

## **APPENDIX B – SAMPLE CONTRACT**

### **CITY OF ARCATA PROFESSIONAL SERVICES AGREEMENT WITH**

**FOR** \_\_\_\_\_

This Agreement is made on \_\_\_\_\_ between the City of Arcata, a municipal corporation (referred to as "City"), and \_\_\_\_\_, a \_\_\_\_\_ (referred to as "Consultant").

#### **RECITALS**

**WHEREAS**, the City desires professional services to assist in certain work described briefly as \_\_\_\_\_ referred to herein as the "Services" or "Project".

**WHEREAS**, Consultant has demonstrated competence, experience and qualifications adequate to perform said professional Services, and the City desires to retain Consultant for such Services.

1. **Scope of Services:** Consultant agrees to perform services as set out in Exhibit A, "Scope of Work, Compensation" attached hereto and incorporated herein, and duly authorized by issuance of Purchase Order No. set out above. No purchase orders are issued without a valid Agreement.
2. **Standards of Performance:**
  - A. ***Standard of Care.*** The standard of care for all professional services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality.
  - B. ***Accuracy of Services.*** City shall not be responsible for discovering deficiencies in the technical accuracy of Consultant's Services. Consultant shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in City-furnished information. However, City shall be responsible for, and Consultant may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by City to Consultant pursuant to this Agreement. Consultant may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.
  - C. ***Special Conditions.*** Consultant shall comply with all additional terms set forth in Exhibit B "Special Conditions," if any are so required: \_\_\_\_\_ Special Conditions; \_\_\_\_\_ No Special Conditions.
  - D. ***Special Insurance Conditions.*** Consultant shall comply with all additional terms set forth in Exhibit C "Special Insurance Conditions," if any are so required:  
\_\_\_\_\_ Special Insurance Conditions; \_\_\_\_\_ No Special Insurance Conditions.
3. **Compensation for Services, Payment:**
  - A. ***Compensation.*** City shall pay Consultant as set forth in Exhibit A, not to exceed \$\_\_\_\_\_.

- B. *Preparation and Submittal of Invoices.* Consultant shall prepare and submit its invoices to the person and address specified by the City's Designated Representative no more than once per month and no later than the \_\_\_\_ day of each month.
- C. *Payments.* All reasonable efforts will be made by City to pay undisputed invoices within \_\_\_\_\_ days of receipt. If City contests an invoice, City may withhold that portion so contested and pay the undisputed portion. Payment shall be made to the address specified by Consultant's Designated Representative.
- D. *Withholding of Payment.* The City may withhold all or any portion of the funds provided for by this Agreement in the event that the Consultant has materially violated, or threatens to materially violate, any term, provision, or condition of this Agreement; or the Consultant fails to maintain reasonable progress toward completion of the Services or any component thereof.

4. Commencement, Completion:

- A. *Commencement.* Services of Consultant shall commence upon full execution of this Agreement by all parties, and the Agreement shall remain in full force until \_\_\_\_\_. No work, services, material or equipment shall be performed or furnished under this Agreement until the City has delivered a fully executed Agreement to the Consultant. A signed Agreement is considered notice to proceed.
- B. *Time for Completion.* Consultant shall complete Services as set forth in Exhibit A. If City authorizes changes in the scope, extent, or character of the Services, then the time for completion of Consultant's services, and the rates and amounts of Consultant's compensation, shall be adjusted equitably. If Consultant fails, through its own fault, to complete the performance required in this Agreement within the time set forth, then City shall be entitled to the recovery of proximate damages resulting from such failure.
- C. *Suspension and Termination.*
  - 1) Suspension. At any time and for any reason, the City may temporarily suspend the Services upon five days' written notice to Consultant. In such event, Consultant shall perform no additional Services under this Agreement until the City has provided written notice to Consultant to re-commence Services.
  - 2) Termination. The obligation to provide Services under this Agreement may be terminated for cause by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate under this paragraph if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
  - 3) Project Suspension or Abandonment. The City may for any reason and at any time suspend indefinitely the Services and/or abandon the Project, or any part thereof, upon written notice to Consultant.
- D. *Payments Upon Termination.* In the event of any termination under this Section 4, Consultant will be entitled to invoice the City and to receive payment for all acceptable services performed or furnished and all reimbursable expenses incurred through the effective date of termination.

E. *Delivery of Project Materials to City.* Prior to the effective date of termination, the Consultant will deliver to City all data and originals of all plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work and other materials for which City has compensated Consultant, and all such material shall become the property of the City upon delivery.

5. **Independent Contractor:** Consultant, in performing Services, shall act as an independent contractor and shall have control of his work and the manner in which it is performed. He/she shall be free to contract for similar services to be performed for others while under contract with the City. Consultant is not to be considered an agent or employee of the City. Consultant agrees to furnish at his/her own expense all tools, equipment, services, labor and materials necessary to complete all requirements of this Agreement.

6. **Indemnity:** When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City and any and all of its boards (including the council, boards, commissions, committees and task forces), officials, employees and agents (collectively, "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-contractors or any entity or individual for which Consultant shall bear legal liability in the performance of professional services under this Agreement.

Other than in the performance of professional services and to the fullest extent permitted by law, Consultant shall indemnify, defend and hold harmless City, and any all of the Indemnified Parties 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.

Consultant's responsibility for defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

The defense and indemnification obligations of the Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

7. **Insurance:** Consultant shall procure and for the duration of this Agreement 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 Consultant, its agents, representatives, or employees; and shall provide Certificates of Insurance as specified below. If Special Insurance Conditions are contained in Exhibit C, said conditions shall control.

Coverage shall be at least as broad as:

A. *Commercial General Liability (CGL):* Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 per occurrence for all covered losses. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit. Additional insured coverage for the City shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits.

B. *Automobile Liability*: ISO Form Number CA 00 01, covering Code 1 (Any Auto) or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned). Limits are subject to review, but in no event to be less than \$2,000,000 per accident for bodily injury and property damage. If City approves Consultant or Consultant's employees use of personal autos on this project, Consultant shall provide evidence of personal auto liability coverage for each such person.

C. *Workers Compensation Insurance*: covering all employees and volunteers as required by the State of California, with Statutory Limits, on a state-approved policy form, and Employer's Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. (Not required if Consultant provides written verification that it has no employees.)

D. *Excess or Umbrella Liability Insurance (Over Primary)*: if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverage. Such policy or policies shall include a drop down provision providing coverage above a maximum \$25,000 self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. Such insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's insurance or self-insurance shall be called upon to protect it as a named insured. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Consultant, subcontractors or others involved in performing Services under this Agreement. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein.

E. *Professional Liability or Errors and Omissions Insurance, As Appropriate*: written on a policy form coverage specifically designed to protect against acts, errors or omissions of Consultant and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall be no less than \$2,000,000 per claim and in the aggregate. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend. The policy retroactive date shall be on or before the effective date of this Agreement.

F. *General Conditions Pertaining to Insurance*: The insurance policies are to contain, or be endorsed to contain, the following provisions:

- 1) The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL 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.
  - a. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance at least as broad as one of the following ISO ongoing operations Forms: CG 20 10 or CG 20 26 or CG 20 33 (not allowed from subcontractors), or CG 20 38; and one of the following ISO completed operations Forms: CG 20 37, 2039 (not allowed from subcontractors), or CG 20 40.
- 2) It is a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage and/or limits required in this Section 8 shall be available to the City as an additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

- 3) For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 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 excess of the Consultant's insurance and shall not contribute with it.
- 4) All self-insured retentions (SIR) must be disclosed to the City for approval and shall not reduce the limits of liability. Policies containing any SIR shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the City.
- 5) The City reserves the right to obtain a full certified copy of any insurance policy and any endorsement. Failure to exercise this right shall not constitute a waiver of the City's right.
- 6) Consultant shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, Consultant shall forthwith obtain and submit proof of substitute insurance.
- 7) Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City 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 has received a waiver of subrogation endorsement from the insurer. However, the Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors. Consultant agrees to require that all subcontractors and sub-subcontractors do likewise.
- 8) Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all required coverages and an additional insured endorsement to Consultant's general liability policy, shall be delivered to the City at or prior to the execution of the Agreement.
- 9) All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.
- 10) The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to the City.
- 11) In the event Consultant fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by Consultant.
- 12) Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

8. **Subcontracting:** No services covered by the Agreement shall be subcontracted without the prior written consent of the City. In the event subcontracting is approved, the following shall apply:

- A. Consultant shall include in all subcontracts and require of all subcontractors all insurance and indemnity requirements and provisions of the Agreement that are applicable to any subcontractor's scope of work. Subcontractor's responsibility for defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.
- B. Each subcontractor shall be obligated to Consultant and the City in the same manner and to the same extent as Consultant is obligated to the City under this Agreement. If hiring a sub-subcontractor to perform any Services, the subcontractor shall include in the sub-subcontract all provisions of this Agreement including all insurance and indemnity provisions that are applicable to said sub-subcontractor's scope of work.
- C. Consultant shall furnish a copy of the Agreement's insurance and indemnity provisions to any subcontractor upon request. Upon request from the City, Consultant shall provide insurance certificates and endorsements of its subcontractors.

9. Document Submission and Title to Documents: Consultant agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes, and other written or graphic work produced in the performance of this Agreement is considered work made for hire and shall be the property of the City upon delivery. City may disclose, disseminate and use in whole or in part, any final form data and information received, collected, and developed under this Agreement.

