

**CITY OF CHICO - PROFESSIONAL SERVICES AGREEMENT**

Procure America, Inc.  
Architect/Consultant/Engineer

Cost Reduction Consulting Services  
Project Title

Various  
Budget Account No.

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**THIS PROFESSIONAL SERVICES AGREEMENT** (Agreement) is entered into on July 31, 2017, between the City of Chico, a municipal corporation under the laws of the State of California, (City) and Procure America, Inc., a California corporation, (Consultant).

**SECTION 1 - DESCRIPTION OF PROJECT**

City desires to undertake that certain project (Project) described in EXHIBIT A, entitled “DESCRIPTION OF PROJECT,” and to engage Consultant to provide the required professional services relating to the Project.

**SECTION 2 - SCOPE OF PROFESSIONAL SERVICES - BASIC; COMPLETION SCHEDULE**

Consultant shall perform those basic professional services in connection with the Project as are set forth more particularly in EXHIBIT B, entitled “SCOPE OF PROFESSIONAL SERVICES - BASIC; COMPLETION SCHEDULE,” and shall complete said professional services in accordance with the completion schedule for professional services as incorporated in EXHIBIT B.

**SECTION 3 - SCOPE OF PROFESSIONAL SERVICES - ADDITIONAL; COMPLETION SCHEDULE**

City and Consultant agree that it may be necessary, in connection with the Project, for Consultant to perform or secure the performance of professional services other than those set forth in EXHIBIT B. In each such instance, Consultant shall advise City, in advance and in writing, of the need for such additional professional services, their cost and the estimated time, if appropriate, required to perform them. Consultant shall not proceed to perform any such

required additional professional service until City has determined that such professional service is beyond the scope of the basic professional service to be provided, is required, and has given its written authorization to perform or obtain it. Each additional professional service so authorized shall constitute an amendment to this Agreement, shall be identified and sequentially numbered as "Amendment No. 1" and so forth, shall be subject to all of the provisions of this Agreement, and shall be incorporated into EXHIBIT B accordingly.

#### **SECTION 4 - COMPENSATION**

Consultant shall be compensated for professional services rendered to City pursuant to this Agreement periodically in the amounts, manner and in accordance with the payment schedule as set forth in EXHIBIT C, entitled "COMPENSATION." Amounts due to Consultant from City for professional service rendered shall be evidenced by the submission to City by Consultant of an invoice, prepared in a form satisfactory to City, setting forth the amount of compensation due for the period covered by it. Each such invoice shall be forwarded to City so as to reach it on or before the 15th day of the month next following the month or months, or other applicable period, for which the professional service invoiced were provided. All such invoices shall be in full accord with any and all applicable provisions of this Agreement. City will make payment on each such invoice within 30 days of receipt of it. However, if Consultant submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement, then City shall not be obligated to process any payment to Consultant until a correct and complying invoice has been submitted.

#### **SECTION 5 - RESPONSIBILITY OF CONSULTANT**

By executing this Agreement, Consultant warrants to City that Consultant possesses, or will arrange to secure from others, all of the necessary professional capabilities, experience, resources and facilities necessary to provide to City the professional services under this Agreement. In procuring the professional services of others to assist Consultant in performing the professional services set forth at EXHIBIT B or additional professional services under SECTION 3 of this Agreement, Consultant shall not employ or otherwise obtain the professional services of any person or entity known to Consultant or City to have, or be likely to develop during the term of this Agreement, an interest that is personally, or professionally, or financially adverse to any interest of City. Consultant will follow the best current, generally accepted professional practices in performing tests and procedures, making findings, rendering opinions, preparing factual presentations and providing professional advice and recommendations regarding professional services rendered under this Agreement.

#### **SECTION 6 - RESPONSIBILITY OF CITY**

To the extent appropriate to the Project contemplated by this Agreement, City shall:

**6.1** Assist Consultant by placing at Consultant's disposal all available information pertinent to the Project, including previous reports and any other data relative to design and construction of the Project.

**6.2** Guarantee access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform Consultant's professional services.

**6.3** Examine all studies, reports, sketches, drawings, specifications, proposals, and other documents prepared and presented by Consultant, and render verbally or in writing as may be appropriate, decisions pertaining thereto within a reasonable time so as not to delay the progress of the services by Consultant.

**6.4** Designate in writing a person to act as City's representative with respect to the services to be performed under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to materials, equipment, elements and systems pertinent to Consultant's professional services.

