

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("**Agreement**") is entered into by and between the City of Hughson, a California municipal corporation ("**City**") and _____ [*insert name of consultant*] ("**Consultant**").

RECITALS

Whereas, City has determined that it requires the following professional services from Consultant: _____ [*insert description of services, e.g. "accounting" or "consulting relative to a proposed development bond"*]; and

Whereas, Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees; and

Whereas, Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

1. DEFINITIONS

- 1.1. "**Scope of Services**": Such professional services as are set forth in Consultant's proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 1.2. "**Approved Fee Schedule**": The compensation rates set forth in Consultant's fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 1.3. "**Schedule of Services**": The schedule that identifies when certain services, work and other items are to be completed and delivered to City attached hereto as Exhibit C and incorporated herein by this reference.

2. TERM

The term of this Agreement will commence on _____, 20__ and will expire on _____, 20__, unless terminated sooner in accordance with Section 15 of this Agreement; provided, however, this Agreement may be renewed for up to _____ [*insert quantity*] succeeding terms of _____ [*insert quantity and units, e.g. "12 months"*] each, at the option of City by written notice to Consultant at least thirty (30) calendar days before expiration of any term, of its intention to renew this Agreement. Nothing in this Agreement requires City to renew or extend this Agreement.

3. CONSULTANT'S SERVICES

3.1 Consultant shall perform the services identified in the Scope of Services ("**Services**"). City shall have the right to request, in writing, changes in the Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by a written amendment or change order to this Agreement.

3.2 Consultant shall perform all Services to the professional standards of Consultant's profession. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 et seq.).

3.3 During the term of this Agreement, the Consultant shall disclose to City any financial, business, or other relationship with City or any third-party that may have an impact upon the outcome of this Agreement or any ensuing City construction project. The Consultant shall also disclose to City Consultant's current clients who may have a financial interest in the outcome of this Agreement or any ensuing City construction project which will follow.

3.4 Consultant warrants that this Agreement was not obtained or secured through rebates, kickbacks, or other unlawful consideration, either promised or paid to any City employee.

3.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the Services. All Services shall be performed by Consultant or under its supervision, and all personnel engaged in the Services shall be fully qualified and authorized to perform it under federal, state and local laws.

3.6 Nothing contained in this Agreement or otherwise, shall create any contractual relation between City and any consultant or contractor or agent of Consultant (each, a "**Subconsultant**"), and no sub-agreement shall relieve Consultant of its responsibilities and obligations hereunder. Consultant agrees to be as fully responsible to City for the acts and omissions of its Subconsultant(s) and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by Consultant. Consultant's obligation to pay its Subconsultants is independent from City's obligation to make payments to the Consultant.

3.7 Consultant shall perform the Services with resources available within its own organization and no portion of the Services shall be subcontracted without the prior written authorization of City, except that which is expressly identified in the Approved Fee Schedule.

3.8 All sub-agreements entered into by Consultant as a result of this Agreement shall contain all the provisions stipulated in this Agreement to be applicable to Subconsultants unless otherwise noted.

3.9 Any substitution of Subconsultant(s) must be approved in writing by City prior to the start of work by the Subconsultant(s).

4. ADDITIONAL SERVICES.

Additional work may be required by City in connection with the Services. Such additional work shall be performed as set forth in a written amendment to this Agreement. Each amendment providing for additional work must list the scope of the additional services to be performed, state the time within which they are to be completed, delineate any special conditions, and state the compensation in accordance with the terms provided in Section 5 of this Agreement.

5. COMPENSATION, ALLOWABLE COSTS, AND PAYMENTS

5.1. All payments by City to Consultant as required under this Agreement will be based on a fixed fee or hourly rate.

5.2. City will pay to Consultant as consideration for all Services to be performed pursuant to this Agreement an amount not-to-exceed _____ DOLLARS (\$_____).

5.3 Consultant will submit monthly invoices to City, specifying Services completed. Each invoice must itemize the services rendered during the billing period and the amount due.

