

## AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_ and year of \_\_\_\_, by and between the City of Eureka, a municipal corporation, (“City”) and \_\_\_\_ Associates, Inc. (“Consultant”).

### RECITALS

WHEREAS, the City desires to contract for professional or technical services; and

WHEREAS, the Consultant represents that it is duly qualified and experienced to provide such services.

NOW, THEREFORE, said City and said Consultant, for the consideration hereinafter set forth, mutually agree as follows:

### AGREEMENT

1. Consultant services shall be furnished in accordance with the attached Terms and Conditions for Professional Consulting Services Agreements, which are incorporated herein by this reference as Exhibit A.

2. Consultant shall perform those services described in the attached Scope of Work, which are incorporated herein by this reference as Exhibit B. City shall pay Consultant as compensation in full for those services, in an amount not to exceed \$\_\_, payable as specified in the attached Terms and Conditions for Professional Services Agreements.

3. The effective date of this Agreement is \_\_\_\_\_ and it shall terminate upon completion of the project as determined by City, unless terminated or extended as provided for within the Terms and Conditions section of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF EUREKA

By: \_\_\_\_\_  
Frank Jäger, Mayor

Dated: \_\_\_\_\_

Approved as to administration:

By: \_\_\_\_\_  
Greg L. Sparks, City Manager

Approved as to content:

By: \_\_\_\_\_  
Rob Holmlund, Community Development Director

Approved as to form:

By: \_\_\_\_\_  
Cyndy Day-Wilson, City Attorney

Attest:

By: \_\_\_\_\_  
Pamela J. Powell, City Clerk

Consultant:

By: \_\_\_\_\_  
Signer Name  
Signer Title

Dated: \_\_\_\_\_

1099 Information

Taxpayer ID # \_\_\_\_\_

Incorporated: Yes \_\_\_\_\_ No \_\_\_\_\_

## EXHIBIT "A"

### TERMS AND CONDITIONS FOR PROFESSIONAL CONSULTING SERVICES AGREEMENT

1. **DEFINITIONS** – "Consultant" shall mean the Professional Consultant which has entered into the Agreement which by reference is subject to the terms and conditions hereinafter set forth. "City" shall mean the City of Eureka, a municipal corporation or the Eureka Redevelopment Agency, a public entity. "Agreement" shall mean the purchase order, contract, or other written instrument constituting the Agreement between the Consultant and the City.
2. **AMENDMENT OF SCOPE OF WORK** – City shall have the right to amend the Scope of Work within the Agreement by written notification to the Consultant. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement.
3. **CITY'S RIGHT TO TERMINATE/SUSPEND AGREEMENT** – At any time and for any reason, City shall have the right to terminate or cancel the Agreement with ten (10) days prior written notice, take possession of the Consultant's studies, preliminary drawings, computations and specifications, insofar as they are complete and acceptable to the City, and pay the Consultant such equitable proportion of the total remuneration for the work actually done by the Consultant at the time of such discontinuance bears to the whole of the work required to be done by the Consultant under the terms of the Agreement.

City, at its sole discretion, may suspend indefinitely or abandon the completion of the project, or any part thereof, and may require the Consultant to suspend the performance of its services. Said right to suspend or abandon shall be without limit or restriction. If the Agreement is suspended for one year or longer and then restarted, City will renegotiate compensation with the Consultant. In such event, Consultant shall be compensated for its reasonable expenses resulting from such suspension, including mobilization and demobilization.

If the City thereafter should determine to complete the project, the City shall have the privilege of requiring completion of the drawings, specifications, and other documents upon compensation of the Consultant.

4. **MEDIATION** – Any dispute, controversy, or claim arising out of or in connection with the interpretation or performance of any term or condition of this Agreement or any breach or alleged breach of this Agreement shall be submitted to non-binding mediation by a neutral and independent mediator, who shall be selected by the parties by mutual agreement, or if the parties are unable to agree upon the selection of a mediator, then in accordance with the rules of the American Arbitration Association. The cost of the mediator and any other mediation costs shall be borne equally by the parties. The mediation process and the outcome of the mediation shall remain confidential. Notwithstanding the foregoing terms, the parties shall make every reasonable effort to resolve disputes, controversies, or claims between themselves in a cooperative fashion prior to submitting a dispute to mediation. Unless otherwise mutually agreed in writing by the parties, neither party may commence an action at law or equity until the mediation provided herein has been concluded.
5. **EMPLOYMENT PRACTICES** – Consultant shall not discriminate in his/her performance under the Agreement either directly or indirectly on the grounds of race, color, religion, sex, age, or national origin in his/her employment practices, and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, or national origin. The Consultant will comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21).
6. **TITLE TO DOCUMENTS** – Title to all plans, specifications, maps, estimates, reports,

