

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN THE CITY OF VACAVILLE AND**

FOR

THIS AGREEMENT is made and entered into on the date last written below, by and between the CITY OF VACAVILLE, a municipal corporation (hereinafter "CITY"), and _____, a California corporation, (hereinafter "CONTRACTOR").

R E C I T A L S

The purpose for which this AGREEMENT is made, and all pertinent recitals, are listed on EXHIBIT A, entitled "RECITALS", which is attached hereto and incorporated herein.

THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. SCOPE OF SERVICES.

CONTRACTOR shall perform those services specified in detail in EXHIBIT B, entitled "SCOPE OF SERVICES", which is attached hereto and incorporated herein.

SECTION 2. TERM OF AGREEMENT.

The term of this AGREEMENT shall be from (*check one*):

the date of this AGREEMENT last written below to _____, inclusive, subject to the provisions of SECTION 11 of this AGREEMENT.

_____ to _____, inclusive, subject to the provisions of SECTION 11 of this AGREEMENT.

SECTION 3. SCHEDULE OF PERFORMANCE.

The services of CONTRACTOR are to be completed according to the schedule set out in EXHIBIT C, entitled "SCHEDULE OF PERFORMANCE", which is attached hereto and incorporated herein. Time is of the essence in this AGREEMENT.

SECTION 4. COMPENSATION.

The compensation to be paid to CONTRACTOR, including both payment for professional services and reimbursable expenses, shall not exceed _____ dollars (\$ _____). The rate and schedule of

payment are set out in EXHIBIT D, entitled "COMPENSATION", which is attached hereto and incorporated herein.

SECTION 5. METHOD OF PAYMENT.

Each month, CONTRACTOR shall furnish to the CITY a statement of the work performed for compensation during the preceding month. Such statement shall also include a detailed record of the month's actual reimbursable expenditures permitted hereunder.

SECTION 6. INDEPENDENT CONTRACTOR.

It is understood and agreed that CONTRACTOR (including CONTRACTOR's employees), in the performance of the work and services agreed to be performed by CONTRACTOR, shall act as and be an independent contractor and not an agent or employee of CITY; and, as an independent contractor, neither CONTRACTOR nor CONTRACTOR's employees shall have any rights to retirement benefits or other benefits that accrue to CITY's employees and CONTRACTOR hereby expressly waives any claim it or its employees may have to any such benefits or rights.

SECTION 7. ASSIGNABILITY.

The parties agree that the expertise and experience of CONTRACTOR are material considerations for this AGREEMENT. CONTRACTOR shall not assign or transfer any interest in this AGREEMENT nor the performance of any of CONTRACTOR's obligations hereunder, without the prior written consent of CITY, and any attempt by CONTRACTOR to so assign or transfer this AGREEMENT or any rights, duties or obligations arising hereunder shall be void and of no effect.

SECTION 8. INDEMNIFICATION AND WAIVER OF SUBROGATION.

A. INDEMNITY.

CONTRACTOR shall indemnify and hold harmless CITY, its officers, officials, employees and volunteers from and against all actions, causes of actions, damages, costs, liabilities, claims, losses, judgments, penalties and expenses of every type and description, including without limitation any fees and/or costs reasonably incurred by CITY's staff attorneys or contract attorneys and any and all costs, fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "liabilities"), arising out of or in connection with any negligent act or omission, misconduct or other legal fault of CONTRACTOR, its officers, employees, subconsultants, subcontractors or agents in

connection with the performance or nonperformance of this AGREEMENT, whether or not CITY accepted or approved any service or work product performed or provided by CONTRACTOR hereunder, and whether or not such liabilities are litigated, settled or reduced to judgment. In the event that a final decision or judgment allocates liability by determining that any portion of damages awarded is attributable to CITY's negligence or willful misconduct, CITY shall pay the portion of damages which is allocated to CITY's negligence or willful misconduct, provided that CITY shall not be liable for any passive negligence of CITY, its officers, officials, employees and volunteers in reviewing, accepting or approving any service or work product performed or provided by CONTRACTOR.

