

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made and entered into as of _____ by and between the City of Marysville (“City”) and _____. (“Consultant”).

RECITALS

- A. The Consultant is specially trained, experienced and competent to provide the professional services required by this Agreement.
- B. The Consultant possesses the skill, experience, ability, background, license, certification, as required by law and knowledge to provide the professional services described in this Agreement in accordance with the terms and conditions described herein.
- C. City desires to retain Consultant to render the professional services as set forth in this Agreement.

AGREEMENT

- 1. Scope of Services. The Consultant shall furnish the following services in a professional manner: Consultant shall perform the services described in Exhibit “A” which is attached hereto and incorporated herein by reference. Consultant shall provide such professional services at the time, place, and in the manner specified in Exhibit “A,” subject to the direction of the City.
- 2. Time of Performance. The services shall commence upon execution of this Agreement, and shall continue until scope of services are completed or until terminated as set forth in Section 6 (Termination) of this Agreement.
- 3. Compensation. Compensation to be paid to Consultant will be based on the approved hourly rate schedule. The maximum contract amount shall not exceed \$66,000.00, and the individual task orders shall not exceed the amount negotiated. Payment by City under this Agreement shall not be deemed a waiver of defects in Consultant’s services, even if such defects were known to the City at the time of payment.
- 4. Method of Payment. Consultant shall submit monthly billing to City describing the services provided during the preceding month. Consultant’s bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City

shall pay Consultant within thirty (30) days upon approval of the monthly invoice by City staff, such approval to not be unreasonably withheld.

5. Additional Services. At any time during the term of this Agreement, City may request that Consultant provide Additional Services. As used herein, “Additional Services” means any services which are determined by City to be necessary for the proper completion of Consultant’s services, but which are not included in Exhibit A. Consultant shall not perform, nor be compensated for, Additional Services without prior written authorization from City that specifies the services to be provided, personnel to be used, and the not-to-exceed cost for the additional services.
6. Termination. This Agreement may be terminated by the City at any time. Upon termination, Consultant shall be entitled to compensation for services properly performed up to the effective date of termination. The Agreement may be terminated for cause by the Consultant upon seven (7) days’ notice to City.
7. Ownership of Documents. The City acknowledges the Consultant's documents, including electronic files, are the work papers of the Consultant and the Consultant's instruments of professional service. All plans, studies, documents, and other writings prepared by and for Consultant, its officers, employees, and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Consultant for such services, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall not be held liable for any modification or reuse of the City-owned instruments of service for purposes outside this Agreement. Consultant shall, at Consultant’s expense, provide such reports, plans, studies, documents, and other writings to City within three (3) days after written request. Nothing herein shall be construed as a limitation on Consultant’s right to re-use component design details, features and concepts on other projects, in other contexts or for other clients.
8. Licensing of Intellectual Property. This Agreement creates a nonexclusive and perpetual license for City to copy, use, modify, or reuse any and all copyrights, designs, and other intellectual property embodied in documents or works of authorship fixed in any tangible medium of expression including, but not limited to, data magnetically or otherwise recorded on computer diskettes, CDs or other electronic form which are prepared or

caused to be prepared by Consultant under this Agreement (“Documents and Data”). Consultant shall require all subconsultants to agree in writing that City is granted a nonexclusive and perpetual license for any Documents and Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents and Data. Consultant makes no such representation and warranty in regard to Documents and Data which may be provided to Consultant by City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City’s sole risk.

9. Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of the Agreement shall be held confidential by Consultant unless and until such documents become a matter of public record. Except as allowed by Paragraph 7 of this Agreement, such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the services under this Agreement. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City’s name or insignia, photographs relating to project for which Consultant’s services are rendered, or any publicity pertaining to the Consultant’s services under this Agreement in any magazine, trade paper, newspaper, television, or radio production or other similar medium without the prior written consent of City.

10. Consultant’s Books and Records

- a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, 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 Consultant to this Agreement.
- b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum of three (3) years, or for any

longer period required by law, from the date of termination or completion of the 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 Manager, City Attorney, City Finance Director, or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at 526 C Street, Marysville, California when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant'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 Consultant's business, City may, by written request by any of the above named officers, require that custody of the records be given to the City and that documents be maintained by City Hall.

