

**PLEASANT VALLEY RECREATION & PARK DISTRICT
PROFESSIONAL SERVICES AGREEMENT**

This agreement is made and entered into on this _____th day of _____ 20____ between the **PLEASANT VALLEY RECREATION AND PARK DISTRICT**, a public agency ("District"), and **INSERT NAME OF ENTITY**, a California Corporation ("Consultant").

RECITALS

WHEREAS, the District desires to contract with Consultant for certain services necessary for **[DESCRIBE SERVICES BEING PROVIDED BY CONSULTANT]** located at **[INSERT DISTRICT PROPERTY NAME AND ADDRESS]**.

WHEREAS, Consultant represents that it has the qualifications and technical skills, experience and expertise to perform these services for the District.

NOW THEREFORE, based on the terms and conditions herein, the parties agree as follows:

1. Scope of Services

Consultant shall perform the professional services required to complete the Project for the District as described in the Scope of Work attached as Exhibit "B" and incorporated by reference herein. All work and services by Consultant shall be performed in a diligent and professional manner.

Consultant warrants that its services shall be performed, within the limits prescribed by the District, in a manner consistent with the level of care and skill ordinarily exercised by _____ professionals under similar circumstances at the time its services are performed. No other warranty or representation, express or implied, is included or intended by Consultant's Proposal, this Agreement, or any reports or documents prepared in connection with this Agreement.

Consultant agrees to undertake the discrete tasks outlined in Exhibit "B" only upon consultation with and authorization from the District's General Manager and _____. Agreement for _____ Services between Pleasant Valley Recreation and Park District and Consultant, Inc.

2. Term of Contract

Unless otherwise earlier terminated as specified in Section 12, this Agreement shall commence on the date set forth above and shall expire at completion of the Project no later than **[INSERT DATE RANGE OR REQUIRED COMPLETION DATE]**. Consultant shall complete all work in accordance with the timelines set forth in the Proposal.

3. Force Majeure

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement will be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the District, if the Consultant shall, within ten (10) days of the commencement of such delay, notify the Project Manager in writing of the causes of the delay. The Project Manager shall ascertain the facts and the extent of delay and extend the time for performing the services for the period of the enforced delay when and if, in the judgment of the Project Manager, such delay is justified. The Project Manager's determination is final. In no event will Consultant be entitled to recover damages against the District for any delay in the performance of this Agreement, however caused; Consultant's sole remedy being extension of the Agreement pursuant to this Section.

4. Independent Consultant Relationship

It is expressly understood between the parties that no employee/employer relationship is intended, the relationship of Consultant to District being that of an independent Consultant. Consultant is solely responsible for selecting the means, methods, and procedures for performing its services hereunder as assigned by the District and for coordinating all portions of the work so the results will be satisfactory to District. Consultant will supply all tools and instruments required to perform its services under this Agreement. Neither the District nor any of its employees shall have any control over the manner or means

by which Consultant or its staff perform the services required herein, except as otherwise set forth herein. Consultant shall perform all services required herein as an independent Consultant of District and shall remain under only such obligations as are consistent with that role.

Consultant represents and warrants that the personnel used to provide services to the District pursuant to this Agreement are classified by Consultant as employees. Consultant shall not at any time or in any manner represent that it or any of its employees are employees of District. District shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venturer or a member of any joint enterprise with Consultant. District shall not be required to make any payroll deductions or provide Workers' Compensation Insurance coverage or health benefits to Consultant. In the event that Consultant or any staff of Consultant providing services under this Agreement claims or is determined by a federal or state agency, a court of competent jurisdiction, or the California Public Employees' Retirement System ("CalPERS") to be classified as other than an independent Consultant for the District, then Consultant shall indemnify, defend, and hold harmless the District for the payment of any and all assessed fines, penalties, judgments, employee and/or employer contributions, and any other damages and costs assessed to the District as a consequence of, or in any way attributable to, the assertion that Consultant or any staff Consultant used to provide services under this Agreement are employees of the District.

