provider agrees to do all necessary work at its own cost and expense, to furnish all labor, tools, equipment, materials, except as otherwise specified, and to do all necessary work included in Exhibit A as requested. The Provider acknowledges that the work plan included in Exhibit A is tentative and does not commit the City to request Provider to perform all tasks included therein.

### **3. COMPENSATION TO PROVIDER:**

a. By the 7<sup>th</sup> day of each month, Provider shall submit to the City an invoice for the total amount of work done the previous month. Pricing and accounting of charges are set forth in Exhibit A and incorporated herein by this reference. Extra work must be approved in writing by

the City Manager or his/her designee prior to performance and shall be paid on a Time and Material basis as set forth in Exhibit A.

b. The total compensation for the work under this Agreement is not to exceed \$125,000.

**4. TIME IS OF THE ESSENCE:**

Provider and City agree that time is of the essence regarding the performance of this Agreement.

**5. STANDARD OF CARE:**

Provider agrees to perform all services hereunder in a manner commensurate with the prevailing standards of like professionals or service providers, as applicable, in the San Francisco Bay Area and agrees that all services shall be performed by qualified and experienced personnel who are not employed by the City.

**6. INDEPENDENT PARTIES:**

Provider hereby declares that Provider is engaged as an independent business and Provider agrees to perform the services as an independent contractor. The manner and means of conducting the services and tasks are under the control of Provider, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Provider's services. None of the benefits provided by City to its employees, including but not limited to unemployment insurance, workers' compensation plans, vacation and sick leave are available from City to Provider, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any compensation due to Provider. Payments of the above items, if required, are the responsibility of Provider.

**7. IMMIGRATION REFORM AND CONTROL ACT (IRCA):**

Provider assumes any and all responsibility for verifying the identity and employment authorization of all of its employees performing work hereunder, pursuant to all applicable IRCA or other federal, or state rules and regulations. Provider shall indemnify, defend, and hold City harmless from and against any loss, damage, liability, costs or expenses arising from any noncompliance of this provision by Provider.

**8. NON-DISCRIMINATION:**

Consistent with City's policy and state and federal law that harassment and discrimination are unacceptable conduct, Provider agrees that harassment or discrimination directed toward a job applicant, a City employee, or a citizen by Provider or Provider's employee on the basis of race, religious creed, color, national origin, ancestry, handicap, disability, marital status, pregnancy, sex, age, or sexual orientation will not be tolerated. Provider agrees that any and all violations of this provision shall constitute a material breach of this Agreement.

**9. HOLD HARMLESS:**

a. Provider shall indemnify, defend, and hold harmless the City, its City Council, boards, commissions, officials, employees, and volunteers ("**Indemnitees**") from and against any and all loss, damages, liability, claims, suits, costs and expenses whatsoever, including reasonable attorneys' fees ("**Claims**"), arising from or in any manner connected to Provider's negligent act or omission, whether alleged or actual, regarding performance of services or work conducted or performed pursuant to this Agreement. If Claims are filed against Indemnitees which allege negligence on behalf of the Provider, Provider shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence is not found on the part of Provider. However, Provider shall not be obligated to indemnify Indemnitees from Claims arising from the sole negligence or willful misconduct of Indemnitees.

b. **Indemnification for Claims for Professional Liability Only:** As to Claims for professional liability only, Provider's obligation to defend Indemnitees (as set forth above) is limited as provided in California Civil Code Section 2782.8.

c. Provider's obligation to indemnify, defend and hold harmless Indemnities shall expressly survive the expiration or early termination of this Agreement.

**10. INSURANCE:**

a. On or before the commencement of the terms of this Agreement, Provider shall furnish the City's Risk Manager with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with subsections 10A, B, C and D. Such certificates, which do not limit Provider's indemnification, shall also contain substantially the following statement:

"Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide ten (10) days' advance written notice to the City of Alameda. Attention: Risk Manager."

b. It is agreed that Provider shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to City and licensed to do insurance business in the State of California. Endorsements naming the City, its City Council, boards, commissions, officials, employees, and volunteers as additional insured shall be submitted with the insurance certificates.

**A. COVERAGE:**

Provider shall maintain the following insurance coverage:

(1) **Workers' Compensation:**

Statutory coverage as required by the State of California.

(2) **Liability:**

Commercial general liability coverage in the following minimum limits:

Bodily Injury: \$1,000,000 each occurrence  
\$2,000,000 aggregate - all other

Property Damage: \$1,000,000 each occurrence  
\$2,000,000 aggregate

If submitted, combined single limit policy with aggregate limits in the amounts of \$2,000,000 will be considered equivalent to the required minimum limits shown above.

