

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is entered into this ____ day of _____ 2018, between the CITY OF STOCKTON, a municipal corporation ("City"), and Takeform whose address is 11601 Maple Ridge Road, Medina NY, 14103 and telephone number is 585-798-8888 ("Consultant").

RECITALS

A. Consultant is qualified and experienced in providing services for a design-build signage program including parking wayfinding; requiring Consultant to, design, determine placement of, fabricate, remove, and install signs in downtown Stockton, including on-street parking options, lots and garages for the purposes specified in this Agreement.

B. City needs a comprehensive signage program including wayfinding for the Parking operation and therefore finds it necessary and advisable to use the services of the Consultant for the purposes provided in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions in this Agreement, City and Consultant agree as follows:

1. **Consultant's Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in **Exhibit A.** Consultant shall provide said services at that time, place and in the manner specified in **Exhibit A.**

2. **City Assistance, Facilities, Equipment and Clerical Support.** Except as set forth in Exhibit A. Consultant shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement. City shall furnish to Consultant only the facilities and equipment listed in Exhibit A.

3. **Term.** This Agreement shall commence on the date written above and shall expire on December 1, 2023; provided, however the parties may agree to change either the commencement or expiration date. Any such change must be in writing and signed by both parties.

4. **Compensation.** City shall pay Consultant for services rendered pursuant to this Agreement as described more particularly in **Exhibit A.** The payments shall be made on a monthly basis upon receipt and approval of Consultant's invoice. Total compensation for services and reimbursement for costs shall not exceed \$ 250,000 Two hundred fifty thousand dollars. Of the total not-to-exceed amount a maximum of 25% of the total may be spent for Design/assessment services, leaving the remaining 75% to be allocated for fabrication and installation products and services.

a. Invoices submitted by Consultant to City must contain a brief description of work performed, time used and City reference number. Payment shall be made within thirty (30) days of receipt of Consultant's invoice and approved by City.

b. Upon completion of work and acceptance by City, Consultant shall have sixty (60) days in which to submit final invoicing for payment. An extension may be granted by City upon receiving a written request thirty (30) days in advance of said time limitation. The City shall have no obligation or liability to pay any invoice for work performed which the Consultant fails or neglects to submit within sixty (60) days, or any extension thereof granted by the City, after the work is accepted by the City.

5. **Sufficiency of Consultant's Work.** All reports, drawings, designs, plan review comments and work product of Consultant shall be adequate and sufficient to meet the purposes for which they are prepared and consistent with industry standard.

6. **Ownership of Work.** All reports, drawings, designs, plan review comments, work product, and all other documents completed or partially completed by Consultant in the performance of this Agreement shall become the property of the City. Any and all copyrightable subject matter in all materials is hereby assigned to the City and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment. All materials shall be delivered to the City upon completion or termination of the work under this Agreement. If any materials are lost, damaged or destroyed before final delivery to the City, the Consultant shall replace them at its own expense. Consultant shall keep materials confidential. Materials shall not be used for purposes other than performance of services under this Agreement and shall not be disclosed to anyone not connected with these services, unless the City provides prior written consent.

7. **Changes.** City may request changes in the scope of services to be provided by Consultant. Any changes and related fees shall be mutually agreed upon between the parties and subject to a written amendment to this Agreement.

8. **Consultant's Status.** In performing the obligations set forth in this Agreement, Consultant shall have the status of an independent contractor and Consultant shall not be considered to be an employee of the City for any purpose. All persons working for or under the direction of Consultant are its agents and employees and are not agents or employees of City.

9. **Termination for Convenience of City.** The City may terminate this Agreement at any time by mailing a notice in writing to Consultant. The Agreement shall then be deemed terminated and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the work actually completed at the time the notice of termination is received.

10. **Non-Assignability.** The Consultant shall not assign, sublet, or transfer this Agreement or any interest or obligation in the Agreement without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing. Consultant shall be solely responsible for reimbursing subcontractors.

11. **Indemnity and Hold Harmless.** Consultant shall defend, indemnify, and hold harmless, the City and its officers, agents and employees from and against all claims, losses, damage, injury, and liability for damages arising from, or alleged to have arisen from, errors, omissions, negligent or wrongful acts of the Consultant in the performance of its services under this Agreement, regardless of whether the City has reviewed or approved the work or services which has given rise to the claim, loss, damage, injury or liability for damages. This indemnification shall extend for a reasonable period of time after completion of the project as well as during the period of actual performance of services under this Agreement. The City's acceptance of the insurance certificates required under this Agreement does not relieve the Consultant from its obligation under this paragraph.

12. **Insurance.** During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense the insurance coverage as set forth in the attached **Exhibit B** and shall otherwise comply with the other provisions of **Exhibit B**.

