

CONSULTANT SERVICES AGREEMENT

THIS CONSULTANT SERVICES AGREEMENT (the "Agreement") is made at Orange, California, on this ____ day of _____, 200_ herein referred to as the "Effective Date") by and between the CITY OF ORANGE, a municipal corporation ("City"), and _____, a _____ *[insert the type and name of the Consultant; e.g., "ABC, INC., a California corporation", "ABC, a California general partnership", "ABC, L.P., a California limited partnership", "John Doe, a sole proprietor, doing business as ABC Company", or "ABC, L.L.C., a California limited liability company"]* ("Consultant"), who agree as follows:

1. Services. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to the reasonable satisfaction of City the services set forth in Exhibit "A", which is attached hereto and incorporated herein by this reference. As a material inducement to the City to enter into this Agreement, Consultant represents and warrants that it has thoroughly investigated and considered the scope of services and fully understands the difficulties and restrictions in performing the work. Consultant represents that it is experienced in performing the work and will follow the highest professional standards in performance of the work. All services provided shall conform to all federal, state and local laws, rules and regulations and to the best professional standards and practices. The terms and conditions set forth in this Agreement shall control over any terms and conditions in Exhibit "A" to the contrary.

[Insert Name and Position] _____ (herein referred to as the "City's Project Manager"), shall be the person to whom the Consultant will report for the performance of services hereunder. It is understood that Consultant's performance hereunder shall be under the direction and supervision of the City's Project Manager (or his/her designee), that Consultant shall coordinate its services hereunder with the City's Project Manager to the extent required by the City's Project Manager, and that all performances required hereunder by Consultant shall be performed to the satisfaction of the City's Project Manager and the City Manager.

2. Compensation and Fees.

a. Consultant's total compensation for all services performed under this Agreement, shall not exceed _____ Dollars (\$____) without the prior written authorization of the City.

b. The above fee shall include all costs, including, but not limited to, all clerical, administrative, overhead, insurance, reproduction, telephone, travel, auto rental, subsistence and all related expenses.

3. Payment.

a. As scheduled services are completed, Consultant shall submit to City an invoice for the services completed, authorized expenses and authorized extra work actually performed or incurred.

b. All such invoices shall state the basis for the amount invoiced, including services completed, the number of hours spent and any extra work performed.

c. City will pay Consultant the amount invoiced within thirty (30) days after the approval of the invoice; or the City will pay Consultant the amount invoiced within 35 days, but may withhold 10% of any invoice until all work is completed, which sum shall be paid within 35 days of completion of the work and receipt of all deliverables; or the City will pay Consultant the amount invoiced, but in no event shall pay more than 50% of the not to exceed price until all work is completed; or the City will pay Consultant the amount invoiced within 35 days of receipt of all deliverables.

d. Payment shall constitute payment in full for all services, authorized costs and authorized extra work covered by that invoice.

4. **Change Orders.** No payment for extra services caused by a change in the scope or complexity of work, or for any other reason, shall be made unless and until such extra services and a price therefor have been previously authorized in writing and approved by the City Manager or his designee as an amendment to this Agreement. The amendment shall set forth the changes of work, extension of time for preparation and adjustment of the fee to be paid by City to Consultant.

5. **Licenses.** Consultant represents that it and any subcontractors it may engage, possess any and all licenses which are required under state or federal law to perform the work contemplated by this Agreement and that Consultant and its subcontractors shall maintain all appropriate licenses, including a City of Orange business license, at its cost, during the performance of this Agreement.

6. **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and not an employee of City. City shall have the right to control Consultant only insofar as the result of Consultant's services rendered pursuant to this Agreement. City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Consultant shall, at its sole cost and expense, furnish all facilities, materials and equipment which may be required for furnishing services pursuant to this Agreement. Consultant shall be solely responsible for, and shall indemnify, defend and save City harmless from all matters relating to the payment of its subcontractors, agents and employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Consultant acknowledges that Consultant and any subcontractors, agents or employees employed by Consultant shall not, under any circumstances, be considered employees of the City, and that they shall not be entitled to any of the benefits or rights afforded employees of the City, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits.

7. **Consultant Not Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, to bind City to any obligation whatsoever.

8. **Designated Persons.** Except as otherwise authorized by the City's Project Manager, only _____ shall perform work provided for under this Agreement. It is understood by the parties that clerical and other nonprofessional work may be performed by persons other than those designated.