(3) Automotive:

Comprehensive automobile liability coverage (any auto) in the following minimum limits:

Bodily injury: \$1,000,000 each occurrence  
Property Damage: \$1,000,000 each occurrence

or

Combined Single Limit: \$2,000,000 each occurrence

(4) Professional Liability:

Professional liability insurance which includes coverage for the professional acts, errors and omissions of Provider in the amount of at least \$2,000,000.

B. SUBROGATION WAIVER:

Provider agrees that in the event of loss due to any of the perils for which it has agreed to provide comprehensive general and automotive liability insurance, Provider shall look solely to its insurance for recovery. Provider hereby grants to City, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Provider or City with respect to the services of Provider herein, a waiver of any right to subrogation which any such insurer of said Provider may acquire against City by virtue of the payment of any loss under such insurance.

C. FAILURE TO SECURE:

If Provider at any time during the term hereof should fail to secure or maintain the foregoing insurance, City shall be permitted to obtain such insurance in the Provider's name or as an agent of the Provider and shall be compensated by the Provider for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. ADDITIONAL INSURED:

City, its City Council, boards, commissions, officials, employees, and volunteers shall be named as an additional insured under all insurance coverages, except worker's compensation and professional liability insurance. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other

insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

**E. SUFFICIENCY OF INSURANCE:**

The insurance limits required by City are not represented as being sufficient to protect Provider. Provider is advised to consult Provider's insurance broker to determine adequate coverage for Provider.

**11. CONFLICT OF INTEREST:**

Provider warrants that it is not a conflict of interest for Provider to perform the services required by this Agreement. Provider may be required to fill out a conflict of interest form if the services provided under this Agreement requires Provider to make certain governmental decisions or serve in a staff capacity as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

**12. PROHIBITION AGAINST TRANSFERS:**

a. Provider shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of the City Manager. Provider shall submit a written request for consent to transfer to the City Manager at least thirty (30) days in advance of the desired transfer. The City Manager may consent or reject such request in his/her sole and absolute discretion. Any attempt to do so without said consent shall be null and void, and any assignee, sublessee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money against the City under this Agreement may be assigned by Provider to a bank, trust company or other financial institution without prior written consent.

b. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Provider, or of the interest of any general partner or joint venturer or syndicate member or cotenant, if Provider is a partnership or joint venture or syndicate or cotenancy, which shall result in changing the control of Provider, shall be construed as an assignment of this Agreement. Control means fifty percent or more of the voting power of the corporation.

**13. APPROVAL OF SUB-PROVIDERS:**

a. Only those persons and/or businesses whose names and resumes are attached to this Agreement shall be used in the performance of this Agreement. However, if after the start of this Agreement, Provider wishes to use sub-providers, at no additional costs to the City, then Provider shall submit a written request for consent to add sub-providers including the names of the sub-providers and the reasons for the request to the City Manager at least five (5) days in advance. The City Manager may consent or reject such requests in his/her sole and absolute discretion.

b. Each sub-provider shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance (as applicable) in reasonable conformity to the insurance carried by the Provider. In addition, any tasks or services performed by sub-providers shall be subject to each provision of this Agreement.

c. The requirements in this Section 13 shall not apply to persons who are merely providing materials, supplies, data or information which the Provider then analyzes and incorporates into its work product.

**14. PERMITS AND LICENSES:**

Provider, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, certificates and licenses, including a City Business License that may be required in connection with the performance of the services and tasks hereunder.

**15. REPORTS:**

a. Each and every report, draft, work product, map, record and other document produced, prepared or caused to be prepared by Provider pursuant to or in connection with this Agreement shall be the exclusive property of City.

b. No report, information or other data given to or prepared or assembled by Provider pursuant to this Agreement shall be made available to any individual or organization by Provider without prior approval of the City Manager or his/her designee.

c. Provider shall, at such time and in such form as City Manager or his/her designee may require, furnish reports concerning the status of services and tasks required under this Agreement.

**16. RECORDS:**

a. Provider shall maintain complete and accurate records with respect to the services, tasks, work, documents and data in sufficient detail to permit an evaluation of the Provider's performance under the Agreement, as well as maintain books and records related to sales, costs, expenses, receipts and other such information required by City that relate to the performance of the services and tasks under this Agreement (collectively the "Records").

b. All Records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Provider shall provide free access to the Records to the representatives of City or its designees during regular business hours upon reasonable prior notice. The City has the right to examine and audit the Records, and to make copies or transcripts therefrom as necessary, and to allow inspection of all proceedings and activities related to this Agreement. Such Records, together with supporting documents, shall be kept separate from other documents and records and shall be maintained by Provider for a period of three (3) years after receipt of final payment.

c. If supplemental examination or audit of the Records is necessary due to concerns raised by City's preliminary examination or audit of records, and the City's supplemental examination or audit of the records discloses a failure to adhere to appropriate internal financial controls, or other breach of this Agreement or failure to act in good faith, then Provider shall reimburse the City for all reasonable costs and expenses associated with the supplemental examination or audit.

