# SERVICE PROVIDER AGREEMENT

THIS SERVICE PROVIDER AGREEMENT ("**Agreement**") is entered into this 11th day of Dec, 2017, by and between CITY OF ALAMEDA, a municipal corporation (the "**City**"), and Susan G. Mayer, an individual, whose address is 2443 Fair Oaks Blvd., PMB 386, Sacramento, CA 95826, (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. The City is in need of the following services: management consulting services. The Provider was selected on a sole source basis because provider possesses extensive expertise in municipal accounting and budgeting, cost allocation plans and indirect cost rate proposal as well as general technical knowledge related to Finance Department operations.

C. Provider possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

D. City and Provider desire to enter into an agreement for management consulting services, 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 ____ day of _____ 2017, and shall terminate on the 30 day of June 2018, unless terminated earlier as set forth herein.

## 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 7th 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 to be according to the fee schedule as 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 **$74,998**.

## 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 to the extent to which its professional liability insurance policy will provide such defense costs.

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<br>$2,000,000 aggregate - all other |
| Property Damage: | $1,000,000 each occurrence<br>$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 following minimum limits:

$1,000,000 each occurrence

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
2263 Santa Clara Avenue, Room 220
Alameda, CA 94501
ATTENTION: Finance Director
Ph: (510) 747-4881 / Fax: (510) 865-4045
Email: finance@alamedaca.gov

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

Susan G. Mayer, CPFO
2443 Fair Oaks Blvd., PMB 386
Sacramento, CA 95826
ATTENTION: Susan Mayer
Ph: (916) 350-1702
Email: susanmayercpfo@gmail.com

## 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.

Susan G. Mayer, CPFO
An individual

Susan G. Mayer
Municipal Finance Consultant

CITY OF ALAMEDA
A Municipal Corporation

Jill Keimach
City Manager

RECOMMENDED FOR APPROVAL

Elena Adair
Finance Director

APPROVED AS TO FORM:
City Attorney

Alan Cohen
Assistant City Attorney

**Susan G. Mayer, CPFO**
**Municipal Finance Consultant**

November 17, 2017

Elena Adair, Finance Director
City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

Dear Ms. Adair,

This letter is to confirm my understanding of the terms and objectives of my engagement to provide management consulting services to the City of Alameda. I understand that you are looking for part-time project support for several City Finance Department initiatives. We have discussed the following project objectives:

- 2017-18 Cost Allocation Plan
  - Facilitate City's development of a cost allocation plan to allocate City overhead to its various funds and programs
  - Assist with the procurement and selection of a third party cost allocation vendor
  - Coordinate data assembly with City staff
  - Support communication with third party vendor
  - Provide analysis of draft cost plan products provided by vendor
  - Summarize cost plan impact on City budget

- 2017-18 Budget Monitoring and Mid-Year Budget Update
  - Assist City staff in monitoring 2017-18 budget/actual trends
  - Facilitate calendar and work plan for Mid-Year budget report to City Council
  - Coordinate update of General Fund revenue projections
  - Analyze budget input from City program departments
  - Assist City staff with management briefings, recommendations, and budget report assembly

- 2018-19 Mid-Cycle Budget Report
  - Assist City staff in development of 2018-19 Mid-Cycle Budget Update
  - Facilitate calendar and work plan for Mid-Cycle budget report to City Council
  - Coordinate update of General Fund revenue projections
  - Facilitate budget report input from City program departments
  - Assist City staff with management briefings, recommendations, and budget report assembly

- On-call Technical Support
  - Provide on-call email and phone support for Finance Department staff

- Other finance projects as assigned

At the City's request, I will be available at City Hall generally two or three days per week starting

2443 Fair Oaks Blvd., PMB 386, Sacramento, CA 95826 (916) 350-1702
susanmayercpfo@gmail.com

January 3, 2018 or as needed to support project objectives. As needed, I will also provide on-call and email support. At this time, services are anticipated for a four month period, and can be terminated by either party by giving seven days' prior written notice.

My services will be performed under professional standards required by the Statements on Standards for Consulting Services issued by the American Institute of Certified Public Accountants. This engagement does not contemplate the performance of any attest services or the preparation of any financial statements. In performing this engagement, I will be relying on the accuracy and reliability of information provided by the City. The City will make all management decisions and perform all management functions. The City will evaluate the adequacy and results of my services and be responsible for any decisions regarding implementation of my recommendations. City management will be responsible for the accuracy of its records and the reports that it issues.

As I work with City staff to assist in the assembly of any budget or cash flow analysis, I will rely on assumptions and information provided by the City. I will not examine financial forecasts nor provide any form of assurance on the achievability of the forecast or reasonableness of the underlying assumptions. Management is responsible for representations about its plans and expectations and for disclosure of significant information that might affect the ultimate realization of the forecasted results. Further, as the City considers its budget and cash flow analysis, note that there will usually be differences between the projected and actual results, because events and circumstances frequently do not occur as expected, and those differences may be material.

Please also note that my engagement cannot be relied on to disclose errors, fraud, or other illegal acts that may exist. The services that I perform in my engagement will be heavily influenced by the representations that I receive from City personnel. Accordingly, inaccurate or false representations could cause inaccurate findings and, therefore, inappropriate recommendations may be developed and critical recommendations may go unidentified. The City is responsible for the accuracy and completeness of the information provided by City personnel.

My fees for this work will be at an hourly rate of $175 per hour. Payment for services is due when rendered and interim billings may be submitted as work progresses and expenses are incurred. Billings become delinquent if not paid within 45 days of the invoice date. If billings are past due in excess of 15 days, I may stop all work until your account is brought current, or withdraw from this engagement. The City acknowledges and agrees that I am not required to continue work in the event of the City's failure to pay on a timely basis for services rendered as required by this engagement letter. The City further acknowledges and agrees that in the event I stop work or withdraw from this engagement as a result of the City's failure to pay on a timely basis for services rendered as required by this engagement letter, I shall not be liable for any damages that occur as a result of my ceasing to render services.

I look forward to this project supporting the City of Alameda.

Sincerely,

Susan G. Mayer

Susan G. Mayer, CPFO