B. OBLIGATION TO DEFEND.

CONTRACTOR shall, upon CITY's request, defend with counsel approved by CITY (which approval shall not be unreasonably withheld), at CONTRACTOR's sole cost and expense, any action, claim, suit, cause of action or portion thereof which asserts or alleges liabilities resulting from any allegedly negligent act, omission, misconduct or other legal fault of CONTRACTOR, its officers, employees, subconsultants, subcontractors or agents in connection with the performance or nonperformance of this AGREEMENT, whether or not such action, claim, suit, cause of action or portion thereof is well founded or lacking in merit.

C. INSURANCE POLICIES; TERMINATION.

Acceptance of insurance certificates or endorsements required under EXHIBIT E of this AGREEMENT does not relieve CONTRACTOR from liability under this SECTION 8 and shall apply to all damages and claims of every kind suffered, or alleged to have been suffered, by reason of CONTRACTOR's negligence, misconduct, or other legal fault regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages. The provisions of this SECTION 8 shall survive any termination of this AGREEMENT.

SECTION 9. INSURANCE REQUIREMENTS.

CONTRACTOR agrees to have and maintain the policies of insurance set forth in EXHIBIT E, entitled "INSURANCE", which is attached hereto and incorporated herein. All policies, endorsements, certificates and/or binders shall be subject to approval by CITY's Risk Manager as to form and

gjh (10-08 rev.); Risk Mgmt (03-12 rev ins exhibit E)

content. These requirements are subject to amendment or waiver only if so approved in writing by CITY's Risk Manager. CONTRACTOR agrees to provide CITY project manager with a copy of said policies, endorsements, certificates and/or binders before work commences under this AGREEMENT. The policies shall include a waiver of subrogation endorsement by which CONTRACTOR's insurer agrees to waive all rights of subrogation against CITY, its officers, officials, employees and volunteers for losses arising from work performed by CONTRACTOR for CITY.

SECTION 10. NONDISCRIMINATION.

CONTRACTOR shall not discriminate in any way against any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age or sexual orientation in connection with or related to the performance of this AGREEMENT.

SECTION 11. TERMINATION.

A. CITY shall have the right to terminate this AGREEMENT, without cause, by giving not less than seven (7) days' written notice of termination.

B. If CONTRACTOR fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, CITY may terminate this AGREEMENT immediately upon written notice.

C. In accordance with Article XVI, Section 18 of the California Constitution, if in any fiscal year subsequent to the execution of this AGREEMENT, CITY fails to appropriate money for the purpose of funding this AGREEMENT, this AGREEMENT shall terminate, without penalty, effective upon the close of business on the last day of the fiscal year for which funding has been appropriated.

D. CITY's Director of _____ or his/her authorized designee is empowered to terminate this AGREEMENT on behalf of CITY.

E. In the event of termination, CONTRACTOR shall deliver to CITY copies of all reports, documents, and other work performed by CONTRACTOR under this AGREEMENT and, upon receipt thereof, CITY shall pay CONTRACTOR for the reasonable value of services performed to the date of termination.

SECTION 12. GOVERNING LAW.

CITY and CONTRACTOR agree that the law governing this AGREEMENT shall be that of the State of California.

SECTION 13. COMPLIANCE WITH LAWS.

CONTRACTOR shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

SECTION 14. CONFIDENTIAL INFORMATION.

All data, documents, discussions, or other information developed or received by or for CONTRACTOR in the performance of this AGREEMENT are confidential and not to be disclosed to any person except with the prior written permission of CITY, or as required by law.

SECTION 15. OWNERSHIP OF MATERIALS.

All reports, documents or other materials developed or discovered by CONTRACTOR or any other person engaged directly or indirectly by CONTRACTOR to perform the services required hereunder shall be and remain the property of CITY without restriction or limitation upon their use by CITY.

SECTION 16. WAIVER.

CONTRACTOR agrees that waiver by CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by CITY of the performance of any work or services by CONTRACTOR shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

SECTION 17. CONTRACTOR'S BOOKS AND RECORDS.

A. CONTRACTOR shall maintain any and all ledgers, books of account, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to CITY for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to CONTRACTOR pursuant to this AGREEMENT.

B. CONTRACTOR shall maintain all documents and records which demonstrate performance under this AGREEMENT for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this AGREEMENT.

C. Any records or documents required to be maintained pursuant to this AGREEMENT shall be made available for inspection or audit at any time during regular business hours upon written request by the CITY's City Attorney, City Manager, or a designated representative of either of these officers. Copies of such documents shall be provided to CITY for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at CONTRACTOR's address indicated for receipt of notices in this AGREEMENT.

