

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Jennifer Mellon, Administrative Services Manager 

DATE: May 15, 2015 (CC Meeting of 6/3/15)

SUBJECT: Consider Agreement with Colasti Rene Mayfield dba Rene Mayfield for Graphic Design Services

BACKGROUND AND DISCUSSION

The City of Moorpark management staff administers a variety of programs and special projects that require public education, promotion, or outreach efforts. Staff has the need for graphic design services for these public information and outreach efforts for a variety of City projects and programs, including but not limited to, solid waste and recycling, transportation, sustainability, water conservation, public announcements, parks and recreation programs, and other special projects.

Staff requires graphic design assistance to create program flyers, public information pieces, and advertisements and this Agreement for Graphic Design Services will allow staff to work with an experienced designer for assistance in creating materials for public outreach. The Agreement is not to exceed \$2,500 annually which is equivalent to 50 hours of design services by the Consultant.

FISCAL IMPACT

The projected cost for the services under this Agreement is not to exceed \$2,500 annually or \$12,500 over the term of the five year Agreement and funding shall reside in numerous divisions within the budget. Staff shall budget for their specific graphic design work needs within their divisional budgets and utilize this Agreement for services. Jennifer Mellon, Administrative Services Manager, shall work with the Consultant to administer the Agreement so that work is tracked and recorded. Other staff shall request graphic design work through the Administrative Services Manager.

STAFF RECOMMENDATION

Authorize the City Manager to sign the Agreement with Colasti Rene Mayfield dba Rene Mayfield subject to final language approval by the City Manager.

Attachment: Agreement

AGREEMENT BETWEEN THE CITY OF MOORPARK AND COLASTI RENE
MAYFIELD DBA RENE MAYFIELD FOR GRAPHIC DESIGN
WORK FOR VARIOUS CITY PROGRAMS

THIS AGREEMENT, is made and effective as of this _____ day of _____, 2015, between the City of Moorpark, a municipal corporation ("City") and Colasti Rene Mayfield, dba Rene Mayfield, a sole proprietor ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

WHEREAS, City has the need for graphic design services for public information and outreach efforts for a variety of City programs and projects, including but not limited to, solid waste and recycling, transportation, sustainability, water conservation, public announcements, parks and recreation programs, and other special projects; and

WHEREAS, Consultant specializes in providing such services and has the proper work experience, certifications, and background to carry out the duties involved; and

WHEREAS, Consultant has submitted to City a Proposal dated May 13, 2015, which is attached hereto as Exhibit A.

NOW, THEREFORE, in consideration of the mutual covenants, benefits, and premises herein stated, the parties hereto agree as follows:

1. TERM

The term of this Agreement shall be from the date of execution to completion of the work identified in the Scope of Services and in conformance with Exhibit A or five (5) years from the date of execution of this Agreement, unless this Agreement is terminated or suspended pursuant to this Agreement.

2. SCOPE OF SERVICES

City does hereby retain Consultant, as an independent contractor, in a contractual capacity to provide graphic design services (designs), as set forth in Exhibit A. In the event there is a conflict between the provisions of Exhibit A and this Agreement, the language contained in this Agreement shall take precedence.

Consultant shall perform the tasks described and set forth in Exhibit A.

Compensation for the services to be performed by Consultant shall be in accordance with Exhibit A. Compensation shall not exceed two thousand five hundred dollars (\$2,500.00) annually as stated in Exhibit A, without a written Amendment to the Agreement executed by both parties. Payment by City to Consultant shall be in accordance with the provisions of Section 5 this Agreement.

3. SPECIAL CONTRACT PROVISIONS

Consultant agrees to be bound by the terms of these Contract Provisions:

a) Irrevocable License to Reproduce. Consultant hereby grants the City, without additional charge to, or payment by, the City, an irrevocable license to make, or cause to be made, photographs and other two-dimensional reproductions of the designs for any municipal purpose including, but not limited to, educational, public relations, tourist and arts promotional purposes. For the purposes of this Agreement, the following are examples of permissible reproductions for the above cited purposes: brochures and pamphlets pertaining to the City or State; exhibition catalogues, books, slides, photographs, postcards, posters, and calendars; art magazines, art books and art and news sections of newspapers; general books and magazines not primarily devoted to art; as well as slides, CDs, DVDs, film strips, video, computer websites and television. Consultant guarantees that due diligence has occurred and permissions have been acquired for graphics that may have copyright protection. City shall not use any reproductions of graphics created in the scope of this Agreement for profit making purposes.

b) Errors and Omissions. The City's acceptance of the designs shall not release the Consultant of the responsibility for the correction of errors or omissions that the work may contain regardless of whether these errors or omissions were the result of circumstances unforeseen at the time the graphic design was developed or approved.

c) Ownership of Graphic Designs and Documents. All original designs shall be created in Adobe Creative Suite software or other software program approved in writing by City and provided to City in a form which can be edited or changed and shall become the joint property of the City and the Consultant. The Consultant shall deliver such graphic designs in a file format agreed upon by Consultant and City upon completion of this Agreement.