11. Independent Contractor. It is understood that Consultant, in the performance of the services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

12. 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 in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- a. will conduct research and arrive at conclusions with respect to its rendition of information, advice, recommendation, or counsel independent of the control and

direction of the City or any City official, other than normal agreement monitoring;
and

- b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation, or counsel. (FPPC Reg. 18700(a)(2)).
13. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. All services provided by Consultant under this Agreement, shall be by Foothill Associates and shall be in accordance with applicable legal requirements and shall perform its services consistent with the professional skill and care ordinarily provided by professionals in Consultant's field of expertise practicing in the same or similar locality under the same or similar circumstances ("standard of care").
14. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations.
15. Licenses. 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 to practice its 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 licenses, permits, insurance, and approvals which are required by the City for its business.
16. Indemnity. Except for claims resulting from the Consultant's performance of professional services under this Agreement, Consultant agrees to defend, indemnify, and hold harmless the City, its officers, officials, agents, and employees from and against any and all claims, demands, actions, losses, damages, injuries, and liability, (including any and all costs and expenses in connection therein), arising from its performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except to the extent any such claim arises from the sole negligence or willful misconduct of the City, its officers, agents, employees, or volunteers. For claims resulting from the Consultants performance of professional services, Consultant agrees to defend, indemnify, and hold harmless the City, its officers, officials, agents, and employees from and against any and all claims, demands, actions, losses, damages, injuries, and liability (including any and all costs and expenses in connection therein), to

the extent arising from its negligent performance of the professional services under this Agreement or its negligent breach of its obligations contained in this Agreement, except to the extent of any such claim arises from the negligence or willful misconduct of the City, its officers, agents, employees, or volunteers, or any third parties. Notwithstanding the duty to defend setout above, the Consultant shall have no duty to hire counsel to defend the City, but at the time of any settlement or adjudication of a claim, the Consultant shall pay as damages to City all reasonable attorney's fees and costs incurred by City to the extent arising from the negligence of the Consultant.

17. Insurance Requirements. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the Agreement, the insurance coverage and policies as set forth in Exhibit "B" attached hereto.
18. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally, by recognized overnight mail carrier, or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Marysville
 526 C Street
 Marysville, CA 95901
 Attn: Jim Bermudez, Community Development and Services

If to Consultant: "Consultant"
 Address
 Address Line 2
 Attn: Name

19. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations are superseded in total by this Agreement.
20. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.
21. Assignments 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 prior written consent of the City. Assignment of this Agreement by City will only be permitted with the express prior written consent of the Consultant. Consultant shall not subcontract any portion of the services to be performed under this Agreement without the prior written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of any subconsultant of Consultant. Nothing in this Agreement shall create any contractual relationship between City and subconsultant 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 subconsultant other than as otherwise required by law.

22. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
23. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
24. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Yuba.
25. Litigation Expenses and Attorney's Fees. If either party to this Agreement commences any legal action against the other part arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and reasonable attorney's fees.
26. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
28. 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 power, right, and authority, to make this Agreement and to bind each respective party.

29. 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.
30. Equal Opportunity Employment. Consultant represents that Consultant is an equal opportunity employer and Consultant shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, disability, ancestry, sex, or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination.
31. This agreement does not create any rights in any person or entity other than the parties hereto."
32. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either City or Consultant. Consultant's Services hereunder are being performed solely for the benefit of City.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF MARYSVILLE

COMPANY

By: _____
Marti Brown, City Manager

By: _____

Title: _____

APPROVED AS TO FORM:

By: _____
Nicole Delerio, Deputy City Attorney

Business License #: _____

Tax ID No.: _____

ATTEST:

By: _____
Billie J. Fangman, City Clerk

Attachments: Exhibit A – Scope of Services
Exhibit B – Insurance Requirements

Exhibit “A”

Scope of Services

Exhibit “B”

Insurance Requirements for most Contracts

(Not for Construction Contracts)

Consultant shall procure and maintain for the duration of the contract 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 Consultant, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence and general aggregate of **\$3,000,000**.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Professional Liability (Errors and Omissions):** Insurance appropriate to the Consultant’s profession, with limit no less than \$1,000,000 per occurrence, \$2,000,000 aggregate.

If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Consultant's insurance coverage shall be primary** insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except with notice to the City.**

Waiver of Subrogation

Consultant hereby grants to City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

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.

Claims Made Policies

If any of the required policies provide claims-made coverage:

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 Consultant must purchase "extended reporting" coverage for a minimum of ***five (5) years*** after completion of work.

Verification of Coverage

Consultant shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.