10. Permits and Licenses: Prior to execution of the Agreement the Consultant shall obtain and maintain throughout the Agreement period all licenses required by law including but not limited to a valid City of Arcata business license.

11. Modification, Amendment: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

12. Assignment. This Agreement is not assignable by the Consultant, either in whole or in part.

13. Audit of Records. Consultant shall maintain complete and accurate records of all payrolls, expenditures, disbursements and other cost items charged to the City or establishing the basis for an invoice, for a minimum of four years from the date of final payment to Consultant. All such records shall be clearly identifiable. Consultant shall allow City representatives to inspect, examine, copy and audit such records during regular business hours upon 24 hours' notice.

14. Designated Representatives. Consultant and City designate the following specific individuals to act as Consultant's and City's representatives and primary contact persons with respect to the services to be performed or furnished by Consultant and responsibilities of City under this Agreement ("Designated Representative"). Such individuals shall have authority to transmit instructions, receive information, and implement the contract on behalf of each respective party. The Designated Representative is not authorized to receive notices required under this Agreement unless identified under Section 15 below. Either party may change the individual name of the Designated Representative by written notice to the other party.

**City Designated Representative:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

**Consultant Designated Representative:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

15. **Notices.** Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt, excepting that notice sent by mail shall be deemed given and received three (3) business days after the date deposited in the United States mail.

**Notice to City:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_  
Fax: \_\_\_\_\_

**Notice to Consultant:**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_  
Fax: \_\_\_\_\_

16. **Governing Law:** This Agreement and performance hereunder and all suits and special proceedings shall be construed in accordance with the laws of the State of California. In any action or proceeding that may be brought from or connected in anyway to this Agreement, the laws of the State of California shall be applicable and shall govern to the exclusion of the law any other forum. Venue shall be fixed in Humboldt County.

17. **Disputes.** City and Consultant agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking any procedures of this Agreement, or exercising their rights under law. Prior to court action, the parties agree to pursue mediation as a means to settle any dispute.

18. **Entire Agreement.** This Agreement together with the exhibits identified below constitutes the entire Agreement between City and Consultant for the Services and supersedes all prior written or oral understandings.

19. **Nondiscrimination.** During the performance of this Agreement, Consultant and its subcontractors shall not unlawfully discriminate against, harass, or allow harassment against any employee or applicant for employment because of sex, race, religion, color, national origin, ancestry, disability, sexual orientation, medical condition, marital status, age (over 40), or denial of family-care leave, medical-care leave, or pregnancy-disability leave. Consultant and its subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment.

20. **Severability.** Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon City and Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

21. **Survival.** All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.

22. **Timeliness.** Time is of the essence in this Agreement. Consultant shall proceed with and complete the Services in an expeditious manner.

23. **Waiver.** Neither the acceptance of Consultant's work nor the payment thereof shall constitute a waiver of any provisions of this Agreement. A waiver of any breach shall not constitute a waiver of that provision, nor shall

it affect the enforceability of that provision or of the remainder of this Agreement.

24. Exhibits Included. The following Exhibits are attached hereto and incorporated into this Agreement:

- Exhibit A: Scope of Work, Compensation
- Exhibit B: Special Conditions
- Exhibit C: Special Insurance Conditions

With the exception of Exhibit C, in the event of conflict between the terms and conditions of this Agreement and those within any Exhibit hereto, the terms and conditions of this Agreement shall prevail over any Exhibit hereto. In the event of conflict between the provisions contained in Section 6 of this Agreement and those in Exhibit C, if any, the Exhibit C Special Insurance Conditions shall control.

25. Attorney's Fees. Should any litigation or arbitration be commenced between the parties hereto concerning this Agreement, or the rights and duties of any party in relation thereto, the party prevailing in such litigation or arbitration shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for attorney's fees in such litigation or arbitration.

26. Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which will constitute one and the same agreement. Facsimile, portable document format (pdf), and verified electronic signatures shall be binding and considered as if an original.

**IN WITNESS WHEREOF**, the person executing this Agreement on behalf of Consultant warrants and represents that he/she has the authority to execute this Agreement on behalf of Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

**CITY:**

By: \_\_\_\_\_  
Karen T. Diemer  
City Manager

Date: \_\_\_\_\_

Insurance and procurement approved:

By: \_\_\_\_\_  
Danielle Allred,  
Contracts and Special Projects Manager

Approved as to form:

By: \_\_\_\_\_  
Nancy Diamond, City Attorney

**CONSULTANT:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

Employer ID#: \_\_\_\_\_

EXHIBIT "A"  
SCOPE OF SERVICES AND COMPENSATION

EXHIBIT "B"  
SPECIAL CONDITIONS

EXHIBIT "C"  
SPECIAL INSURANCE CONDITIONS