5. Compliance with Laws

Consultant will be solely responsible for giving all notices and complying with any and all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority relating to Consultant's work, including but not limited to those relating to copyright, trademark, or other intellectual property matters.

6. Environmental Laws.

Consultant shall comply with all applicable environmental laws, ordinances, codes, and regulations of Federal, State, and local governments. Consultant shall also comply with all applicable mandatory standards and policies relating to energy efficiency.

7. Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense, such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments, taxes, including applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement; and shall indemnify, defend, and hold harmless District against any claim for such fees, assessments, taxes, penalties or interest levied, assessed or imposed against District hereunder.

8. Acknowledgement of Relationship

Consultant agrees that all dealings of the parties under this Agreement shall be confidential, and writings, reports, data, information or communication developed, prepared or assembled by Consultant under this Agreement, or any information made available to Consultant by District, shall not be revealed, disseminated or made available by Consultant to any person or entity other than District without the prior written consent of District, unless otherwise required by subpoena or applicable law.

9. Payment to Consultant

District shall pay Consultant upon completion of the work within thirty (30) days after receipt of Consultant's invoices in a form approved by District's, with the exception of any disputed amounts which shall be withheld until resolution of the dispute. No payment made under this Agreement shall be conclusive evidence of Consultant's performance of the Agreement, either wholly or in part, and no payment shall be construed to be an acceptance of Consultant's work.

Total Project Cost Not to Exceed: [\$ 00,000.00]

or

[INSERT WRITTEN AMOUNT]

10. Assistance by District

District agrees to provide to Consultant available information of relevance to Consultant's work, including all data and documents pertaining to the Project. District pledges to work cooperatively with Consultant and render all reasonable assistance toward completion of Consultant's work. The District's Project Manager shall be _____, _____[job title].

11. Ownership of Documentation

All maps, data, reports, and other documentation (other than Consultant's drafts, notes, and internal memoranda), including duplication of same prepared by Consultant in the performance of these services, shall become the property of the District and shall be retained by the Consultant for a period of three years after completion of the Project. If requested by the District, all, or the designated portions of such documentation, shall be delivered to the District.

12. Termination of Contract

Either party may terminate this Agreement at any time, with or without cause, upon ninety (90) days' written notice to the other party. Upon receipt of any notice of termination, Consultant shall immediately cease all work or services hereunder except such as may be specifically approved by the District's General Manager. In the event this Agreement is terminated, all data, specifications, documents, and information generated by Consultant in connection with the Project shall be delivered to District and may be used by District. Copies of these materials may be retained by Consultant. Consultant shall be entitled to compensation for the reasonable value of the work product actually produced prior to the effective date of the notice of termination and for any services authorized by the District's General Manager thereafter in accordance with the Schedule of Compensation and District shall be entitled to reimbursement for any compensation paid in excess of the services rendered.

13. Insurance

Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to District, during the entire term of this Agreement including any extension thereof, the following policies of insurance in Exhibit "A" – Liability Insurance Requirements.

Commercial General Liability Insurance: A policy of commercial general liability insurance using Insurance Services Office "Commercial General Liability" policy form CG 00 01, with an edition date prior to 2004, or the exact equivalent. Coverage for an additional insured shall not be limited to its vicarious liability. Defense costs must be paid in addition to limits. Limits shall be no less than \$2,000,000 per occurrence for all covered losses and no less than \$4,000,000 general aggregate and no less than \$4,000,000 for products/completed operations aggregate.

Automotive Liability: A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than \$1,000,000 per accident, combined single limit. Said policy shall include coverage for owned, non-owned, leased and hired cars.

Workers' Compensation Liability: A policy of workers' compensation insurance on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for all covered losses.