**6.5** Give prompt written notice to Consultant whenever City observes or otherwise becomes aware of any defect in the Project.

**6.6** Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

#### **SECTION 7 - INDEMNIFICATION**

To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with Consultant's use of City premises under this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Consultant shall reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

Consultant/Subconsultant/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its directors, officials, officers, employees, agents, or volunteers.

Notwithstanding the above, Consultant's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents for claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) shall be limited to the extent caused by Consultant's negligent acts, errors or omissions.

## **SECTION 8 - INSURANCE**

Any requirements by City that Consultant carry general liability, errors and omissions, or any other type of insurance in connection with the services to be performed and/or professional services to be rendered by Consultant pursuant to this Agreement shall be as set forth in EXHIBIT D, entitled "INSURANCE PROVISIONS."

## **SECTION 9 - GENERAL PROVISIONS**

### **9.1 Access to Records**

Consultant shall maintain all books, records, documents, accounting ledgers, and similar materials relating to services performed for City under this Agreement on file for at least four years following the date of final payment to Consultant by City. Any duly authorized representative(s) of City shall have access to such records for the purpose of inspection, audit and copying at reasonable times, during Consultant's usual and customary business hours. Consultant shall provide proper facilities to City's representative(s) for access and inspection. Consultant shall be entitled to reasonable compensation for time and expenses related to such access and inspection activities, which shall be considered to be an additional professional service to City, falling under the provisions of SECTION 3 of this Agreement.

### **9.2 Assignment**

This Agreement is binding on the heirs, successors, and assigns of the parties hereto and shall not be assigned by either City or Consultant without the prior written consent of the other.

### **9.3 Changes to Scope of Services - Basic Professional Services**

City may at any time, upon a minimum of 10 days written notice, modify the scope of basic professional services to be provided under this Agreement. Consultant shall, upon receipt of said notice, determine the impact on both time and compensation of such change in scope and notify City in writing. Upon agreement between City and Consultant as to the extent of said impacts to time and compensation, an amendment to this Agreement shall be prepared describing such changes. Execution of the amendment by City and Consultant shall constitute the Consultant's notice to proceed with the changed scope.

### **9.4 Compliance with Laws, Rules, Regulations**

All professional services performed by Consultant pursuant to this Agreement shall be performed in accordance and full compliance with all applicable Federal, State, or City statutes, and any rules or regulations promulgated thereunder.

### **9.5 Conflict of Interest Code Applicability**

If City's City Manager has determined that one or several of Consultant's Principal(s) or Project Manager(s) are subject to the provisions of Section 2R.04.180 of the Chico Municipal Code (the City's Conflict of Interest Code), then each such person will be required to comply with the provisions of said Code in connection with the professional services they render to the City under this Agreement. In such event, City's requirements are set forth in EXHIBIT E, entitled "CONFLICT OF INTEREST PROVISIONS," to this Agreement.

**9.6 Exhibits Incorporated**

All Exhibits attached to and referred to in this Agreement are hereby incorporated by this reference.

**9.7 Independent Contractor**

City and Consultant agree that the relationship between them created by this Agreement is that of an employer-independent contractor. Consultant shall be solely responsible for the conduct and control of the services performed under this Agreement. Consultant shall be free to render professional consulting services to others during the term of this Agreement, so long as such activities do not interfere with or diminish Consultant's ability to fulfill the obligations established herein to City.

**9.8 Integration; Amendment**

This Agreement represents the entire understanding of City and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered in it. This Agreement may not be modified or altered except by amendment in writing signed by both parties.

**9.9 Jurisdiction**

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

**9.10 Notice to Proceed; Progress; Completion**

Upon execution of this Agreement by the parties, City shall give Consultant written notice to proceed with the services. Such notice may authorize Consultant to render all of the professional services contemplated herein, or such portions or phases as may be mutually agreed upon. In the latter event, City shall, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the services. Upon receipt of such notices, Consultant shall diligently proceed with the services authorized and complete it within the agreed time period.

**9.11 Ownership of Documents**

Title to all documents, designs, drawings, specifications, and the like with respect to services performed under this Agreement shall vest with City at such time as City has compensated Consultant, as provided herein, for the professional services rendered by Consultant in connection with which they were prepared.

**9.12 Subcontracts**

Consultant shall be entitled, to the extent determined appropriate by Consultant, to subcontract any portion of the services to be performed under this Agreement. Consultant shall be responsible to City for the actions of persons and firms performing subcontract services. The subcontracting of services by Consultant shall not relieve Consultant, in any manner, of the

obligations and requirements imposed upon Consultant by this Agreement.