13. **Notices.** All notices herein required shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

Consultant: Takeform
11601 Maple Ridge Road
Medina NY 14103

City: City Manager
City of Stockton
425 N. El Dorado Street
Stockton, CA 95202

14. **Conformance to Applicable Laws.** Consultant shall comply with all applicable Federal, State, and Municipal laws, rules, and ordinances. Consultant shall not discriminate in the employment of persons or in the provision of services under this Agreement on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

15. **Licenses, Certifications and Permits.** Prior to the City's execution of this Agreement and prior to the Consultant's engaging in any operation or activity set forth in this Agreement, Consultant shall obtain a City of Stockton business license, which must be kept in effect during the term of this Agreement. Consultant covenants that it has obtained all certificates, licenses, permits and the like required to perform the services under this Agreement.

16. **Records and Audits.** Consultant shall maintain all records regarding this Agreement and the services performed for a period of three years from the date that

final payment is made. At any time during normal business hours, the records shall be made available to the City to inspect and audit.

17. **Confidentiality**. Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of City reports, information or conclusions.

18. **Conflicts of Interest**. Consultant covenants that other than this Agreement, Consultant has no financial interest with any official, employee or other representative of the City. Consultant and its principals do not have any financial interest in real property, sources of income or investment that would be affected in any manner of degree by the performance of Consultant's services under this Agreement. If such an interest arises, Consultant will immediately notify the City.

19. **Waiver**. In the event either City or Consultant at any time waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or of any other covenant, condition or obligation.

20. **Governing Law**. California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of San Joaquin, Stockton Branch or, where applicable, in the federal District Court of California, Eastern District, Sacramento Division.

21. **No Personal Liability**. No official or employee of City shall be personally liable to Consultant in the event of any default or breach by the City or for any amount due Consultant.

22. **Exhibits**. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

23. **Scope of Agreement**. This writing constitutes the entire Agreement between the parties. Any modification to the Agreement shall be in writing and signed by both parties.

THIS AGREEMENT executed the date and year first above written.

CITY OF STOCKTON

CONSULTANT

Kurt Wilson, City Manager

By: _____
Signature

ATTEST:

Print name

Bret Hunter, City Clerk

Title: _____

APPROVED AS TO FORM:

*[If Consultant is a corporation
signature(s) must comply with
Corporations Code §313.]*

John Luebberke, City Attorney

EXHIBIT A**SCOPE OF SERVICES**

1. GENERAL. This is scope of services is for a design-build signage program, requiring Consultant to, fabricate, remove, and install signs in downtown Stockton, including on-street parking options, lots and garages.

2. DESIGN

a. Consultant shall meet and collaborate with City to create a comprehensive parking signage and wayfinding program which identifies parking options and directs the customers in a clear and inviting tone to all parking including on-street, lot and garage options.

b. Consultant shall use color to distinguish areas of parking such as type, location/floors, timing, etc. Color scheme to be approved by City.

c. Consultant shall use universally recognized font such as Bell Gothic Standard, Arial or a like replacement. The City shall have final approval of font to be used.

d. Consultant shall ensure lettering and instructional signage meets current ADA requirements.

e. Design graphics shall include but not be limited to exterior and interior garage walls; pillars; wraps; street signage and medians; maps; directional, mounted, and hung signage; and collateral hand-outs.

f. Materials defined for fabrication must be durable; fade resistant; able to withstand Northern California's dry, hot summers and cool, wet winter climate; available; cost-effective; resistant to graffiti; and require minimal maintenance. Consultant shall provide the following:

- i. Signage will meet ASTM standards for temperature, humidity, and freeze thaw cycles,
- ii. Signage will meet ASTM E84 Class A fire rating,
- iii. Mounting hardware must be non-corroding aluminum or stainless steel,
- iv. Signage must be structurally engineered to resist wind loads and thermal movement without distortion or deflection,
- v. Signage must be coated with graffiti and UV resistant protective overlay

g. Consultant will be required to provide signage/graphic dimensions, types, color formulas, patterns, materials, finishes, plots and location plans. Such formulas and plans will become the property of the City upon project completion and are required to be submitted to the City prior to final payment.

h. Design development and approval is anticipated to proceed for not more than 6 months, unless extension is agreed upon in writing by City.

i. Consultant must be prepared to move a segment along to full design-build status at the request of the City to allow some signage to move forward to fabrication and installation while details are fine-tuned on remaining signage segments.

3. FABRICATION AND INSTALLATION

a. Consultant shall not perform any work until a notice to proceed is issued by the Economic Development Department.

b. Consultant shall perform all sign fabrication, removal, and installation work per the agreed upon specifications listed under Section 2, Design, a. - i. Consultant is not responsible for preparing or painting the interior walls and columns, unless the signage agreed upon is painted on the wall. Consultant is responsible for installing all signs as specified.

c. Consultant shall provide labor, material, equipment, supervision, transportation, handling, storage, liaison, and traffic control for the delivery, fabrication, installation, and mounting of new signs and removal of existing signs on various surfaces.

d. Proposed penetrations, of structures, may require x-raying and approval from City Engineering prior to any penetration work. Consultant is responsible for obtaining written approval from City for all surface penetrations.

e. The end-product and work areas shall be clean and free of defects. All signs removed shall be disposed of off-site, at the Consultant's expense.

f. Some parking area work will include traffic control. The Consultant is responsible for submitting and obtaining City approval and permits, where applicable; and implementing traffic control plans prior to any work commencing.

g. Questions pertaining to the work shall be referred to the Economic Development Department for clarification prior to fabrication or installation of work. After a notice to proceed for that specific area of work is given, no allowance will be made in favor of the Consultant for failing to check dimensions and methods of construction and/or reporting any clarifications.

h. The City will not reimburse Consultant for mileage. All travel is at the expense of the Consultant.

i. Consultant shall complete all sign installations within the agreed upon time frame, not to exceed ninety (90) days from the issuance of the notice to proceed for Installation.

j. Consultant shall provide a multi-disciplined team led by an experienced project manager assigned to City during the entire duration of the project. Leads in all involved disciplines shall be required to participate in the design process as necessary to ensure a viable, efficient, cost-effective end-product.