9. **Assignment or Subcontracting.** No assignment or subcontracting by Consultant of any part of this Agreement or of funds to be received under this Agreement shall be of any force or effect unless the assignment has had the prior written approval of City. City may terminate this Agreement rather than accept any proposed assignment or subcontracting. Such assignment or subcontracting may be approved by the City Manager or his designee.

10. **Time of Completion.** Consultant agrees to commence the work provided for in this Agreement within (5) days of the Effective Date of this Agreement and to diligently prosecute completion of the work within _____ (__) calendar days from such date or as may otherwise be agreed to by and between the Project Manager and the Consultant. **[Alternative Provision:** Consultant agrees to commence the work provided for in this Agreement within the (10) days of the date herein above stated and to diligently prosecute completion of the work in accordance with the time period set forth in Exhibit "A" hereto or otherwise agreed to by and between the representatives of the parties.]

11. **Time Is of the Essence.** Time is of the essence in this Agreement. Consultant shall do all things necessary and incidental to the prosecution of Consultant's work.

12. **Liquidated Damages.** Consultant shall pay City, or have withheld from monies due it, as liquidated damages, the sum of _____ Dollars (\$____) per day for each and every calendar day's delay in finishing the work within the time specified, including any written extensions which may be granted, in writing, in accordance with this Agreement.

13. **Delays and Extensions of Time.** Consultant's sole remedy for delays outside its control, other than those delays that are caused by the City, shall be an extension of time. No matter what the cause of the delay, Consultant must document any delay and request an extension of time in writing at the time of the delay to the satisfaction of City. Any extensions granted shall be limited to the length of the delay outside Consultant's control. Any extensions granted shall be limited to the length of the delay outside Consultant's control. If Consultant believes that delays caused by the City will cause it to incur additional costs, it must specify, in writing, why the delay has caused additional costs to be incurred and the exact amount of such cost at the time the delay occurs. No additional costs can be paid that exceed the not to exceed amount absent a written amendment to this Agreement.

14. **Products of Consultant.** The documents, study materials, manuals and other products produced or provided by Consultant for this Agreement shall become the property of City upon receipt. Consultant shall deliver all such products to City prior to payment for same. City may use, reuse or otherwise utilize such products without restriction.

15. **Equal Employment Opportunity.** During the performance of this Agreement, Consultant agrees as follows:

a. Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or mental or physical disability.

Consultant shall ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, or mental or physical disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, a notice setting forth provisions of this non-discrimination clause.

b. Consultant shall, in all solicitations and advertisements for employees placed by, or on behalf of Consultant, state that all qualified applicants will receive consideration for employment without regard for race, color, religion, sex, national origin, or mental or physical disability.

c. Consultant shall cause the foregoing paragraphs (a) and (b) to be inserted in all subcontracts for any work covered by this Agreement, provided that the foregoing provisions shall not apply to subcontracts for standard commercial supplies or raw materials.

16. Conflicts of Interest. Consultant agrees that it shall not make, participate in the making, or in any way attempt to use its position as a consultant to influence any decision of City in which Consultant knows or has reason to know that Consultant, its officers, partners, or employees have a financial interest as defined in Section 87103 of the Government Code.

17. Indemnity.

a. To the fullest extent permitted by law, Consultant agrees to indemnify, defend and hold the City, its City Council and each member thereof, and the officers, employees and representatives of the City (herein referred to collectively as the "Indemnitees") entirely harmless from all liability arising out of:

(1) Any and all claims under worker's compensation acts and other employee benefit acts with respect to Consultant's employees or Consultant's contractor's employees arising out of Consultant's work under this Agreement; and

(2) Any claim, loss, injury to or death of persons or damage to property caused by any act, neglect, default, or omission other than a professional act or omission of the Consultant, or person, firm or corporation employed by the Consultant, either directly or by independent contract, including all damages due to loss or theft sustained by any person, firm or corporation including the Indemnitees, or any of them, arising out of, or in any way connected with the work or services which are the subject of this Agreement, including injury or damage either on or off City's property; but not for any loss, injury, death or damage caused by the active negligence or willful misconduct of City. The Consultant, at Consultant's own expense, cost and risk, shall indemnify any and all claims, actions, suits or other proceedings that may be brought or instituted against the Indemnitees on any such claim or liability covered by this subparagraph, and shall pay or satisfy any judgment that may be rendered against the Indemnitees, or any of them, in any action, suit or other proceedings as a result of coverage under this subparagraph.