4. PERFORMANCE

Consultant shall at all times faithfully, competently and to the best of their ability, experience, standard of care, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

5. MANAGEMENT

The individual directly responsible for Consultant's overall performance of the Agreement provisions herein above set forth and to serve as principal liaison between City and Consultant shall be Rene Mayfield, and no other individual may be substituted without the prior written approval of the City Manager.

The City's contact person in charge of administration of this Agreement, and to serve as principal liaison between Consultant and City, shall be the City Manager or the City Manager's designee.

6. PAYMENT

Taxpayer ID or Social Security numbers must be provided by Consultant on an IRS W-9 form before payments may be made by City to Consultant.

The City agrees to pay Consultant upon completion of the Agreement. This amount shall not exceed two thousand five hundred dollars (\$2,500) annually or twelve thousand five hundred (\$12,500) for the total term of the Agreement unless additional payment is approved as provided in this Agreement. The City Manager shall be authorized to approve on behalf of the City a written Amendment to the Agreement to adjust the Scope of Services and payment rates set forth in Exhibit A, so long as such adjustment to Consultant's payment rates does not equal or exceed a three percent (3%) increase in any fiscal year. Any such adjustment to the Consultant's rates that exceeds a three percent (3%) increase in any fiscal year shall require prior approval of the City Council.

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services and compensation are authorized, in advance, in a written amendment to this Agreement executed by both parties. The City Manager, if authorized by City Council, may approve additional work not to exceed ten percent (10%) of the amount of the Agreement.

Payment shall be made within thirty (30) days of receipt of the invoice as to all non-disputed fees. If the City disputes any of Consultant's fees or expenses, City shall give written notice to Consultant within thirty (30) days of receipt of any disputed fees set forth on the invoice.

7. TERMINATION OR SUSPENSION WITHOUT CAUSE

The City may at any time, for any reason, with or without cause, suspend, or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.

The Consultant may terminate this Agreement only by providing City with written notice no less than thirty (30) days in advance of such termination.

In the event this Agreement is terminated or suspended pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination or suspension, provided that the work performed is of value to the City.

Upon termination or suspension of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to this Agreement.

8. DEFAULT OF CONSULTANT

The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate or suspend this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

If the City Manager or his/her designee determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, he/she shall cause to be served upon the Consultant a written notice of the default. The Consultant shall have fifteen (15) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

9. LIQUIDATED DAMAGES

This section intentionally left blank.

10. OWNERSHIP OF DOCUMENTS

Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or the City's designees at reasonable times to such books and records; shall give the City the right to examine and audit said books and records; shall permit City to make transcripts therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. Notification of audit shall be provided at least thirty (30) days before any such audit is conducted.

Upon completion of, or in the event of termination or suspension without cause of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused, or otherwise disposed of by the City without the

permission of the Consultant. With respect to computer files, Consultant shall make available to the City, at the Consultant's office and upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

11. INDEMNIFICATION AND HOLD HARMLESS

Indemnity for professional liability: When the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsels' fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or sub-consultants (or any agency or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

Indemnity for other than professional liability: Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsels' fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or agency for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant.

Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section from each and every sub-consultant, or any other person or entity involved by, for, with, or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this Section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns, or heirs of Consultant and shall survive the termination of this Agreement or this Section.

City does not and shall not waive any rights that it may have against Consultant by reason of this Section, because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions shall apply regardless of whether or not said insurance policies are determined to be applicable to any losses, liabilities, damages, costs, and expenses described in this Section.

12. INSURANCE

Consultant shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit B attached hereto and incorporated herein by this reference as though set forth in full.

13. INDEPENDENT CONSULTANT

Consultant is and shall at all times remain as to the City a wholly independent Contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers or employees, or agents of the City except as set forth in this Agreement. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

14. LEGAL RESPONSIBILITIES

The Consultant shall stay informed of local, state, and federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such laws and regulations, including but not limited to the Americans with Disabilities Act and Occupational Health and Safety Administration laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this Section.

15. ANTI DISCRIMINATION

Neither the Consultant, nor any sub-consultant under the Consultant, shall discriminate in employment of persons upon the work because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or gender of such person, except as provided in Section 12940 of the Government Code. The Consultant shall have responsibility for compliance with this Section [Labor Code Section 1735].

16. UNDUE INFLUENCE

Consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award, terms, or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City will receive compensation, directly or indirectly from Consultant, or any officer, employee, or agent of Consultant, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling the City to any and all remedies at law or in equity.

17. NO BENEFIT TO ARISE TO LOCAL EMPLOYEES

No member, officer, or employee of the City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Services during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Services performed under this Agreement.

18. CONFLICT OF INTEREST

Consultant covenants that neither they nor any officer or principal of their firm have any interests, nor shall they acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of their services hereunder. Consultant further covenants that in the performance of this Agreement, they shall employ no person having such interest as an officer, employee, agent, or sub-consultant. Consultant further covenants that Consultant has not contracted with nor is performing any services directly or indirectly, with the developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, now or within the past one (1) year, and further covenants and agrees that Consultant and/or its sub-consultants shall provide no service or enter into any contract with any developer(s) and/or property owner(s) and/or firm(s) and/or partnership(s) and/or public agency(ies) owning property and/or processing an entitlement application for property in the City or its Area of Interest, while under contract with the City and for a one (1) year time period following termination of this Agreement.

19. NOTICE

Any notice to be given pursuant to this Agreement shall be in writing, and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

To: City Manager, City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021

To: Rene Mayfield
207 West Los Angeles #262
Moorpark, California 93021

Either party may, from time to time, by written notice to the other, designate a different address or contact person, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon receipt by personal service or as of the third (3rd) day after deposit in the United States mail.

20. CHANGE IN NAME

Should a change be contemplated in the name or nature of the Consultant's legal entity, the Consultant shall first notify the City in order that proper steps may be taken to have the change reflected in the Agreement documents.

21. ASSIGNMENT

Consultant shall not assign this Agreement or any of the rights, duties, or obligations hereunder. It is understood and acknowledged by the parties that Consultant is uniquely qualified to perform the services provided for in this Agreement.

22. LICENSES

During the entire term of this Agreement, Consultant shall have in full force and effect, all licenses required by law for the performance of services in this Agreement.

23. VENUE AND GOVERNING LAW

This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions, or covenants referred to herein shall be filed in the applicable court in Ventura County, California. The City and Consultant understand and agree that the laws of the state of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement.

24. COST RECOVERY

In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including attorneys' fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

25. ARBITRATION

Cases involving a dispute between City and Consultant may be decided by an arbitrator if both sides agree in writing, with costs proportional to the judgment of the arbitrator.

26. ENTIRE AGREEMENT

This Agreement and the Exhibits attached hereto contain the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

27. CAPTIONS OR HEADINGS

The captions and headings of the various Articles, Paragraphs, and Exhibits of this Agreement are for convenience and identification only and shall not be deemed to limit or define the content of the respective Articles, Paragraphs, and Exhibits hereof.

28. AMENDMENTS

Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by both parties to this Agreement.

29. PRECEDENCE

In the event of conflict, the requirements of the City's Request for Proposal, if any, and this Agreement shall take precedence over those contained in the Consultant's Proposal.

30. INTERPRETATION OF AGREEMENT

Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

31. WAIVER

No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.

32. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of obligations hereunder.

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

CITY OF MOORPARK

COLASTI RENE MAYFIELD, dba RENE
MAYFIELD

By: _____

Steven Kueny, City Manager

By: _____

Rene Mayfield, Consultant

Attest:

Maureen Benson, City Clerk

Exhibit A

Scope of Work Between the City of Moorpark and Colasti Rene Mayfield dba Rene Mayfield

1. SCOPE OF WORK:

Colasti Rene Mayfield, DBA Rene Mayfield shall provide to City graphic design work to be used for public information and outreach efforts for a variety of City programs and projects, including but not limited to, solid waste and recycling, transportation, sustainability, water conservation, public announcements, parks and recreation programs, and other special projects.

Consultant rate is \$50.00 per hour for all graphic design work performed within this Agreement for the City of Moorpark. Consultant agrees to work up to, and not exceeding 50 hours per year within the terms of this Agreement. City agrees to pay Consultant at the above hourly rate not to exceed \$2,500 per year throughout the Term of the Agreement.

2. CONSULTANT WILL PROVIDE:

- a. Graphic Designs that will be used for public information, outreach, and promotion of a variety of City projects and programs, including but not limited to solid waste and recycling programs, transportation, sustainability, water conservation, public announcements, parks programs and other special projects. Designs may be needed in a variety of specified dimensions to be used in a variety of ways including but not limited to print media, online publications and advertisements, and signage.
- b. Computer Files with the graphic designs in a format agreed upon by City and Consultant.
- c. Emergency telephone and cellular telephone contact numbers to City upon receipt of executed Agreement.

3. CITY WILL PROVIDE:

- a. Information about the projects and programs for the graphic design work.
- b. Payment as described in Section 2 of this Agreement.

**Exhibit B
Insurance Requirements**

As a condition precedent of the effectiveness of this Agreement, Consultant shall procure, and thereafter maintain in full force and effect at Consultant's sole cost and expense, the following types and amounts of insurance:

1. Consultant shall not be required to provide general commercial liability insurance for services performed under this Agreement.
2. Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than State statutory limits per accident. If Consultant or Consultant's employees, sub-consultants, or volunteers will use personal autos in any way in performing the services under this Agreement, Consultant shall provide evidence of personal auto liability insurance for each such person consistent with the requirements of state law.
3. Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease. A Workers Compensation Insurance Certificate shall be filed with City before beginning work, unless Consultant signs the following written certification that no one other than Consultant, or a legal sub-consultant, will perform any services under this Agreement.

Workers Compensation Exemption Certification:

I certify that in the performance of this Agreement, I shall not employ any person in any manner so as to become subject to the Workers' Compensation laws of the California Labor Code, and agree that if I should become subject to the Workers' Compensation provisions of the California Labor Code, I shall forthwith comply with those provisions.

Consultant:

Print

Signature