5.4. Monthly invoices shall include the following information:

5.4.1 City Agreement number.

5.4.2 Direct Labor charges billed by class of employee, rate per hour and number of hours.

5.4.3 Overhead charges, as applicable.

5.4.4 Indirect Costs related to travel, lodging, meals and incidental charges as described in the Approved Fee Schedule.

Any additional direct or indirect costs not specifically identified in this Agreement must be approved by City before any request for reimbursement can be made by Consultant.

5.5 City shall notify Consultant, in writing, of any disputed amounts included on the invoice. City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.

5.6 City is not obligated to pay any invoice submitted 180 days or more after a Product is shipped or Services are completed.

5.7. City shall not advance Consultant for any costs in the performance of this Agreement. City shall pay Consultant for any reimbursable costs upon 1) providing proper supporting documentation for the cost in its monthly billings and 2) completion of the activity in which the cost was incurred by the Consultant.

5.8. City will make best efforts to reimburse Consultant within thirty (30) days of receipt of an acceptable invoice approved by the City. City shall notify Consultant, in writing, of any disputed

amounts included on the invoice. City shall pay all undisputed amounts included on the invoice. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant

6. PROJECT SCHEDULE

Consultant will perform and deliver the Services according to the Schedule of Services. The Schedule of Services may be extended by the written consent of Consultant and City and only in the event that such extension is necessary due to significant revisions to the Services or the Schedule of Services (or both) caused by City or other reviewing agency.

7. FAILURE TO MAKE REASONABLE PROGRESS

City reserves the right to suspend reimbursement in the event Consultant fails to make reasonable progress in the performance or the delivery, or both, of the Services.

8. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("*written products*") developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. However, the written products are not intended or represented to be suitable for reuse by City on extensions of the Services or any other project. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at City's sole risk and without liability or legal exposure to Consultant. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

9. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor and not an employee of City. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or any Subconsultant is, or that any of Consultant's or Subconsultant's agents or employees are, in any manner employees of City.

10. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement, provided Consultant may retain an archival copy of such data for its project files subject to confidential treatment.

11. INDEMNIFICATION

11.1. To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property that

arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, or any of its officers, employees, servants, or Subconsultants in the performance (or non-performance) of the Services or this Agreement (or both). Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

11.2. City shall have the right to offset against the amount of any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 11 or related to Consultant's failure to: (i) pay taxes on amounts received pursuant to this Agreement, or (ii) comply with applicable workers' compensation laws, or (iii) both (i) and (ii).

11.3. Consultant agrees to obtain executed indemnity agreements from each and every Subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of the Services whereby each Subconsultant or other person or entity involved in the performance of the Services agrees to indemnify, defend, and hold harmless City to the same or greater extent as Consultant has agreed to indemnify, defend, and hold harmless City as set forth in this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any negligence, recklessness, or willful misconduct of Consultant's Subconsultants or any other person or entity involved by, for, with or on behalf of Consultant in the performance of the Services or this Agreement (or both). Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

11.4. The obligations of Consultants under this Section 11 will not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

11.5. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. Consultant's obligations to defend, hold harmless, and indemnify City will apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

12. INSURANCE

12.1. Consultant will not commence the Work until all insurance required pursuant to this Agreement is obtained at Consultant's own expense. Consultant must furnish certification of insurance within five (5) days after this Agreement is executed and prior to issuance of the Notice to Proceed. Such insurance must have the approval of City as to limit, form and amount. During the term of this Agreement, Consultant must carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with

Consultant's performance of the Work or this Agreement (or both). Such insurance shall be of the types and in the amounts as set forth below:

12.1.1 Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits of Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate as respects products/completed operations if applicable.

a. Coverage must include:

- (1) Premises and Operations;
- (2) Broad Form Property Damage;
- (3) Products and Completed Operations;
- (4) Contractual Liability;
- (5) Personal Injury & Advertising Liability;
- (6) Independent Contractor's Liability;
- (7) Cross Liability and Severability of Interest.

b. Such insurance must include the following endorsements, copies of which must be provided to City:

- (1) Inclusion of City and their directors, officers, representatives, agents and employees as additional insured as respects to Consultant's services or operations under this Agreement;
- (2) Waiver of Subrogation in favor of City and their directors, officers, representatives, agents and employees; and
- (3) Stipulation that the insurance is primary insurance and that no insurance or self-insurance of the City will be called upon to contribute to a loss.

