

**City Manager's Report
July 12, 2011 City Council Meeting**



Prepared by: Randy Pesses, Public Works Director

Item #: 8.11

Subject: Adopt Resolution No. _____, a Resolution of the City Council:

1. Authorizing the City Manager to execute a Consulting Services Agreement with Paragon Geotechnical Consulting Engineers, in the amount of \$20,000 to provide geotechnical consulting services to the City of Placerville in the calendar years 2011 and 2012 on an "As-Needed" basis.

Background: The City of Placerville has a number of ongoing projects that, on occasion, require the services of a geotechnical engineering firm to provide advice with respect to foundation design, retaining walls, slope stability, pavement design, contaminated soils, and other issues related to project design or construction. In addition, geotechnical firms typically provide service with respect to materials testing performed during construction projects for quality assurance purposes. In some instances, the scope of work is such that a request for proposals is necessary and a firm is selected to provide services for a specific project. However, on occasion, the need for service is of a limited scope for a short duration, and in those instances, the ability to retain a geotechnical engineer under an existing "As-Needed" Contract can be very beneficial from a cost and timing perspective. In addition, there are instances when the services of a geotechnical engineer are needed on an emergency basis, as in the case when a landslide occurs. Again, having a geotechnical firm under contract with the City on an "As-Needed" basis can be very effective in obtaining consulting services very quickly.

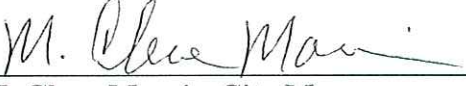
Discussion: Youngdahl Consulting Group, Inc., was under contract with the City in 2008 through 2010 to provide "As-needed" geotechnical services. The City utilized those services on several occasions including the Cold Springs Road & Carson Road overlay and the City-sponsored portions of the sewer line relocation work associated with the Highway 50 Operational Improvements Project. The 2010 contract has expired, and therefore it is recommended that a new "As-Needed" agreement in the amount of \$20,000 be entered into with Paragon to extend through 2011 and 2012.

Budget Impact: The services utilized under this agreement will be in support of both City capital improvement projects and private development projects. The cost of work performed for private development projects will be borne completely by the developer. Services for City projects will be limited to City Council authorized capital improvement projects that have an unencumbered budget balance that is greater or equal to the anticipated expenditures. Tonight, staff respectfully requests the City Council to approve the "as needed" agreement with Paragon Geotechnical Consulting Engineers.

Recommendation:

That the City Council adopt a Resolution:

1. Authorizing the City Manager to execute a Consulting Services Agreement with Paragon Geotechnical Consulting Engineers, in the amount of \$20,000 to provide geotechnical consulting services to the City of Placerville in the calendar years 2011 and 2012 on an "As-Needed" basis.



M. Cleve Morris, City Manager



Randy Pesses, Public Works Director

ATTACHMENTS:
Consulting Agreement

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PLACERVILLE TO
ENTER INTO AN "AS-NEEDED" GEOTECHNICAL CONSULTING AGREEMENT
WITH PARAGON GEOTECHNICAL CONSULTING ENGINEERS**

WHEREAS, the City of Placerville has a number of ongoing projects that may require the services of a geotechnical engineering firm to provide advice with respect to foundation design, retaining walls, slope stability, pavement design, material testing, and other issues related to project design or construction; and,

WHEREAS, the need for service is of a limited scope for a short duration and the ability to retain a geotechnical engineer under an "as-needed" contract can be very beneficial to the City from a cost and timing perspective; and,

WHEREAS, Paragon Geotechnical Consulting Engineers 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, Paragon is located within the City of Placerville and is fully staffed with geotechnical professionals and support staff, as well as complete laboratory and testing facilities and has the ability to respond promptly to the needs of the City.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Placerville does hereby:

1. Authorize the City Manager to execute a consulting services agreement with Paragon Geotechnical Consulting Engineers, in an amount not to exceed \$20,000 to provide geotechnical consulting services to the City of Placerville in calendar years 2011 and 2012, on an "as-needed" basis.

The foregoing Resolution was introduced at a regular meeting of the City Council of the City of Placerville held on July 12, 2011 by Councilmember _____ who moved its adoption. The motion was seconded by Councilmember _____.

