

CITY OF HIGHLAND
AGREEMENT FOR PROFESSIONAL SERVICES

On this ____ day of _____ the City of Highland, a municipal corporation, hereinafter referred to as City, and Consultant, a California limited liability company, hereinafter referred to as Consultant, hereby mutually agree as follows:

I. Scope of Agreement

A. Employment of Consultant's Name

The City hereby employs the Consultant in accordance with the terms of this Agreement to perform the consultant services set forth in Section III.

B. Agreement Documents

The complete Agreement includes all of the Agreement documents including, but not limited to, the Consultant's proposal (Exhibit "A"), this Agreement and all other documents, texts and other items incorporated by reference in any of the herein-above-named Agreement documents. The specific terms and conditions of this Agreement and Exhibit "A", attached hereto, shall control and have precedence over any contradictory or inconsistent terms and conditions included in the aforementioned Agreement documents and shall be controlling in questions of interpretation.

C. Severability of Provisions

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

D. Commencement / Term of Work

The services of Consultant are to commence upon execution of this Agreement and shall continue until the City approves all authorized work.

E. Failure to Perform

Failure of the Consultant to commence and complete the work, as outlined in Exhibit "A", may result in the Agreement being terminated by the City.

F. Compliance With Laws

In the performance of this Agreement, Consultant shall abide by and conform to any and all applicable laws of the United States, the State of California, the Municipal Code and Ordinances of City. Consultant warrants that all work done under this Agreement will be in strict compliance with all applicable safety rules, laws, statute, ordinances, regulations, and practices.

II. Project Budget

A. Budget Limitations

The design of the project shall be based upon the scope of work defined in the project proposal attached hereto as Exhibit "A" and made a part of this Agreement by this reference as though set forth in full herein. No change from said scope of work shall be made unless so authorized in writing by the City or the City's designated representative.

III. Basic Services of the Consultant

The General Scope of Services intended is to update _____ for the City of

Highland.

Additional information regarding the Basic Services provided by the consultant is detailed in Exhibit "A" under the General Approach, Staffing and Scope of Services section.

IV. Independent Consultant

The performance of Consultant's services hereunder shall be in the capacity of an independent Consultant and not as an officer, agent, or employee of City. In consideration for the compensation paid to Consultant by City, Consultant agrees that City shall not be liable or responsible for any benefits, including, but not limited to, worker's compensation, disability, retirement, life, unemployment, health or any other benefits for Consultant, its officers, employees, agents, Consultants or subcontractors, and Consultant agrees that it shall not sue or file a claim, petition or application therefor against City or any of its officers, employees, agents, representatives or sureties, and shall defend and indemnify City from all claims, causes of action, liability and damages arising therefrom.

V. Interest of Consultant

Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and-represents that to Consultant's professional knowledge, information and belief in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant may be a designated employee within the meaning of the Political Reform Act, and, if so notified by the City, will comply with all reporting and requirements of the City with respect to Consultant's financial interests.

VI. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement, without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

VII. License

Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required of Consultant and its sub-Consultants to practice their profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any license, permits, insurance and approvals which are legally required of Consultant to practice its profession. Consultant shall obtain and

maintain a City Business License during the performance of this Agreement.

VIII. Failure to Perform Work

If Consultant should be adjudged bankrupt or should make a general assignment for the benefit of creditors; if a receiver should be appointed on account of insolvency of Consultant; if Consultant should refuse or should fail, except in cases for which an extension of time is provided specifically by City to supply adequate properly skilled workers or proper materials to perform its obligations under this Agreement within the time herein required, in a good work manner; or if Consultant should fail to make prompt payment to subcontractors, or for material or labor, or disregards laws, ordinances or the instructions of City or its duly authorized engineers, inspectors or representatives, or otherwise violate any provision of this Agreement; then City, upon the certification of its designated representatives that sufficient cause exists to justify such action may, without prejudice to any other right or remedy and after giving Consultant five (5) days written notice, terminate this Agreement and finish the work by whatever methods it may deem appropriate and expedient. In such case, Consultant shall not be entitled to receive any further payment except for such work as City deems had been satisfactorily completed prior to termination.

IX. Assignment and Subcontracting

The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the City. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.

X. Ownership of Work Product

It is understood by and agreed between the parties that all documents, records, written materials, notes and other materials produced or prepared by Consultant pursuant to this Agreement shall become and are the property of City, and shall be signed, stamped and delivered to City immediately upon completion of the services provided for herein, or upon termination of this Agreement.

XI. Disputed Work

In any case where the Consultant deems extra compensation is due for work or services not clearly covered in this Agreement, or not ordered in writing by the City as extra services, the Consultant shall immediately notify the City in writing of its intention to make claim for such extra compensation before the Consultant begins the work on which the Consultant bases the claim. If such notification is not given, and/or if the City is not afforded an opportunity to negotiate the appropriate fee for such extra services, the Consultant is deemed to have agreed to waive the claim for such extra compensation.