**9.13 Term; Termination**

The term of this Agreement shall commence upon City's issuance to Consultant of a notice to proceed for all or a portion of the services, as hereinabove provided, and shall end upon City's acceptance and payment for all or such portion of the services as was authorized by such notice, including any and all retentions. Notwithstanding the foregoing, City may, in its sole discretion, terminate this Agreement at any time and for any reason whatsoever by giving at least 10 days prior written notice of such termination to Consultant. In this latter event, Consultant shall be entitled to compensation for all professional service rendered and services performed for City to the date of such termination.

**9.14 Notice**

Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service or, alternatively, by personal delivery or overnight courier service addressed to the parties as follows:

To City:	City Manager City of Chico P. O. Box 3420 Chico, CA 95927-3420	or	City Manager City of Chico 411 Main Street Chico, CA 95928
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To Consultant: President  
Procure America, Inc.  
31103 Rancho Viejo Rd., Suite D2102  
San Jaun Capistrano, CA 92675

**SECTION 10 - SPECIAL PROVISIONS**

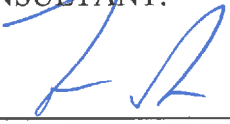
This Agreement shall include all special provisions, if any, as are set forth on EXHIBIT F, entitled "SPECIAL PROVISIONS."

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date first set forth above.

CITY:

  
\_\_\_\_\_  
Mark Orme, City Manager\*

CONSULTANT:

  
\_\_\_\_\_  
By: Fred Armendariz, President

\*Authorized pursuant to Section 3.08.060  
of the Chico Municipal Code

APPROVED AS TO FORM:



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Vincent C. Ewing, City Attorney\*

\*Pursuant to The Charter of the  
City of Chico, Section 906(D)

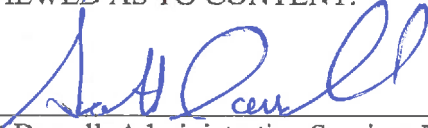
APPROVED AS TO CONTENT:



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Chris Constantin, Assistant City Manager

REVIEWED AS TO CONTENT:



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Scott Dowell, Administrative Services Director\*

\*Reviewed by Finance and Information Systems



**CITY OF CHICO - PROFESSIONAL SERVICES AGREEMENT**

Procure America, Inc.  
Architect/Consultant/Engineer

Cost Reduction Consulting Services  
Project Title

Various  
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**EXHIBIT A**

DESCRIPTION OF PROJECT

Consultant shall provide professional cost reduction consulting services and make recommendations on actions the City may take to reduce cost and enhance service levels while continuing to meet City's operational requirements. City may, at City's sole discretion, implement some, all or none of Consultant's recommendations.

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## EXHIBIT B

### SCOPE OF PROFESSIONAL SERVICES - BASIC; COMPLETION SCHEDULE

#### Scope of Professional Services - Basic

The Consultant shall provide professional cost reduction consulting services as follows:

#### 1. REVIEW PHASE

Being mindful of limited City resources, Consultant shall act as the project manager for all aspects of the project and will, to the extent possible, minimize City staff involvement.

##### a) Telecommunications Expense Category (landline, data and wireless)

Consultant shall use its best efforts to obtain cost savings for City's benefit by analyzing City's policies, procedures, supplier contracts, past invoices and other pertinent information as it relates to City's telecommunications expense category. Consultant will further gather information as to City's needs (past, present and future) from City's service providers to build a solution that not only lowers cost, but also matches City's operational and corporate requirements and expectations. After analyzing City's current spending patterns, Consultant shall provide City with a full report outlining Consultant's observations. Consultant's report will include a review of operations, cost reduction recommendations and potential service level enhancements.

##### b) Other Expense Categories

By written amendment to this Agreement, City may request that Consultant review other City expense categories in addition to the telecommunications category.

#### 2. POST REVIEW PHASE

For the entire balance of the relationship with City, Consultant will continue to consult with City to continuously look for efficiencies in the chosen areas of focus. Periodically

the Consultant team will review City's invoicing and deliverables to ensure accountability by City's service providers with respect to the spirit and intent of the agreement between City and the third-party service provider. This review will consider service levels, cost controls and overall City satisfaction. Further, Consultant will continuously consult with City to anticipate changes in service needs to ensure that the proper service provider, contract and procedures are in place to address City's go forward requirements.