manuscripts, drawings, descriptions, and other final work products compiled by the Consultant under the Agreement shall be vested in the City, none of which shall be used in any manner whatsoever, by any person, firm, corporation, or agency without the expressed written consent of the City. Basic survey notes and sketches, charts, computations, and other data prepared or obtained under the Agreement shall be made available, upon request, to the City without restriction or limitation on their use. City will indemnify, defend and hold harmless Consultant against any and all claims resulting from negligent, improper and unintended reuse of Consultant's work products by City or other third parties.

7. **RECORDS OF PERFORMANCE** – Consultant shall maintain adequate records of performance of the Agreement and make these records available for inspection, audit, and copying by the City throughout the duration of the Agreement and for a period of three (3) years from the date of final payment.
8. **ASSIGNMENT** – The Agreement shall not be assigned by the Consultant in whole or in part, without the written consent of the City.
9. **PAYMENT** – Consultant shall submit itemized invoices for work performed. Payment shall be made based upon approval of the invoice. City shall make any payment due within thirty (30) days after approval of such invoice.
10. **FEDERAL AND STATE RULES AND REGULATIONS** – In the event the Request for Proposal to Provide Professional Consulting Services cites any Federal or State financial assistance involved in the project for which professional services are provided, the Consultant shall have the duty of performing under the Agreement in accordance with applicable Federal and State laws, rules, and regulations.
11. **CORRECTION OF WORK** – The performance of services or acceptance of information furnished by Consultant shall not relieve the Consultant from obligation to correct any defective Consultant work subsequently discovered and all incomplete, inaccurate, or defective work shall be remedied by the Consultant on demand without cost to the City.
12. **CONSULTANT'S LIABILITY** – The Consultant shall be responsible for all injuries to persons and for all damage to property of the City or others caused by or resulting from the negligence of the Consultant, his/her employees, agents, or subcontractors during the progress of or connected with rendition of services here rendered, and shall defend and hold harmless and indemnify the City and all officers and employees of the City from all costs and payments for damages or injuries to the extent arising out of the negligent performance of the work of the Consultant or his/her subcontractors under the Agreement.
13. **INSURANCE** – The Consultant shall provide Certificates of Insurance as noted below. All insurance carriers shall be rated A:VII or better.
14. **GENERAL LIABILITY INSURANCE** – The Consultant shall take out and maintain, throughout the duration of the Agreement, commercial general liability insurance with minimum limits of \$2,000,000 combined single limit (CSL), or \$2,000,000 bodily injury per occurrence and \$2,000,000 property damage per occurrence, covering all bodily injury and property damage arising out of its operation under the agreement.

Prior to the execution of the Agreement, the Consultant shall provide the City a Certificate of Insurance showing the appropriate general liability limits. In addition, the Consultant shall provide the City with a Commercial General Liability Insurance Endorsement. The preferred form is a CG 20 10 11 85, but the Consultant may with prior approval by the City, substitute an alternative endorsement provided the endorsement references "your work", and contains the following minimum specific components:

1. A statement that includes the following language:

"The City of Eureka is included as an additional insured including its officers, officials, employees, and volunteers."

2. A statement acknowledging the insured's insurance as primary as respects the City of Eureka and that any other insurance maintained by the City of Eureka shall be in excess of the insured's insurance and shall not be called upon to contribute with it.
3. A statement that the policy shall not be canceled except after thirty (30) days prior written notice to the City.
4. The endorsement must have an original authorized signature.

Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

An alternative to the submission of a CG 20 10 11 85 form is available. A CG 20 10 10 01, or a CG 20 33 10 01 (or similarly worded form) ***along with*** a CG 20 37 10 01 will be acceptable in lieu of a CG 20 10 11 85 form.

NOTE: Policies that include endorsement numbers CG 22 94 10 01 and/or CG 22 95 10 01, or have the endorsement wording written into the policy language, are not acceptable.

15. **AUTOMOBILE INSURANCE** – Throughout the duration of the Agreement the Consultant shall provide "Any Auto" automobile insurance covering all bodily injury and property liability incurred during the term of the Agreement, with minimum coverage of \$2,000,000 per accident for bodily injury and property damage; or \$2,000,000 per accident combined single limit (CSL).