Such notice by the Consultant to the City shall not in any way be construed as proving the validity of the claim. The claim must be approved, in writing, by the City.

XII. Resolution of Disputes

Should any dispute arise respecting the value of any work omitted or of any work which Consultant may be required to do, or respecting the amount of any payment to Consultant during the performance of the Agreement, said dispute shall be decided by the City Manager of City, subject to the final approval of the City Council.

XIII. Unauthorized Work

Work done in the absence of or without the knowledge of the City or any work done without written authority from the City, will be considered unauthorized and at the expense of the Consultant, and will not be paid for by the City.

XIV. The City's Responsibilities

A. Budget Limitations

The City shall provide full information as to the requirements and expectations of the Consultant, including budget limitations and scheduling.

B. Legal Services

The City shall furnish legal advice and services required for the project.

C. Administrative Procedures

The City shall notify the Consultant of administrative procedures required and shall specify, in writing, representatives, if any authorized to act in its behalf. The City shall review documents submitted by the Consultant and shall promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the project. The Consultant shall observe the procedure of issuing any orders to Contractors only through the City. Nothing herein contained shall be construed as a delegation by the City of its powers of inspection under all applicable codes, laws and ordinances nor of its power to enforce compliance with the same.

D. Representative

The City shall designate a representative authorized to act on the City's behalf with respect to the Project. The designated representative shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

XV. Consultant's Compensation

A. Basic Services

The Consultant agrees to perform professional services required by this Agreement in a professional and competent manner consistent with accepted City standards. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of professional care to be expected of competent professionals in Consultant's field of expertise. The City agrees to pay the Consultant, and Consultant agrees to accept for its services, an amount not to exceed \$_____ per _____, not including travel expenses incurred, _____ as outlined in Exhibit "A". If the scope of services is adjusted, additional fees may be negotiated, in writing, and in accordance with this Agreement, prior to the performance of any additional services.

B. Method of Payment

Consultant shall submit monthly billings to City describing the work performed during the preceding month. Consultant's bills shall include a brief description of the services performed. City shall pay Consultant no later than thirty (30) days after approval of the monthly invoice by City Staff.

C. Reimbursements

Reimbursements for fees and other expenses, which have been approved by the City pursuant to this Agreement, shall be made to the Consultant, as incurred and billed.

D. Limitation

No payment for any work performed by the Consultant shall exceed the limits established in foregoing provisions of this Agreement.

E. Additional Services

At any time during the term of this Agreement, City may request that Consultant perform Additional Services. As used herein, "Additional Services" means any work, which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City, prior to the performance of any additional services.

XVI. Termination of Agreement

A. Termination

This Agreement may be terminated by either party upon written notice to the other party, in the event of a substantial failure of performance by such other party, or if the City should decide to abandon or indefinitely postpone the project. Upon termination, all materials, documents and work product produced pursuant to this Agreement by or for Consultant and/or in Consultant's possession, shall immediately become the property of the City.

B. Payment Upon Termination

In the event of such termination the City shall pay to the Consultant as full payment for all services performed that amount which has been previously approved and actually incurred by Consultant at the time of termination, which amount shall not exceed the reasonable value of the work completed according to the schedule established pursuant to Section XV.

In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion.

XVII. Insurance

The Contractor shall procure and maintain, for the duration of the 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, employees or subcontractors.

Indemnification Consultant's Responsibility

It is understood and agreed that Consultant has the professional skills, experience and

knowledge necessary to perform the work agreed to be performed under this Agreement, that City relies upon the professional skills of Consultant to do and perform Consultant's work in a skillful and professional manner, and Consultant thus agrees to so perform the work. Acceptance by City of the work performed under this Agreement does not operate as a release of said Consultant from such professional responsibility for the work performed.

It is further understood and agreed that Consultant is apprised of the scope of the work to be performed under this Agreement and Consultant agrees that said work can and shall be performed in a fully competent manner.

During the term of this Agreement, and for a period of three (3) years after completion and acceptance of the Project by the City, Consultant shall indemnify, defend and hold City, its officers, employees, agents and volunteers harmless from and against any and all liability (direct or indirect, including any and all costs and expenses in connection therein), claims, suits, actions, damages and causes of action arising out of the performance of this Agreement, including, but not limited to, any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state or municipal law or ordinance, or other cause in connection with the negligent or intentional acts or omissions of Consultants, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising solely out of the active negligence, sole negligence, or willful misconduct of the City, its officers, employees, agents or volunteers in performing the work set forth in this Agreement.

Minimum Scope of Insurance

Consultant shall provide insurance in scope, amounts and coverages as required by City, including, but not limited to, the following:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001)
2. Insurance Services Office Form Number CA 0001 (Ed. 1/87) covering Automobile Liability, Code 1 (any auto).
3. Worker's Compensation insurance as required by the State of California and Employers' Liability Insurance
4. Errors and Omissions liability insurance appropriate to the consultant's profession. Architects and engineers' coverage is to be endorsed to include contractual liability, if applicable.

Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limits shall be twice the required occurrence limit. (\$4,000,000)
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property

- damage.
3. Employer's Liability: \$2,000,000 per accident for bodily injury or disease.
 4. Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance.
 5. Errors and Omissions liability: \$1,000,000 to be carried by Consultant and all licensed professional sub-consultants, if appropriate.

Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retention that pertain to the City, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, agents and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Consultant; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor; premises owned, occupied or used by the Consultant; including materials, parts or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an endorsement to the Consultant's insurance, or as a separate owner's policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days prior written notice, by certified mail return receipt requested, has been given to the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms provided those endorsements conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences.

The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

The Consultant shall strictly comply with all federal, state and local laws and regulations, including, but not limited to the Immigration Reform and Control Act of 1986, codified at 8 U.S.C. §§ 1324a and 1324b (the "IRCA"), which require and ensure the hiring and retention of employees who are United States citizens, permanent residents and/or who are otherwise authorized by law to work in the United States of America, and, as required by the IRCA, shall affirmatively verify the identity and employment authorization of every employee as a condition of employment or continued employment. The Consultant shall further include this requirement in any subcontract made pursuant to this contract.

XVIII. Worker's Compensation

By executing this Agreement, the Consultant hereby certifies that he/she is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and will comply with such provisions before commencing the performance of the work of this Agreement.

XIX. Audit

Consultant shall allow City to inspect its records with respect to services performed pursuant to this Agreement, upon giving reasonable notice. Consultant shall maintain any books, records or other documents relating to the work performed for a period of at least three (3) years from the completion of the services performed pursuant to this Agreement.

XX. Default

In the event that any of the provisions of this Agreement are violated by Consultant or by any approved subcontractor under any subcontract on the Project, City may terminate this Agreement by serving written notice on Consultant of its intention to terminate and, unless within five (5) days after the serving of such notice such violation shall cease, this Agreement shall terminate. As to violations of the provisions of this Agreement, which cannot be remedied or corrected within five (5) days, said Agreement shall, at the option of City, cease and terminate upon the giving of said notice. In the event of any such termination for any of the reasons above-mentioned, City may take over the work in progress and prosecute the same to completion by contract or otherwise on the account and at the expense of Consultant; Consultant shall be liable to City for any excess cost incurred in the event of any such termination; and City may take possession of and utilize such materials and appliances as may be on the site of work and necessary in completing the work. This clause shall not be construed to prevent the termination, for other causes authorized by law, of other provisions of this Agreement.

XXI. Non Discrimination

Consultant shall declare that he/she does not discriminate in his/her employment with regard to age, handicap, race, color, religion, sex or national origin.

XXII. Drug Free Workplace

Consultant agrees to comply with the City’s Drug Free Workplace Policy.

XXIII. Attorney Fees

In the event of any action between City and Consultant seeking enforcement of any of the terms and conditions of this Agreement, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, reasonable costs and expenses and reasonable attorney’s fees.

XXIV. Waiver

No waiver or failure to exercise any right, option or privilege under the terms of this Agreement on any occasion shall be construed to be a waiver of any other right, option or privilege or any other occasion.

XXV. Assignments

Neither this Agreement, nor any part thereof, nor any monies due or to become due thereunder may be assigned by the Consultant without the prior written consent and approval of the City.

The City and Consultant hereby agree to the full performance of the covenants and conditions contained herein.

XXVI. Successors and Assigns

It is mutually understood and agreed that this Agreement shall be binding upon the City and its successors and upon the Consultant, its partners, successors, executors and administrators.

XXVII. Notices

All notices shall be personally delivered or mailed to the below listed addresses, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service or process.

Address of Consultant is as follows:

Phone: _____

Email: _____

Address of City is as follows:

City of Highland
27215 Base Line
Highland, CA 92346
Joseph A. Hughes, City Manager
(909) 864-6861 x 221

XXVIII. Controlling Law/Venue

California law shall govern the interpretation and enforcement of this Agreement; and action brought relating to this Agreement shall be brought in San Bernardino County.

XXIX. Authority to Enter Agreement

Consultant has all requisite power and authority to conduct its business and to execute, deliver and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal right, power and authority to make this Agreement and to bind each respective party.

XXX. The consultant shall strictly comply with all federal, state and local laws and regulations, including, but not limited to the Immigration Reform and Control Act of 1986, codified at 8 U.S.C. §§ 1324a and 1324b (the "IRCA"), which require and ensure the hiring and retention of employees who are United States citizens, permanent residents and/or who are otherwise authorized by law to work in the United States of America, and, as required by the IRCA, shall affirmatively verify the identity and employment authorization of every employee as a condition of employment or continued employment. The consultant shall further include this requirement in any subcontract made pursuant to this contract.

IN WITNESS WHEREOF, the City and Consultant have executed this Agreement the day and year first above written.

City of Highland

Consultant: _____

Name: Larry McCallon
Mayor

Name:
President

ATTEST:

Betty Hughes
City Clerk

Exhibit A

General Approach, Staffing and Scope of Services

Consultant agrees to perform the following tasks and functions: