

# AGREEMENT

THIS AGREEMENT is made and entered into this 28<sup>th</sup> day of July, 2021, by and between Morongo Valley CSD hereinafter referred to as "CSD", with principal offices at the Morongo Valley Community Services District and CHARLES ABBOTT ASSOCIATES, INC., hereinafter referred to as "Consultant", with corporate offices located at 27201 Puerta Real, Suite 200, Mission Viejo, CA 92691.

WHEREAS, The CSD proposes to utilize the services of Consultant for Fire Plan Review and Inspection Services.

WHEREAS, the Consultant has represented to the Morongo Valley CSD that the Consultant has the requisite qualifications and experience and has the requisite capabilities to properly perform the proposed services in a thorough, competent, professional, and workmanlike manner.

Now, therefore, in consideration of the foregoing and the mutual promises and covenants herein contained, the parties hereto agree as follows:

## **SCOPE OF SERVICES**

- A. Consultant will perform services and the related work described above, attached as Exhibit A.
- B. Consultant will perform services based on directives issued by the Morongo Valley Fire Chief. Consultant will not undertake any work, which will result in costs, expenses, or fees without written permission from the CSD. Consultant will not further subcontract or assign said work to any other individual or company without consent of the CSD.
- C. The CSD may require Consultant to provide additional services beyond the items described above. For such services, the rates and quantities will be negotiated between the CSD and Consultant. If approved by the CSD, a written work order will be provided.

## **COMPENSATION**

- A. CAA's compensation for providing the proposed services will be at a percent of fee rate Of 65% of the proposed Fire Prevention Fees as adopted for development projects, and an hourly rate of \$97/hr for Annual Inspections.
- B. Consultant will provide monthly invoices, which will itemize all work performed and related charges for that work. The CSD will pay each such invoice within 30 days of receipt of each invoice. Consultant will provide an unconditional release for all amounts due upon receiving payment from the CSD. The CSD will contact Consultant not later than 5 days of receipt of any invoice which is in dispute.

## **TERM**

- A. This Agreement will take effect immediately upon signing by both parties and will remain in effect until July 28, 2026.

- B.** This Agreement may be terminated by the CSD without cause by giving 30 days' written notice to the Consultant. If this Agreement is terminated by the CSD, Consultant will be compensated for such services up to the point of termination based on the work completed to such date. Consultant may terminate this agreement by providing the CSD with written notice, at least 60 days in advance of such termination. If this Agreement is terminated by the Consultant, the Consultant will be compensated for services up to the point of termination, based on the work completed to such date.
- C.** Consultant will perform the services under this Agreement in a skillful and competent manner and according to the standards observed by a competent practitioner of the work in which Consultant is engaged. Services provided pursuant to this Agreement will be provided in a substantial, first class, and workmanlike manner to conform to the standards of quality normally provided in the field.

### **INSURANCE**

- A.** Consultant will neither work under this Agreement until it has obtained all insurance required hereunder from a company or companies rated A or better, nor will Consultant allow any additional Sub-Consultant to commence work for any part of this agreement until all insurance required of this Agreement (as outlined below) has been obtained.
- B.** Throughout the term of this Agreement, at Consultant's sole cost and expense, Consultant will keep, or cause to be kept, in full force and effect, for the mutual benefit of the CSD and Consultant the following insurance policies:
- General Liability Insurance – Providing protection of \$1,000,000 per occurrence / \$2,000,000 annual aggregate against claims and liabilities for personal injury, death, or property damage arising from Consultant's activities.
  - Professional Liability Insurance – Providing protection for at least \$2,000,000 per occurrence/annual aggregate against claims and liabilities of the Consultant.
  - Automobile Liability Insurance – Providing protection for at least \$1,000,000 combined single limit.
  - Worker's Compensation Insurance – In accordance with the provisions of the laws of the State of California.

All insurance required by this Agreement will be carried only with responsible insurance companies licensed to do business in the State of California. General and Auto Liability policies will name the City, its officers, agents, and employees as additional insured.

### **INDEMNIFICATION**

The Consultant shall defend, indemnify, and hold harmless the CSD, its officers, directors, employees, and agents from and against all Claims, to the extent arising out of Consultant's gross negligence or willful misconduct in the performance of its obligations under this Agreement. The CSD shall defend, indemnify, and hold harmless the Consultant, its officers, directors, employees, and agents from and against all Claims, to the extent arising out of the CSD's gross negligence or willful misconduct under this agreement.

## **NONDISCRIMINATION BY CONSULTANT**

Consultant represents and agrees that Consultant does not and will not discriminate against any sub-consultant, employee, or applicant for employment because of race, religion, color, gender, handicap, or national origin. Such nondiscrimination will include, but not be limited to, the following: employment, upgrading, promotion, demotion, transfers, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

## **OWNERSHIP OF DOCUMENTS**

Consultant agrees that all original documents, plans, reports, and other materials developed during the course of providing the services specified in the Agreement will be the property of the Morongo Valley CSD and will be provided by the Consultant to the CSD upon their completion.

## **CONSULTANT'S RECORDS**

Consultant will keep records and invoices in connection with its work to be performed under this Agreement. Consultant will maintain complete and accurate records with respect to the costs incurred under this Agreement. All such records will be clearly identifiable. Consultant will allow a representative of the CSD during normal business hours to examine, audit, and make transcripts or copies of such records. Consultant will allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of five years from the date of final payment under this Agreement.

## **ENTIRE AGREEMENT**

This Agreement supersedes any and all agreements, either oral or written, between the parties hereto, and contains all the covenants and agreements between the parties with respect to rendering of services described herein. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made with regard to such services by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise regarding such services not contained in this Agreement will be valid or binding. Any modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.

## **GOVERNING LAW AND VENUE**

- A. This Agreement will be governed by and construed in accordance with the laws of the State of California.
- B. San Bernardino County will be the venue for any legal proceedings, including mediation, arbitration, or court actions that are initiated regarding this Agreement.

## **BREACH OF AGREEMENT**

If the Consultant defaults in the performance of any of the terms or conditions of this Agreement, it will have ten days after service upon it of written notice of such default 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 CSD will 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. The failure of the CSD to object to any default in the performance of the terms and conditions of this Agreement will not constitute a waiver of either that term or condition or any other term or condition of this Agreement.

**ATTORNEY'S FEES**

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorney's fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

**NON-SOLICITATION**

During and for a period of six (6) months following termination of this Agreement, neither party shall directly or indirectly solicit for hire or engage any personnel (whether as employee, consultant or in any other capacity) of CAA with responsibilities related to this Agreement without CAA's prior written consent.

**SEVERABILITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Morongo Valley CSD  
11207 Ocotillo Street  
Morongo Valley, CA 92256

Charles Abbott Associates, Inc.  
27201 Puerta Real, Suite 200  
Mission Viejo, CA 92691

Gerald Yearsley  
Print Name

Rusty R. Reed  
Print Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Director of Operations  
Title

CEO/President  
Title