D. Where CITY has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of CONTRACTOR's business, CITY may, by written request by any of the above-named officers, require that custody of such records and documents be given to CITY and that such records and documents shall be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by CONTRACTOR, CONTRACTOR's representatives, or CONTRACTOR's successor-in-interest during regular business hours.

SECTION 18. CONFLICT OF INTEREST.

CONTRACTOR shall avoid all conflict of interest or appearance of conflict of interest in the performance of this AGREEMENT.

SECTION 19. SPECIAL PROVISIONS.

Special provisions, if any, to this AGREEMENT are specified in EXHIBIT F, entitled, "SPECIAL PROVISIONS", which is attached hereto and incorporated herein.

SECTION 20. NOTICES.

All notices and other communications required or permitted to be given under this AGREEMENT shall be in writing and shall be personally served or mailed, postage prepaid and addressed to the respective parties as follows:

TO CITY:

<Name>, Project Manager
City of Vacaville
650 Merchant Street
Vacaville, CA 95688
ATTENTION:

TO CONTRACTOR:

,
ATTENTION:

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

SECTION 21. VENUE.

In the event that suit shall be brought by either party to this AGREEMENT, the parties agree that venue shall be exclusively vested in the state courts of the County of Solano or, where otherwise appropriate, exclusively in the United States District Court, Eastern District of California, Sacramento, California.

SECTION 22. INTERPRETATION.

Each party has reviewed this AGREEMENT and any question of doubtful interpretation shall not be resolved by any rule or interpretation providing for interpretation against the drafting party. This AGREEMENT shall be construed as if both parties drafted it. The captions and headings contained herein are for convenience only and shall not affect the meaning or interpretation of this AGREEMENT.

SECTION 23. SIGNATOR'S WARRANTY.

Each party warrants to each other party that he or she is fully authorized and competent to enter into this AGREEMENT in the capacity indicated by his or her signature and agrees to be bound by this AGREEMENT.

SECTION 24. PRIOR AGREEMENTS AND AMENDMENTS.

This AGREEMENT, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This AGREEMENT may only be modified by a written amendment duly executed by the parties to this AGREEMENT.

WITNESS THE EXECUTION HEREOF on the day and year last written below.

APPROVED AS TO FORM:

"CITY"

Gerald L. Hobrecht, City Attorney

CITY OF VACAVILLE, a municipal corporation

By: _____
[Insert Name and Title]

By: _____
[Insert Name and Title]

Dated: _____

"CONTRACTOR"

[Insert company name and form of business, e.g. "XYZ COMPANY, a New York corporation"]

By: _____
[Insert Name and Title]

Dated: _____

EXHIBIT A

RECITALS

WHEREAS, CITY desires to obtain contract services to _____ ; and

WHEREAS, _____ has the necessary professional expertise and skill to perform such services.

NOW, THEREFORE, the purpose of this AGREEMENT is to retain _____ as CONTRACTOR
to CITY to perform those services specified in SECTION 1 of this AGREEMENT.

EXHIBIT B

SCOPE OF SERVICES

EXHIBIT C

SCHEDULE OF PERFORMANCE

Work shall commence immediately upon execution of this AGREEMENT and shall be performed in accordance with the schedule set forth below. The time for completion is .

EXHIBIT D

COMPENSATION

CITY agrees to compensate CONTRACTOR _____ dollars (\$) for professional services performed in accordance with the terms and conditions of this AGREEMENT.

The maximum amount of compensation to be paid to CONTRACTOR under this AGREEMENT, including both payment for professional services and reimbursable expenses, shall not exceed _____ dollars (\$ _____). CONTRACTOR shall not be entitled to any additional compensation unless CITY, after receiving written notice from CONTRACTOR, approves in writing such additional compensation.

Reimbursable expenses shall include the reasonable cost of: _____ .

EXHIBIT E

INSURANCE REQUIREMENTS FOR CONTRACTORS

In all instances where a CONTRACTOR or its representatives will be conducting business and/or providing services, CITY requires the following MINIMUM insurance requirements and limits.

CONTRACTOR shall procure and maintain 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 and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors. Insurance must be renewed for a period of at least 180 days after final payment has been made by CITY to CONTRACTOR pursuant to this agreement. **Maintenance of proper insurance coverage is a material element of the contract. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by CITY as a material breach of contract.**

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

Original signed certificates and separate policy endorsements naming the City of Vacaville as an additional insured for general liability, and a waiver of subrogation for Workers' Compensation Insurance shall be received and approved by CITY before any work may begin. However, failure to do so shall not operate as a waiver of these insurance requirements.

CITY reserves the right to modify or require additional coverages for specific risk exposures depending on scope of CONTRACTORS work.

Minimum coverage is detailed below. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated herein shall not serve to reduce the policy limits of coverage of CONTRACTOR. Exceptions to these requirements may be allowed in special circumstances. Contact Risk Management to inquire.

Minimum Scope of Insurance – the following forms shall be provided and coverage shall be at least as broad as the following:	
1.	Insurance Services Office Commercial General Liability coverage (ISO Occurrence Form CG 0001) including coverage for on-going operations, and products and completed operations.
2.	Original and separate Additional Insured Endorsements for General Liability (ISO Form CG 20 10 11/85 or its equivalent) with primary and non-contributory language.
3.	Insurance Services Office Automobile Liability coverage (ISO Form CA 0001, Code 1, Any Auto)
4.	Workers' Compensation Insurance as required by the State of California including Employer's Liability coverage.
5.	Original and separate Waiver of Subrogation for Workers' Compensation Insurance.
6.	Builder's Risk/Course of Construction insurance covering all risks of loss less policy exclusions when the City of Vacaville has a financial interest in the property. – <i>(Only required for Construction Contracts involving property)</i>
7.	Contractor's Pollution Liability <i>(if applicable for Construction Contractors)</i>

Required Coverage	Minimum Limits
General Liability <i>(primary and excess limits combined)</i>	Minimum coverage \$1,000,000 per occurrence/\$2,000,000 aggregate. Coverage requirements may be increased based on risk analysis and consultation with City Risk Manager. Includes coverage for bodily injury, personal injury, property damage and products and completed operations. The policy shall not exclude coverage for XCU perils (explosion, collapse, or damage to underground property). If the policy includes a general aggregate, either the general aggregate shall apply separately to this project, service or location or the minimum required aggregate limit shall be twice the per occurrence limit. Policy shall be endorsed to name the City of Vacaville as an additional insured per the conditions detailed below.
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage.
Workers' Compensation and Employers' Liability	Statutory limits as required by the State of California including \$1 million Employers' Liability per accident, per employee for bodily injury or disease. If CONTRACTOR is self-insured, provide a certificate of Permission to Self-Insure, signed by the California Department of Industrial Relations and Self-Insurance.

<p>Builders' Risk/Course of Construction – Covers property under construction, repair or renovation as well as equipment and materials to be installed.</p> <p>(Only required for Construction Projects involving property and equipment installation.)</p>	<p>Coverage shall include all risks of direct physical loss, excluding earthquake, <i>for an amount equal to the full completed value of the covered structure or replacement value of alterations or additions, including soft costs and business interruption.</i></p> <p>If the project does not involve new or major reconstruction, an Installation Floater may be acceptable. For such projects, a property installation floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken or destroyed during the performance of the Work, including during transit, installation and testing at the City of Vacaville site.</p> <p>The City of Vacaville shall be named as loss payee as its interest may appear. The insurer shall waive all rights against City.</p>
<p>Contractor's Pollution Liability <i>(if applicable)</i></p> <p>Protects against: <i>unexpected/unintended release of pollution resulting from contractor's covered operations such as:</i></p> <p>HVAC, paving, carpentry, pipeline & tank installation, drillers, remediation contractors, maintenance, mechanical, demolition, excavation, grading, street/road construction, residential & commercial builders.</p>	<p>Same limits as General Liability.</p>
Required Policy Conditions	
<p>A. M. Best Rating</p>	<p>A-:VII or Better. If the A.M. Best Rating falls below the required rating, CONTRACTOR must replace coverage immediately and provide notice to City.</p>
<p>Additional Insured Endorsement</p>	<p>Applicable to General Liability.</p> <p>The City of Vacaville, its officers, officials, employees, agents and volunteers are to be named as additional insureds for all liability arising out of the operations by or on behalf of the named insured including but not limited to bodily injury, deaths and property damage or destruction arising in any respect directly or indirectly in the performance of this contract.</p> <p>ISO form CG 20 10 (11/85) or its equivalent is required. If endorsement excludes products and completed operations coverage, then form CG 20 37 (10/01) is also required.</p>
<p>Primary and Noncontributory</p>	<p>The CONTRACTOR's insurance coverage must be primary and noncontributory coverage as it pertains to CITY, its officers, officials, employees, agents and volunteers. Any insurance or self insurance maintained by CITY is wholly separate from the insurance of the CONTRACTOR and in no way relieves the CONTRACTOR from its responsibility to provide the required limits of insurance.</p>
<p>Waiver of Subrogation Endorsement Form</p>	<p>CONTRACTOR's insurer will provide a Waiver of Subrogation endorsement in favor of CITY for Workers Compensation coverage during the life of this contract.</p>
<p>Deductibles and Self-Insured Retentions</p>	<p>Any deductible or self-insured retention over \$50,000 must be declared to and approved by the City Risk Manager. At the option of CITY either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects CITY or the CONTRACTOR shall procure a financial guarantee in an amount equal to the deductible or self-insured retention guaranteeing payment of losses and related investigations, claims administration and defense expenses.</p> <p>CONTRACTOR is responsible for satisfaction of the deductible and/or self-insured retention for each loss.</p>
<p>Loss Payable Endorsement (only required when Builder's Risk and/or Course of Construction Insurance is required.)</p>	<p>Applicable to Builder's Risk/Course of Construction naming the City of Vacaville as Loss Payee.</p>

