

SECTION III: SAMPLE CONTRACT

AGREEMENT FOR SERVICES

THIS AGREEMENT made and entered by and between the City of Placerville, a political subdivision of the State of California (hereinafter referred to as "City") and _____ a company duly qualified to conduct business in the State of California, whose principal place of business is _____, (hereinafter referred to as "Consultant");

WITNESSETH

WHEREAS, City has determined that it is necessary to obtain a Consultant to provide services

WHEREAS, Consultant has represented to City that it is specially trained, experienced, expert and competent to perform the special services required hereunder and City has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

NOW, THEREFORE, City and Consultant mutually agree as follows:

ARTICLE I

Scope of Services: Consultant agrees to provide to City those described in Exhibit "A", incorporated herein and made by reference a part hereof.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire on_____. This Agreement may be extended for one additional one-year period, if mutually agreed by both parties hereto, in writing not less than thirty (30) days prior to the expiration of this Agreement.

ARTICLE III

Compensation for Services: For services provided herein, City agrees to pay Consultant in accordance with the rates and charges identified in Exhibit "B", incorporated herein and made by reference a part hereof. Payment shall be made within thirty (30) days following City receipt and approval of itemized invoice(s) detailing services rendered. The total amount of this Agreement shall not exceed \$_____.

ARTICLE IV

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

ARTICLE V

Consultant to City: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from City and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to City and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to City during term hereof.

ARTICLE VI

Assignment and Delegation: Consultant is engaged by City for its unique qualifications and skills as well as those of its personnel. Consultant shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of City.

ARTICLE VII

Independent Consultant/Liability: Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement.

Consultant exclusively assumes responsibility for acts of its employees, associates and sub consultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. City shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

ARTICLE VIII

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that funding for this project is from an anticipated advance from development projects currently pending within the City, and as such, Consultant will not be authorized to proceed with the work until City has actually received the funds, and a formal notice to proceed is issued to Consultant

ARTICLE IX

Default, Termination and Cancellation:

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice.

Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.

B. Bankruptcy: This Agreement, at the option of the City, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.

C. Ceasing Performance: City may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

Termination or Cancellation without Cause: City may terminate this Agreement in whole or in part seven (7) calendar days upon written notice by City for any reason. If such prior termination is effected, City will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Consultant, and for such other services, which City may agree to in writing as necessary for contract resolution. In no event, however, shall City be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise. In the event of termination for default, City reserves the right to take over and complete the work by contract or by any other means.

ARTICLE X

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to City shall be in duplicate and addressed as follows:

CITY OF PLACERVILLE
ENGINEERING DIVISION
3101 CENTER STREET
PLACERVILLE, CA 95667

ATTN: Nate Stong, City Engineer
Or; to such other location as the City directs.

Notices to Consultant shall be addressed as follows:

Or; to such other location as the Consultant directs.

ARTICLE XI

Indemnity: To the fullest extent allowed by law, CONSULTANT shall defend, indemnify, and hold harmless the CITY and its officers, agents, employees and representatives from and against any and all claims, actions, losses, injuries, damages or expenses of every name, kind, and description, including litigation costs and reasonable attorney's fees incurred, brought for or on account of, injury to or death of any person, including but not limited to workers, City employees, and the public, or damage to property, which arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its officers, agents, employees, volunteers, representatives, contractors and subcontractors. This duty of CONSULTANT includes the duty of defense, inclusive of that set forth in California Civil Code Section 2778. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement.

ARTICLE XII

Insurance: Consultant shall provide proof of a policy of insurance satisfactory to the City and documentation evidencing that Consultant maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Consultant as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage.
- C. Automobile Liability Insurance of not less than \$500,000.00 is required in the event motor vehicles are used by the Consultant in the performance of the Agreement.
- D. Professional Liability Insurance (errors and omissions) of not less than \$1,000,000.00 per claim and in the aggregate. Further, Consultant agrees to maintain in full force and effect such insurance for three years after performance of work under this Agreement is completed.
- D. Consultant shall furnish a certificate of insurance satisfactory to the City as evidence that the insurance required above is being maintained.
- E. The insurance will be issued by an insurance company acceptable to City, or be provided through partial or total self-insurance likewise acceptable to City.
- F. Consultant agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Consultant agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of City and Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the Consultant fails to keep in effect at all times insurance coverage as herein provided, City may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- G. The certificate of insurance must include the following provisions stating that:
 1. The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to City, and;
 2. The City of Placerville, its officers, officials, employees and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned.

This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.

- H. The Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
- I. Any deductibles or self-insured retentions must be declared to and approved by the City, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- J. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
- K. The insurance companies shall have no recourse against the City of Placerville, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- L. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- M. In the event Consultant cannot provide an occurrence policy, Consultant shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- N. Certificate of insurance shall meet such additional standards as may be determined by the City as essential for protection of the City.

ARTICLE XIII

Interest of Public Official: No official or employee of City who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership or association in which he/she is directly or indirectly interested; nor shall any such official or employee of City have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XIV

Interest of Consultant: Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

ARTICLE XV

California Residency (Form 590): All independent Consultants providing services to the City must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certify that they have a permanent place of business in California. The Consultant will be required to submit a

Form 590 prior to execution of an Agreement or City shall withhold seven (7%) percent of each payment made to the Consultant during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

ARTICLE XVI

Taxpayer Identification Number (Form W-9): All independent Consultants or Corporations providing services to the City must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

ARTICLE XVII

City Business License: To conduct business within the City of Placerville Consultant must be in possession of a valid City Business License.

ARTICLE XVIII

Administrator: The City Officer or employee with responsibility for administering this Agreement is Nate Stong, City Engineer, or successor.

ARTICLE XIX

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

ARTICLE XX

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

ARTICLE XXI

Venue: Any dispute resolution action rising out of this Agreement, including, but not limited to, litigation, mediation or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Consultant waives any removal rights it might have under Code of Civil Procedure Section 394.

ARTICLE XXII

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

-- CITY OF PLACERVILLE --

Date: _____

By: _____

Cleve Morris
City Manager
"City"

-- CONSULTANT --

Dated: _____

By: _____

"Consultant"

EXHIBIT “A”
Scope of Services

Consultant will provide the following services to the City:

EXHIBIT “B”
Schedule of Fees and Charges