### Services to be Provided by City

City shall give its full cooperation to Consultant in providing all required documents, invoices, contracts and staff consultation time to Consultant's evaluation team to conduct the expense reduction review. During the review process, City agrees not to renegotiate, amend or extend in place contracts or introduce operational procedures/changes that will affect cost/pricing and or contractual obligations of the City to the supplier. However, any unilateral changes initiated by a supplier to the City shall not constitute savings for the purposes of this Agreement.

During the relationship between Consultant and City, City and Consultant understand that despite Consultant's recommendations, suggestions, potential suppliers and other proposals, City has the right not to proceed with said proposals. However, if after receipt of the Consultant's report, the City does pursue any or all of the documented review recommendations (with or without Consultant's further assistance), Consultant is entitled to the appropriate revenue share as outlined in Exhibit C below for any implemented recommendations which yield an actual and documented savings that is directly associated with implementation of the recommendation.

City agrees to grant Consultant the right to review any materials (books, records, invoices, contracts or other information) related to the review category selected by City unless otherwise protected by law. Consultant is authorized to obtain information relating to the provider accounts directly from the provider's personnel and provider websites. Any additional City request or engagements, written or otherwise to review supplementary expenses or income streams will also be governed by this Agreement.

### Completion Schedule

Review Phase - The review phase will be completed within 120 days of receipt of the City's Notice to Proceed.

Post Review Phase - Upon completion of the review phase, and if City elects to proceed with any or all of the recommendations as set forth in Consultant's report(s), each expense reduction category carries its own 12-month term/billing cycle commencing on the first invoice for that expense category. After the initial 12-month implementation period, for an additional 24-month period, Consultant will spot check to confirm that the approved changes are implemented correctly and that the vendors are invoicing the City at correct rates.

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## EXHIBIT C

### COMPENSATION

#### Existing Established Rates

City has in place certain existing costs as it pertains to the expense category(s) selected for review ("Established Rates"). Consultant's report will document the Established Rates for each service or product chosen for review and outline the methodology for Consultant's findings. City and Consultant will then discuss, agree and document the Established Rates for the targeted service or product. After the initial review is completed, Consultant will produce an addendum to this Agreement that outlines the Established Rates, billing cycles and other operational details associated with the go forward strategy.

#### Revenue Share - Expense Reduction

If City elects to proceed with any or all of the recommendations as set forth in Consultant's report, City agrees to compensate Consultant for the savings associated with the proposal. The Revenue Share to Consultant is one hundred percent (100%) of the actual realized savings for 12 months measured by the difference between the agreed upon Established Rates and City's new costs as set forth in Consultant's findings report. All cost reduction gains are to be documented to the City for each billing period and generated specifically by Consultant's findings report. No savings will be estimated nor forecast and must be fully realized by the City to be considered cost reduction for this Agreement. City will retain one hundred percent (100%) of all actual realized savings in subsequent years after the initial 12-month period. It may be necessary to institute cost reduction strategies within an expense category in stages. If this occurs, then each stage of implementation will be viewed with its own billing cycle.

#### Revenue Share - Other Sources of Revenue

Consultant may discover over billing, credits, rebates or other sources of revenue to City. This revenue will also be considered expense reduction and will be accounted for in the same manner as the cost reduction savings. The Revenue Share to Consultant for these one-time items is fifty percent (50%) of the actual realized revenue.

#### Revenue Share Cap

Notwithstanding the compensation methodology described above, total compensation for services rendered related to the telecommunications expense category shall not exceed \$140,000 for all services

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## EXHIBIT D

### INSURANCE PROVISIONS

#### Professional Liability Insurance

Consultant/Contractor shall obtain professional liability (errors and omissions) insurance, with a minimum \$1,000,000 limit, from one or more U.S. domiciled insurance companies licensed to do business in the State of California with an A.M. Best Company rating of "B" or better providing coverage for services rendered to City under this Agreement.

Said insurance coverage shall be evidenced by a certificate of insurance which shall be executed by an authorized official of the insurer(s). In addition to the limits of coverage described above, the certificate of insurance shall provide that the insurer shall provide to City at least 30 days prior notice of cancellation or material change in coverage, or 10 days prior notice of cancellation for non-payment.

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EXHIBIT E

CONFLICT OF INTEREST PROVISIONS

NONE

**CITY OF CHICO - PROFESSIONAL SERVICES AGREEMENT**

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EXHIBIT F

SPECIAL PROVISIONS

NONE