Prior to the execution of the Agreement, the Consultant shall provide the City a Certificate of Insurance showing the appropriate automobile liability limits. In addition, the Consultant shall provide the City with an Automobile Liability Insurance Endorsement that includes the following:

1. A statement that includes the following language:

"The City of Eureka is included as an additional insured including its officers, officials, employees, and volunteers."

2. A statement acknowledging the insured's insurance as primary as respects the City of Eureka and that any other insurance maintained by the City of Eureka shall be in excess of the insured's insurance and shall not be called upon to contribute with it.
3. A statement that the policy shall not be canceled except after thirty (30) days prior written notice to the City.
4. The endorsement must have an original authorized signature.

16. **WORKERS' COMPENSATION INSURANCE** – The Consultant shall, throughout the duration of the Agreement, maintain in full force and effect a policy of workers' compensation insurance covering all its employees and volunteers as required by the State of California.

Prior to the execution of the Agreement, the Consultant shall provide to the City a Certificate of Workers' Compensation Insurance. The Consultant shall provide the City with a Workers' Compensation Insurance Endorsement that includes the following:

1. A waiver of subrogation clause which states the following:

“This insurance company agrees to waive all rights of subrogation against the City, its officers, officials, employees, and volunteers for losses paid under the terms of this policy, which arise from the work performed by the named insured for the City.”

2. A statement that the policy shall not be canceled except after thirty (30) days prior written notice to the City.
3. The endorsement must have an original authorized signature.

Certificates issued by State Compensation Insurance Fund **must have** State Fund endorsement numbers 2065 and 2570 on them.

17. **PROFESSIONAL LIABILITY INSURANCE** – The Consultant shall, at his/her own expense, take out and keep in force throughout the duration of the Agreement, professional liability insurance in an amount not less than \$2,000,000 per claim and \$2,000,000 aggregate. Said policy is to pay on the Consultant's behalf for all expenses and damages to the extent resulting from Consultant's negligent acts and errors and omissions in plans, specifications, and other work performed by Consultant under the Agreement. Consultant shall furnish City with the Certificate of Insurance providing the required Coverage prior to commencing performance. Consultant shall notify the insurance carrier to notify City in writing not less than thirty (30) days prior to cancellation and if there are any other changes affecting the coverage of the policy.
18. **SUBCONTRACTING** – None of the services covered by the Agreement shall be subcontracted without the prior written consent of the City. Consultant shall furnish separate certificates and endorsements for each subcontractor having received consent by the City. All coverages for subcontractors shall be subject to all of the requirements stated herein for the Consultant.
19. **COVENANT AGAINST CONTINGENT FEES** – The Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure the Agreement and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or making of the Agreement. For breach or violation of this warranty, the City shall have the right to annul the Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
20. **DELAYS AND EXTENSIONS** – The consultant will be granted time extensions for delays beyond the Consultant's control. Time extensions will be equal to the length of the delay or as otherwise agreed upon between the Consultant and the City and shall be approved in writing by the City Engineer. In such event, compensation as set forth in the Scope of Work shall be subject to renegotiation upon written demand of either party to the Agreement.
21. **CONSULTANT'S ENDORSEMENT** – The Consultant will endorse plans, specifications, reports, and documents in accordance with applicable portions of the Business and Professions Code of the State of California.

22. **PERMITS AND LICENSES** – Prior to execution of the Agreement, the Consultant shall obtain and maintain throughout the contract period a valid City municipal business license.
23. **LAWS TO BE OBSERVED** – Throughout the term of this Agreement, the Consultant shall keep himself fully informed of and shall comply with all state and Federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, the use of equipment, safety requirements, or the materials used in the work, or which in any way affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. He shall at all times observe and comply with, and shall cause all his agents, subcontractors, and employees to observe and comply with, all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the work and shall defend and indemnify the City, and all of its officers, officials, employees and volunteers, the design engineer, and the Engineer against any and all claims or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by himself, his subcontractors, or his employees.
24. **CONTRACT TERMS TO BE EXCLUSIVE** – This document is the entire Agreement between the parties and it incorporates or supersedes all previous Agreements describing the terms and provisions of the Agreement for Services.

CERTIFICATION OF CONSULTANT

I HEREBY CERTIFY that I am the duly authorized representative of the firm of \_\_\_\_\_ whose address is \_\_\_\_\_, and that neither the above firm I here represent nor I has:

(a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this Agreement;

(b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the Agreement; or

(c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement;

except as here expressly stated (if any):

I hereby acknowledge that this certificate is subject to applicable State and Federal laws, both criminal and civil.

\_\_\_\_\_  
Date

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