**17. NOTICES:**

a. All notices shall be in writing and delivered: (i) by hand; or (ii) sent by registered, express, or certified mail, with return receipt requested or with delivery confirmation requested from the U.S. postal service; or (iii) sent by overnight or same day courier service at the party's respective address listed in this Section.

b. Each notice shall be deemed to have been received on the earlier to occur of: (x) actual delivery or the date on which delivery is refused; or (y) three (3) days after notice is deposited in the U.S. mail or with a courier service in the manner described above (Sundays and City holidays excepted).

c. Either party may, at any time, change its notice address (other than to a post office box address) by giving the other party three (3) days prior written notice of the new address.

d. All notices, demands, requests, or approvals from Provider to City shall be addressed to City at:

City of Alameda  
Finance Department and Public Works Department  
2263 Santa Clara Avenue  
Alameda, CA 94501  
ATTENTION: Nancy Bronstein  
Ph: (510) [747-4922]

e. All notices, demands, requests, or approvals from City to Provider shall be addressed to Provider at:

Chuck Todd  
1846 Sandalwood Drive,  
Concord, California 94519  
Ph: (925) [818-7365]

**18. SAFETY:**

a. The Provider will be solely and completely responsible for conditions of all vehicles owned or operated by Provider, including the safety of all persons and property during performance of the services and tasks under this Agreement. This requirement will apply continuously and not be limited to normal working hours. In addition, Provider will comply with all safety provisions in conformance with U.S. Department of Labor Occupational Safety and Health Act, any equivalent state law, and all other applicable federal, state, county and local laws, ordinances, codes, and any regulations that may be detailed in other parts of the Agreement. Where any of these are in conflict, the more stringent requirements will be followed. The Provider's failure to thoroughly familiarize itself with the aforementioned safety provisions will not relieve it from compliance with the obligations and penalties set forth herein.

b. The Provider will immediately notify the City within 24 hours of any incident of death, serious personal injury or substantial property damage that occurs in connection with the performance of this Agreement. The Provider will promptly submit to the City a written report of

all incidents that occur in connection with this Agreement. This report must include the following information: (i) name and address of injured or deceased person(s); (ii) name and address of Provider's employee(s) involved in the incident; (iii) name and address of Provider's liability insurance carrier; (iv) a detailed description of the incident; and (v) a police report.

**19. TERMINATION:**

a. In the event Provider fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Provider shall be deemed in default in the performance of this Agreement. If such default is not cured within two (2) business days after receipt by Provider from City of written notice of default, specifying the nature of such default and the steps necessary to cure such default; City may thereafter immediately terminate the Agreement forthwith by giving to the Provider written notice thereof.

b. The foregoing notwithstanding, City shall have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) days' prior written notice to Provider as provided herein.

c. Upon termination of this Agreement either for cause or for convenience, each party shall pay to the other party that portion of compensation specified in this Agreement that is earned and unpaid prior to the effective date of termination. The obligation of the parties under this Section 19.c. shall survive the expiration or early termination of this Agreement.

**20. ATTORNEY'S FEES:**

In the event of the bringing of any action or suit by a party hereto against the other party by reason of any breach of any covenants, conditions, obligation or provision arising out of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its costs and expenses of the action or suit, including reasonable attorneys' fees, experts' fees, all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For the purposes of this Agreement, reasonable fees of attorneys of the Alameda City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the Alameda City Attorney's services were rendered who practice in Alameda County in law firms with approximately the same number of attorneys as employed by the Alameda City Attorney's Office.

**21. COMPLIANCE WITH ALL APPLICABLE LAWS:**

During the Term of this Agreement, Provider shall keep fully informed of all existing and future state and federal laws and all municipal ordinances and regulations of the City of Alameda which affect the manner in which the services or tasks are to be performed by the Provider, as well as all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. Provider shall comply with all applicable laws, state and federal and all ordinances, rules and regulations enacted or issued by City.

**22. CONFLICT OF LAW:**

This Agreement shall be interpreted under, and enforced by the laws of the State of California without regard to any choice of law rules which may direct the application of laws of another jurisdiction. The Agreement and obligations of the parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities.) Any suits brought pursuant to this Agreement shall be filed with the courts of the County of Alameda, State of California.

**23. WAIVER:**

A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

**24. INTEGRATED CONTRACT:**

The Recitals and Exhibits are a material part of this Agreement and are expressly incorporated herein. This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by written execution signed by both City and Provider.

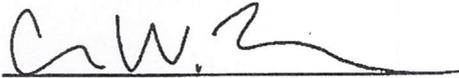
**25. CAPTIONS:**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

*Signatures on next page*

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed on the day and year first above written.