12.1.2 Automobile Liability Insurance for bodily injury (including death) and property damage which provides limits of liability of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence applicable for all owned, non-owned and hired vehicles.

12.1.3 Statutory Workers' Compensation and Employers' Liability Insurance for not less than One Million Dollars (\$1,000,000) per accident applicable to Employers' Liability coverage for all employees engaged in services or operations under this Agreement. The policy must include Broad Form All States/Other States coverage. Coverage must be specifically endorsed to include the insurer's waiver of subrogation in favor of City and their directors, officers, representatives, agents and employees, a copy of which will be provided to City.

12.1.4 Professional Liability Insurance for damages arising out of Consultant's acts, errors or omissions. The policy must provide a coverage limit of not less than Two Million Dollars

(\$2,000,000) per claim/aggregate as respects Consultant's services under this Agreement. Such insurance must be maintained for a period of not less than two (2) years following completion of services.

12.1.5 Cyber Coverage for damages arising out of Consultant's use of data network that may be subject to cyber security breaches, privacy breaches, and hacking attacks. The policy must provide a coverage limit of not less than Two Million Dollars (\$2,000,000) per claim/aggregate as respective Consultant's services under this Agreement for Network Security and Privacy Liability. Such insurance must be maintained for a period of not less than two (2) years following completion of services.

12.1.6 Umbrella/Excess Liability insurance on an occurrence basis in excess of the underlying insurance described above which is at least as broad as each and every one of the underlying policies. The policy must provide coverage limits of not less than \$5,000,000 (each claim), \$5,000,000 (general aggregate), and \$5,000,000 (products & completed operations aggregate). Umbrella limits may be used to satisfy limit requirements as long as the total amount of insurance is not less than the limits specified in this Agreement.

12.2. Consultant shall require each of its Subconsultants to maintain insurance coverage that meets all of the requirements of this Agreement.

12.3. The policy or policies required by this Agreement shall be issued by an admitted insurer or an approved insurer with the Surplus Line Association in the State of California and with a rating of at least A:VII in the latest edition of AM Best's Insurance Guide.

12.4. Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may (in addition to any other remedy provided by this Agreement, law, or equity) either: (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay, at Consultant's expense, the premium thereon.

12.5. At all times during the term of this Agreement, Consultant shall maintain on file with City a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City such certificate(s).

12.6. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least ten (10) days prior to the expiration of the coverages.

12.7. All policies must be endorsed to provide the City with thirty (30) calendar days prior written notice of any cancellation, reduction, or material change in coverage. Notices, including evidence of

insurance, must be forwarded to:

City of Hughson
PO Box 9
Hughson, CA 95326

Consultant will submit certifications confirming that the insurance has been renewed and continues in place.

12.8. The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

12.9. All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees or Subconsultants, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

12.10. Any deductibles or self-insured retentions must be declared to and approved by City

12.11. Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under the terms of this Agreement.

13. MUTUAL COOPERATION

13.1. City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement. Consultant shall be entitled to reasonably rely upon the accuracy and completeness of such information and materials, provided that Consultant shall provide City prompt written notice of any known defects in such information and materials.

13.2. In the event any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require.

14. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City:

City of Hughson
PO Box 9
Hughson, CA 95326
Attn: City Manager
(209) 883-4054

If to Consultant:

Attn: _____
(____) _____

15. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 10, Section 11, and Section 13.2 of this Agreement shall survive the expiration or termination of this Agreement.