SURETY BONDS (If a Public Works/Engineering Project)	The CONTRACTOR shall provide: <ol style="list-style-type: none"> 1. A Bid bond 2. A Performance Bond 3. A Payment Bond
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Umbrella/Excess Liability Policies

If an Umbrella or Excess Liability Policy is used to meet the liability limits, coverage shall be at least as broad as specified for underlying coverages and cover those insured in the underlying policies. Upon request, a Schedule of Underlying Coverage shall be provided by CONTRACTOR to CITY for review and approval.

Claims-Made Policies

If any insurance policy is written on a claims-made form: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work. 2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the CONTRACTOR must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.

Subcontractors

CONTRACTOR shall include all subcontractors as insured under its policies or shall furnish to the City's designated project manager for review and approval, separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

CONTRACTOR agrees to defend and indemnify the City of Vacaville for any damage resulting to it from failure of either CONTRACTOR or any subcontractor to take out or maintain the required insurance policies. The fact that insurance is obtained by CONTRACTOR, and/or CONTRACTOR's subcontractors, will not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this contract. Damages recoverable by CITY from CONTRACTOR or any third party will not be limited by the amount of the required insurance coverage.

Verification of Coverage

All original certificates and endorsements shall be received and approved by CITY before work may begin. The City of Vacaville reserves the right to require complete, certified copies of all required insurance policies including endorsements affecting the coverage at any time.

Original insurance certificates and required policy endorsements shall be mailed, or delivered to the designated project manager for the City of Vacaville.

Insurance certificates and endorsements may be emailed or faxed to the designated project manager. However, CONTRACTOR must mail the original certificates and endorsements to designated project manager once emailed or faxed.

Continuous Coverage

CONTRACTOR shall maintain the required insurance for a period of at least 180days after final payment has been made by CITY to CONTRACTOR pursuant to this agreement. Should the CONTRACTOR cease to have insurance as required during this time, all work by the CONTRACTOR pursuant to this agreement shall cease until insurance acceptable to CITY is provided. In the event that CONTRACTOR fails to comply with CITY's insurance requirements, CITY may take such action as it deems necessary to protect CITY's interests. Such action may include but is not limited to termination of the contract, withholding of payments, or other actions as CITY deems appropriate.

If services or the scope of work extend beyond the expiration dates of the required insurance policies initially approved by CITY, CONTRACTOR must provide updated certificates and endorsements indicating that the required coverage, terms and conditions are still in place. **Renewal certificates and updated endorsements shall be mailed to the designated project manager.**

Reporting Requirements

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, its officers, officials, employees or volunteers.

Consistent with Public Policy

The insuring provisions, insofar as they may be judged to be against public policy shall be void and unenforceable only to the minimum extent necessary so that the remaining terms and provisions herein may be consistent with public policy and thus enforceable.