CHUCK TODD  
An Individual



Chuck Todd  
Owner

CITY OF ALAMEDA  
A Municipal Corporation

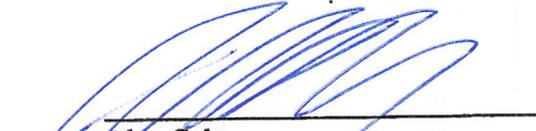
\_\_\_\_\_  
Eric J Levitt  
City Manager

RECOMMENDED FOR APPROVAL



Nancy Bronstein  
Director of Human Resources

APPROVED AS TO FORM:  
City Attorney

  
\_\_\_\_\_  
Alan Cohen  
Assistant City Attorney

## Attachment A

### Chuck Todd for design consultation and creation of Infographics, Design and Artwork.

June 2019 through June 30, 2021

#### Scope of Services and Pricing

Designs, infographics and services produced can be used by the city in print, on websites, in reports or in any form the City of Alameda requires.

Cost for Services: Hourly rate is \$75 per hour for the City of Alameda, April 2019 through June 30, 2021.

Billing is based on hours worked on infographics, graphic design, consultation and related projects including time spent in meetings, emails, phone calls, editing, revisions and any prep work with printing vendors etc.

Projects I've designed during the past few years for The City of Alameda and Public Works have included:

- Mid-Cycle BUDGET UPDATE 2018-2019
- 2017-2019 CIP "Build, Deliver, Serve"
- Harbor Bay Ferry flyer
- Various map and infographics projects
- Poster designs
- Presentation slides
- Public Works Onboarding Guide; Strategic Plan; and org charts
- 2015-17 CIP "A FUTURE TO BUILD ON"
- and for the Housing Authority of Alameda:
- RENT PROGRAM ANNUAL REPORT"

Design work is primarily created in Adobe Illustrator, Adobe InDesign and Adobe Photoshop. Since I charge an hourly rate, if work goes quickly my total charge could be somewhat less. If the work is complex and involves a lot of changes and revisions to the completed project, the cost could end up being higher than the examples listed.

I retain the usage rights of original artwork and illustrations I create. And I reserve the right to use any of my completed design and infographics work as professional examples on my blog, website, social media and in other self-promotional materials.

Below are a few examples of design projects and infographics showing the number of hours each took and the cost as a guide to pricing projects for the City of Alameda.

#### **Sample Projects with approximate hours worked, and cost at my rate of \$75 per hour:**

2017-2019 CIP: BUILD, DELIVER, SERVE"

73-page working design

Jan.-May

85-90 hours @ 75 per hour = \$6,450-\$6,750

#### **2018-2019 Mid-Cycle BUDGET UPDATE**

Design, infographics, meetings and consultation

Jan.-June 2018

123 hours @ \$75 per hour = \$9,225

**Rent Program Annual Report:**

16-page annual report

34 hours @75 per hour = \$2,550

**Rehabilitation Projects" infographic:**

22 hours @75 per hour = \$1,650

**Four Fast Ways to the Ferry" flyer**

28 hours @75 per hour = \$2,100

**Tree Trimming:**

infographic map,

8 hours

@75 per hour = \$600

Chuck Todd

1846 Sandalwood Drive

Concord, CA 94519

925 818-7365

chucktoddartist@gmail.com

[www.chucktodd.net](http://www.chucktodd.net)

[www.chucktoddinfographics.com](http://www.chucktoddinfographics.com)



POLICY NUMBER: 46 SBM UN1106 ✓



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

ADDITIONAL INSURED - PERSON-ORGANIZATION

LOCATION 001 BUILDING 001

CITY OF ALAMEDA, ITS CITY COUNCIL, BOARDS, COMMISSIONS, OFFICIALS,  
EMPLOYEES, AND VOLUNTEERS  
PUBLIC WORKS DEPARTMENT  
ALAMEDA POINT, BUILDING 1  
950 WEST MALL SQUARE, ROOM 110  
ALAMEDA CA 94501

CITY OF RIVERSIDE  
3900 MAIN STREET,  
RIVERSIDE, CA 92522

**CITY OF ALAMEDA**  
Risk Management  
  
Date 5-6-19  
Lucretia Akil, City Risk Manager

Chuck Todd, City of Alameda Business License # 822902

CLIENT: City of Alameda

**CHUCK  
TODD**

1846  
Sandalwood  
Drive  
Concord, CA  
94519

ILLUSTRATION

(925) 818-7365 chucktoddartist@gmail.com

To:

City of Alameda  
Finance Department and Public Works Department  
2263 Santa Clara Avenue  
Alameda, CA 94501  
ATTENTION: Nancy Bronstein

05/8/2019

Nancy:

Here is a note on my letterhead to confirm:

I'm a self-employed individual. I do freelance art,  
design and infographics from my home studio.  
I have no employees.

Thanks,  
Chuck Todd

Please send payment to: **Chuck Todd, 1846 Sandalwood Drive, Concord, CA 94519**