Professional Liability: Insurance appropriate to the Consultant's profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. In the event any of said policies of insurance are cancelled or amended, Consultant shall, prior to the cancellation or amendment date, submit new evidence of insurance in conformance with this Section to the District's Manager. If a copy of the insurance certificate is not on file prior to the commencement of the term of this Agreement, the District may deny Consultant access to the Property. Consultant agrees that the provisions of this Section shall not be construed as limiting in any way the extent to which Consultant may be held responsible for the

payment of damages to any persons or property resulting from Consultant's activities or the activities of any person or persons for which Consultant is otherwise responsible. All of the above policies of insurance shall be primary insurance. The general liability policy shall waive all rights of subrogation and contribution it may have against the District and the District's Parties and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. Failure on the part of Consultant, or any of its subcontractors, to procure or maintain required insurance shall constitute a material breach of contract under which the District may immediately terminate this Agreement. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the District's self-insurance pool.

Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the District requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to District.

14. Indemnification

a. Indemnity for Design Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, and except for the statutory limits set forth under California Civil Code Section 2782,8 applicable to services provided by a "design professional", Consultant shall indemnify, defend and hold harmless District and its officers, employees, agents (the "District's Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorneys' fees and costs, to the extent same are caused in whole or in part by any negligent or wrongful act, error, or omission of Consultant, its officers, agents, employees or subcontractors (or any entity or individual for which Consultant bears legal liability) in the performance of professional services under this Agreement.

b. Indemnity for Other Than Design Professional Liability. Other than in the performance of design professional services and to the full extent permitted by law, Consultant shall indemnify, defend and hold harmless District and District's Parties from and against any liability (including liability for claims, suits, actions, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, defense costs and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subcontractors of Consultant.

c. Insurance Requirements. Submission of insurance certificates or other proof of coverage shall not relieve Consultant from liability under this indemnification and hold harmless provisions. These provisions shall survive the termination of this Agreement and shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

Prior to the commencement of the Project, Consultant shall provide District with proof of the types and amounts of insurance described on Exhibit "A".

15. Terms

No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties. No oral understanding or agreement not incorporated herein shall be binding on any of the parties.

16. Prohibition Against Subcontracting or Assignment

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the District to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the District.

17. Examination of Records

Consultant agrees that District shall have access to and the right to examine at any reasonable time and on reasonable notice Consultant's documents, papers, and records, including accounting records, relating to or involving this Agreement.

18. Notice

All notices or other official correspondence relating to contractual matters between the parties shall be made by depositing the same as first-class, postage paid mail addressed as follows:

To Consultant: INSERT CONSULTANT NAME
Attn: CONSULTANT DESIGNATED CONTACT
STREET ADDRESS
CITY, STATE, ZIP

To District: Pleasant Valley Recreation and Park District
Attn: INSERT DISTRICT CONTACT
1605 Burnley St.
Camarillo, CA 93010

or such other address as either party may designate hereinafter in writing delivered to the other party. All notices shall be agreed to have been received three (3) days after mailing.

19. No Waiver

No failure or delay by District in asserting any of District's rights and remedies as to any default of Consultant shall operate as a waiver of the default, of any subsequent or other default by Consultant, or of any of District's rights or remedies. No such delay shall deprive District of its right to institute and maintain any actions or proceeding which may be necessary to protect, assert or enforce any rights or remedies arising out of this Agreement or the performance of this Agreement.

20. Partial Invalidity

If any term, covenant, condition, or provision of this Agreement is found by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated thereby.

21. Incorporation of Recitals

The foregoing recitals are incorporated herein as though fully set forth.

22. California Law

This Agreement shall be interpreted and construed pursuant to the laws of the State of California. Any dispute between the parties shall be filed and heard in a court of competent jurisdiction in the County of Ventura, State of California.

23. Additional Provisions

Consultant agrees that no full time employee of District shall be employed by its firm during the period that this Agreement is in effect.

24. Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, shall be entitled to reasonable attorneys' fees, whether or not the matter proceeds to judgment, and to all other reasonable costs for investigating such action, taking depositions and discovery, including all other necessary costs the court allows which are incurred in such litigation.

25. Conflict of Interest.

Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement. Consultant shall comply with all conflict of interest laws and regulations.

26. Interpretation

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

27. Corporate Authority.

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[Signatures on following page]

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

DISTRICT:
PLEASANT VALLEY RECREATION &
PARK DISTRICT

By: _____
Mary Otten, General Manager

ATTEST:

INSERT

CONSULTANT:
[INSERT CONSULTANT NAME]

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

DRAFT

EXHIBIT "A"
LIABILITY INSURANCE REQUIREMENTS

Pleasant Valley Recreation and Park District (PVRPD) requires evidence of insurance coverage documents, for the duration of any agreement term, a minimum of thirty (30) days prior to an agreement effective date or event, if specified. The following is required for all Certificates of Insurance and Additional Insured Endorsements.

Certificate of Insurance (COI) – Coverage shall be primary and non-contributory and at least as broad as and include or state the following:

- ❖ **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, **\$4,000,000** aggregate. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- ❖ **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor 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.
- ❖ **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. Waiver of Subrogation Endorsement required.
- ❖ **Professional Liability (Errors and Omissions):** *When applicable* – Insurance appropriate to the Contractor's profession, with limit no less than **\$2,000,000** per occurrence or claim, **\$2,000,000** aggregate.
- ❖ **Liquor Liability:** *When applicable* - If Renter will be supplying alcoholic beverages, the CGL insurance shall include host liquor liability coverage. If Renter is using a caterer or other vendor to supply alcohol that vendor must have liquor liability coverage. If Renter intends to sell alcohol either the Renter or vendor providing the alcohol for sale must have a valid liquor sales license and liquor liability insurance covering the sale of alcohol.
- ❖ **Sexual Abuse and Molestation (SAM):** *When applicable* - If the CGL policy is not endorsed to include affirmative coverage for sexual abuse or molestation and the work will include contact with minors, Contractor shall obtain and maintain a SAM policy covering with a limit no less than **\$1,000,000** per occurrence or claim.
- ❖ **Insured:** Must match entity named within the agreement.
- ❖ **Insurer's Affording Coverage:** Must have an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the District.
- ❖ **Policy Effective/Expiration Date:** Must cover dates of service or event.
- ❖ **Description of Operations:** Must read "Pleasant Valley Recreation and Park District, its elected and appointed officials, agents, volunteers, and employees are listed as an Additional Insured." Include address, date, and name/type of event or description of project.
- ❖ **Certificate Holder:** Must read "Pleasant Valley Recreation and Park District 1605 Burnley Street, Camarillo, CA 93010" (*No abbreviations accepted*)

Additional Insured Endorsements (AIE) – Endorsement must include or state the following:

- ❖ **Policy Number:** Must match policy numbers on COI.
- ❖ **Additional Insured – Designated Person or Organization:** Must state "This endorsement changes the policy."
- ❖ **Schedule – Name Of Additional Insured Person(s) or Organization(s):** Must read ""Pleasant Valley Recreation and Park District, its elected and appointed officials, agents, volunteers, and employees."
- ❖ **Primary and Noncontributory** – Endorsement must be provided.

Notice of Cancellation – A cancellation clause shall state the following:

"Should any of the above described policies be cancelled before the expiration date thereof, the issuing company will mail 30 days written notice to the certificate holder named."

PVRPD reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. Coverage limits listed above are to be considered minimum coverage, PVRPD reserves the right to require higher limits and additional coverages at its discretion. If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, PVRPD requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to PVRPD.

EXHIBIT "B"
SCOPE OF WORK

Consultant will furnish all labor and materials necessary to complete work as identified [**INSERT DESCRIPTION OF SERVICES OR CONSULTANT PROPOSAL**].

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