[For Agreements Requiring Professional Liability Insurance]

b. To the fullest extent permitted by law, Consultant agrees to indemnify and hold Indemnitees entirely harmless from all liability arising out of any claim, loss, injury to or death of persons or damage to property caused by the negligent professional act or omission in the performance of professional services pursuant to this Agreement.

c. Except for the Indemnitees, the indemnifications provided in this Agreement shall not be construed to extend any third party indemnification rights of any kind to any person or entity which is not a signatory to this Agreement.

18. Insurance. [Note: The type and amount of Insurance may be modified depending on the nature of Consultant's work. Please discuss with the City Attorney's office and the Risk Manager before finalizing the contract and submitting it to the Consultant.]

a. Consultant shall carry workers compensation insurance as required by law for the protection of its employees during the progress of the work. Consultant understands that it is an independent contractor and not entitled to any worker's compensation benefits under any City program.

b. Consultant shall maintain during the life of this Agreement, comprehensive general liability insurance or commercial general liability insurance written on an occurrence basis providing for a combined single limit of \$1 million for bodily injury, death and property damage.

c. Consultant shall maintain during the life of this Agreement, automotive liability insurance on a comprehensive form covering all owned, non-owned and hired automobiles providing for a combined single limit of \$1 million for bodily injury, death and property damage.

d. Each policy of general liability and automotive liability shall provide that City, its officers, agents, and employees are declared to be additional insureds under the terms of the policy, but only with respect to the work performed by Consultant under this Agreement. A policy endorsement to that effect shall be provided to the City along with the certificate of insurance, which endorsement shall be on Insurance Services Office, Inc. Form CG 20 10 10 01. In lieu of an endorsement, the City will accept a copy of the policy(ies) which evidences that the City is an additional insured as a contracting party.

e. **[Optional]** Consultant shall maintain during the life of this Agreement professional liability insurance covering errors and omissions arising out of the performance of this Agreement with a combined single limit of \$1,000,000. Consultant agrees to keep such policy in force and effect for at least five years from the date of completion of this Agreement.

f. The insurance policies maintained by Consultant shall be primary insurance and no insurance held or owned by City shall be called upon to cover any loss under the policy. Consultant will determine its own needs in procurement of insurance to cover liabilities other than as stated above.

g. Before Consultant performs any work or prepares or delivers any materials, Consultant shall furnish certificates of insurance and endorsements, as required by City, evidencing the aforementioned general liability, automotive and professional liability insurance coverages [***Alternative provision if professional liability insurance coverage is not required: evidencing the aforementioned general liability and automotive insurance coverages***] on forms acceptable to City, which shall provide that the insurance in force will not be canceled or allowed to lapse without at least ten (10) days prior written notice to City.

h. Except for professional liability insurance coverage that may be required by this Agreement, all insurance maintained by Consultant shall be issued by companies admitted to conduct the pertinent line of insurance business in the State of California and having a rating of Grade A or better and Class VII or better by the latest edition of Best's Key Rating Guide. In the case of professional liability insurance coverage, such coverage shall be issued by companies either licensed or admitted to conduct business in the State of California so long as such insurer possesses the aforementioned Best's rating.

i. Consultant shall immediately notify the City if any required insurance lapses or is otherwise modified and cease performance of this Agreement unless otherwise directed by the City. In such a case, the City may procure insurance or self insure the risk and charge Consultant for such costs and any and all damages resulting therefrom, by way of set-off from any sums owed Consultant.

j. Consultant agrees that in the event of loss due to any of the perils for which it has agreed to provide insurance, Consultant shall look solely to its insurance for recovery. Consultant hereby grants to the City, on behalf of any insurer providing insurance to either the Consultant or to the City with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance.

k. Contractor shall include all subcontractors, if any, as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor to the City for review and approval. All coverages for subcontractors shall be subject to all of the requirements stated herein.