The motion was passed by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Mayor Dave Machado

Susan Zito, CMC, City Clerk

AGREEMENT FOR SERVICES

THIS AGREEMENT, made and entered into by and between the City of Placerville, a political subdivision of the State of California (hereinafter referred to as “City”) and Paragon Geotechnical Consulting Engineers, a company duly qualified to conduct business in the State of California, whose principal place of business is 1049 Kimi Way, Placerville, CA 95667, (hereinafter referred to as “Consultant”);

WITNESSETH

WHEREAS, City has determined that it is necessary from time to time to obtain a Consultant to provide Geotechnical Engineering and Geological services, and material testing services for various capital improvement projects and various developer sponsored projects within the city; and,

WHEREAS, Consultant has represented to City that it is specially trained, experienced, professional 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 on an “as-needed” basis geotechnical, geological, and materials testing services for various City sponsored capital improvement projects, and to provide these services on the City's behalf on privately sponsored development projects within the city when necessary to assure development project compliance with City standards and sound engineering principles.

ARTICLE II

Term: This Agreement shall become effective when fully executed by both parties hereto and shall expire on December 31, 2012. 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 consultant's 2011 Schedule of Charges attached hereto as Exhibit A and incorporated by reference herein. 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 \$20,000 (Twenty Thousand Dollars).

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

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.
- D. 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 IX

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
PUBLIC WORKS DEPARTMENT
3101 CENTER STREET
PLACERVILLE, CA 95667
ATTN: Randy Pesses
or to such other location as the City directs.

Notices to Consultant shall be addressed as follows:

Paragon Geotechnical Consulting Engineers
1049 Kimi Way
Placerville, CA 95667
Attn: Rick Wentz

ARTICLE X

Indemnity:

- a) Indemnification for Professional Liability. Where 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 attorney's 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 entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.
- b) Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, protect, 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 attorneys 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 entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant.
- c) Limitation of Indemnification. Notwithstanding any provision of this Article to the contrary, design professionals are required to defend and indemnify the City only to the extent permitted by Civil Code Section 2782.8, which limits

the liability of a design professional to claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The term "design professional," as defined in Section 2782.8, is limited to licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code.

- d) The provisions of this section do not apply to claims occurring as a result of City's sole or active negligence. The provisions of this section shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officials, employees and agents.

ARTICLE XI

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. 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 XII

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 XIII

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 XIV

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 XV

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 XVI

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

ARTICLE XVII

Administrator: The City Officer or employee with responsibility for administering this Agreement is Randy Pesses, Public Works Director, or successor.

ARTICLE XVIII

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 XIX

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 XX

Venue: Any dispute resolution action arising 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 XXI

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.

-- C I T Y OF P L A C E R V I L L E --

Dated: _____

By: _____
Cleve Morris, City Manager

-- C O N S U L T A N T --

Dated: 7-6-2011

By:  _____
Dana Dean, Vice President
Paragon Geotechnical Consulting Engineers



PARAGON GEOTECHNICAL, INC.
CONSULTING ENGINEERS

2011 SCHEDULE OF CHARGES

Effective January 1, 2011

PERSONNEL

<u>Staff Level</u>	<u>Rate</u>
Principal Engineer/Geologist.....	\$165/hr
Senior Engineer/Geologist.....	\$145/hr
Project Engineer/Geologist.....	\$135/hr
Sr. Staff Engineer.....	\$125/hr
Sr. Field Technician (prevailing wage).....	\$97/hr**
Field Technician (prevailing wage).....	\$87/hr**
Laboratory Technician.....	\$75/hr
Drafting.....	\$70/hr
Clerical Support.....	\$68/hr

- **
1. 2-hr minimum except for single-trip pickup/delivery.
 2. Technician rates for work performed between 6 p.m. and 6 a.m..... add \$20/hr
 3. Overtime (Saturdays, over 8 hours in one day)..... add \$30/hr
 4. Overtime (Sundays, Holidays)..... add \$40/hr

FIELD EQUIPMENT

<u>Description</u>	<u>Rate</u>
Company Vehicle and Mileage.....	Included in staff hourly rates
Nuclear Density Gauge.....	Included in technician hourly rates
Prevailing Wage Surcharge.....	Included in technician hourly rates
Sand Cone Testing Equipment.....	\$40/test
Concrete Sampling Equipment.....	Included in technician hourly rates
Coring Equipment.....	\$150/day
Outside Services, Equip. Rental.....	cost plus 15%