16. DEFAULT AND TERMINATION

16.1 Consultant shall be liable for any and all loss and damages sustained by City as a result of delays resulting from any breach of this Agreement by Consultant.

16.2. If at any time City shall have reasonable doubt that Consultant has the ability to perform or complete the Services in the time and manner hereunder set forth because of Consultant's financial condition, or insufficient manpower, equipment, or materials, Consultant shall immediately furnish adequate assurance of its ability to perform satisfactorily to City. The failure of Consultant to furnish such assurance shall be deemed an event of default of this Agreement.

16.3 All of the following shall constitute events of default, which is not an exclusive list:

16.3.1 Consultant's failure to perform in full or in material part any or all of its obligations under this Agreement.

16.3.2 The filing against Consultant of an involuntary petition seeking to declare Consultant a debtor under the Bankruptcy Code if such involuntary petition is not dismissed within thirty (30) days after filing, or the granting of an order of relief against Consultant by the Bankruptcy Court, the commission of any act of insolvency, or making of an assignment for benefit of creditors without City's consent, or if for any cause a receiver shall be appointed for Consultant or Consultant's assets or interests under this Agreement.

16.3.3 Any act or omission by Consultant that would provide a basis for any claim by City against Consultant under applicable law, whether for damages or other legal remedy.

16.4 Should City terminate this Agreement due to the default of Consultant, Consultant shall owe as a debt to City all money damages sustained by City, including without limitation the following:

- Any increased cost required to complete Services of the terminated Consultant.

- Any delay damages, including increased bank penalties or interest and all other financial damage, caused by delay in completion of Services due to replacement of Consultant.
- All other costs and damages sustained by City due to any default of Consultant.

16.5 If City, in its subjective good faith judgment, determines that the Services has been improperly performed, has caused delay, or has caused damages to other work performed by Other Consultants, and if Consultant refuses or for any reason is unable to correct or pay for the improper Services, damage, or cost of delay, City may correct or pay for the correction of the improper Services, damages, or cost of delay and charge the costs to Consultant, which costs may be deducted from any monies owed by City to Consultant.

16.6 City may terminate this Agreement at any time for any reason by written notice to Consultant. Effective on receipt of such notice of termination from City, Consultant will cease all Services unless otherwise directed by City in writing. Upon such termination, Consultant may submit an invoice or invoices to City in amounts which represent the compensation specified herein for Services actually performed to the date of such termination and for which Consultant has not been previously compensated. Upon payment of the amount due, City will be under no further obligation to Consultant, financial or otherwise, and it is agreed that Consultant will not have any claim and will not be entitled to recover monetary damages for lost or anticipated profits for remaining work or for lost or anticipated profits based in any way on forgoing or not seeking, bidding or entering into other contracts or projects in reliance upon this Agreement.

17. GENERAL PROVISIONS

17.1. Consultant shall not delegate, transfer, or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.

17.2. The captions and headings in this Agreement are intended to be descriptive only and for convenience in reference in this Agreement. Should there be any conflict between the Heading and the specific content of a section or paragraph, the specific content of the section and paragraph shall control and govern in the construction and interpretation of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

17.3. The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

17.4. Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Stanislaus County, California.

17.5. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

17.6. This Agreement shall be governed and construed in accordance with the laws of the State of California.

17.7. All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written Agreements are binding upon the parties. Amendments to this Agreement and change orders shall be effective and binding only if made in writing and executed by City and Consultant.

17.8 This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument. A signed copy of this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Notwithstanding the foregoing, City and Consultant each shall deliver original counterparts to the other on or before FIFTEEN (15) days from the date hereof.

City

By: _____
Merry Mayhew
City Manager

[insert name of consultant]

By: _____
Name:
Title:

EXHIBIT "A"
SCOPE OF SERVICES

[to be attached]

EXHIBIT "B"
APPROVED FEE SCHEDULE

[to be attached]

EXHIBIT "C"
SCHEDULE OF WORK

[to be attached]