4. PROJECT MILESTONES AND TIMELINE

Consultant is responsible for providing the following tasks and deliverables and will meet with City as appropriate to deliver said objectives. Timeframes listed are estimates. Actual delivery dates of said tasks will be mutually agreed upon by Consultant and City as the project begins and will be adjusted as necessary.

<u>Action/Deliverable</u>	<u>Completion Duration</u>
a. Project Kickoff meeting with City	
b. Site Assessments Includes walk throughs of each facility and surrounding streets, Field measurements and photos, discussions with stakeholders, study of pedestrian and vehicular patterns.	3 Weeks
c. Concept Development Includes signage and graphic design concepts, wayfinding logic concepts, and Preliminary location plans.	4 Weeks
d. Design and Wayfinding Development Includes signage and graphics family renderings; photo elevations/3-D modeling; sample submission; wayfinding standards; shop drawings with dimensions, color formulas, patterns, and material finishes; plots of each sign and graphic; location and removal plans; and code validation and permitting.	4 Weeks
e. Fabrication Includes signage production and pre-installation surveys.	6 Weeks
f. Removal of Existing Signage and Installation	6 Weeks

5. WARRANTY

Consultant shall provide the following for five years following project completion:

- a. An Account Executive that will serve as the central point of contact for City.
- b. Annual Signage Audit. Consultant shall provide an annual assessment of each sign and graphic regarding condition, accuracy, and compliance; each year for five years following the installation. Assessment shall be submitted to the City.
- c. Replacement signage shall be delivered within two weeks of order placement.
- d. All signs shall be listed with pricing prior to design acceptance. Such pricing shall be honored by Consultant for five years following project completion.
- e. Web Portal. Each sign and graphic element shall be available online in a protected environment to allow for ease of re-orders or additional signage by City.
- f. A standard program for assuring consistency of the signage in quality, materials, colors, font, and overall appearance, is required.

6. RATES

Project Hours	Hourly Rate
Principal	\$ 125.00
Project manager	\$ 115.00
Assessment Walkthroughs	\$ 115.00
Meetings with City	\$ 115.00
Code & Permit Research	\$ 115.00
Stakeholder Management	\$ 115.00
Timeline & Budget Management	\$ 115.00
Pre-installation Walkthroughs	\$ 115.00
Design Lead (Sr.)	\$ 95.00
Presentations, Meetings & Consultation	\$ 95.00
Design Development	\$ 95.00
Designer	\$ 75.00
Concept Designs	\$ 75.00
Design Development	\$ 75.00
Graphic Associate	\$ 75.00
Generate Proofs of each sign	\$ 75.00
Planner	\$ 75.00
Generate Signage Location Plans	\$ 75.00
Generate Demo Plans for Sign Removal	\$ 75.00
Production/Copying	N/A

7. CITY'S RESPONSIBILITIES

- a. The City shall be responsible for the preparation and painting of the interior or exterior walls and columns of the garages as needed, prior to the signage installation.
- b. The City shall not be responsible for painting the signage itself. If the approved signage method includes painting color or directional signage onto a wall, Consultant is responsible for such painting.

Exhibit B**Insurance Requirements for Professional Services**

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the **general aggregate limit shall be twice** the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease. ***(Not required if consultant provides written verification it has no employees)***
4. **Professional Liability (Errors and Omissions)** Insurance appropriate to the Consultant's profession, with limit no less than **\$2,000,000** per occurrence or claim, \$2,000,000 aggregate. (If Claims-made, see below.)

If the Consultant maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained by the consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are to be covered as additional insureds on the CGL policy and AL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (**at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used**).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be endorsed as primary** insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers shall be excess of the Consultant's insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting the Consultant's insurance coverage to the sole negligence of the Named Insured.

Notice of Cancellation

Each insurance policy required above shall state that **coverage shall not be canceled, except with notice to the City of Stockton.**

Waiver of Subrogation

Consultant hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted to do business in the State of California; if not admitted to do business

in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

Claims Made Policies

If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

Verification of Coverage

Consultant shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, for any reason or no reason.

Consultant shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its Declarations Page and Endorsement Page for each of the required policies.

Certificate Holder Address

Proper address for mailing certificates, endorsements and notices shall be:

- City of Stockton
- Attention: Risk Services
- 425 N El Dorado Street
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

Maintenance of Insurance

If at any time during the life of the Contract or any extension, the Consultant fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City of Stockton is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.