19. Termination. Either party may for any reason terminate this Agreement by giving the other party not less than five (5) days written notice of intent to terminate. Upon receipt of notice from Consultant and immediately upon the giving of notice by Consultant to the City, the Consultant shall immediately cease work, unless the notice from the City provides otherwise. Upon the termination of this Agreement, the City shall pay Consultant for services satisfactorily provided and all allowable reimbursements incurred to the date of termination in compliance with this Agreement, unless termination by the City shall be for cause, in which event the City may withhold any disputed compensation. The City shall not be liable for any claim of lost profits.

20. Maintenance and Inspection of Records. In accordance with generally accepted accounting principles, Consultant and its subConsultants shall maintain reasonably full and complete books, documents, papers, accounting records, and other information (collectively, the "records") pertaining to the costs of and completion of services performed under this Agreement. The City and any of their authorized representatives shall have access to and the

right to audit and reproduce any of Consultant's records regarding the services provided under this Agreement. Consultant shall maintain all such records for a period of at least three (3) years after termination or completion of this Agreement. Consultant agrees to make available all such records for inspection or audit at its offices during normal business hours and upon three (3) days notice from the City, and copies thereof shall be furnished if requested.

21. Compliance with all Laws/Immigration Laws. Consultant shall be knowledgeable of and comply with all local, state and federal laws which may apply to the performance of this Agreement. Consultant warrants and represents that all of its employees, including any and all prospective employees hired to perform services for the City under this Agreement and the employees of any subcontractor retained by the Consultant to perform a portion of the services under this Agreement, are and will be authorized to perform the services contemplated by this Agreement in full compliance with all applicable state and federal laws, rules and regulations, including, but not limited to, the Immigration Nationality Act of 1952 (commencing with Section 1101 of Title 8 of the United States Code), and the Immigration Nationality and the Immigration Reform and Control Act of 1986 (commencing with Section 1324a of Title 8 of the United States Code), as amended. The Consultant agrees to indemnify and hold the City, its officials, and employees harmless for, of and from any loss, including but not limited to fines, penalties and corrective measures, the City may sustain by reason of the Consultant's failure to comply with said laws, rules and regulations in connection with the performance of this Agreement.

22. Attorneys' Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements, in addition to any other relief to which it may be entitled.

23. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California and Consultant agrees to submit to the jurisdiction of California courts.

24. Integration. This Agreement constitutes the entire agreement of the parties. No other agreement, oral or written, pertaining to the work to be performed under this Agreement shall be of any force or effect unless it is in writing and signed by both parties. Any work performed which is inconsistent with or in violation of the provisions of this Agreement shall not be compensated.

25. Notice. Except as otherwise provided herein, all notices required under this Agreement shall be in writing and delivered personally or by first class mail, postage prepaid, to each party at the address listed below. Either party may change the notice address by notifying the other party in writing. Notices may be sent by either facsimile or U.S. Mail. Notices shall be deemed received upon receipt of same or within 3 days of deposit in the U.S. Mail, whichever is earlier. Notices sent by facsimile shall be deemed received on the date of the facsimile transmission.

"CONSULTANT"

"CITY"

City of Orange
300 E. Chapman Avenue

Attn.: _____

Orange, CA 92866-1591

Attn.: _____

IN WITNESS of this Agreement, the parties have entered into this Agreement as of the year and day first above written.

“CONSULTANT”

“CITY”

[Insert name of consultant.]

CITY OF ORANGE

By: _____

Printed Name: _____

By: _____

[Insert “John W. Sibley, City Manager” if Contract does not require Council approval or “Carolyn V. Cavecche, Mayor” if Contract requires Council approval.]

Title: _____

*By: _____

Printed Name: _____

Title: _____

ATTEST:

Mary E. Murphy, City Clerk *[This attestation provision need only be included when the Mayor signs the Contract.]*

APPROVED AS TO FORM:

(Assistant) City Attorney

NOTE:** ***The City requires the following signature(s) on behalf of the Consultant:
-- ***(1) the Chairman of the Board, the President or a Vice-President, AND (2) the Secretary, the Chief Financial Officer, the Treasurer, an Assistant Secretary or an Assistant Treasurer. If only one corporate officer exists or one corporate officer holds more than one corporate office, please so indicate. OR***
-- ***The corporate officer named in a corporate resolution as authorized to enter into this Agreement. A copy of the corporate resolution, certified by the Secretary close in time to the execution of the Agreement, must be provided to the City.***

EXHIBIT “A”

SCOPE OF SERVICES

[Beneath this sheet.]

