

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE PLEASANT VALLEY
RECREATION & PARK DISTRICT
AND
CONSULTANT, INC.**

This agreement is made and entered into, effective [REDACTED] between the PLEASANT VALLEY RECREATION AND PARK DISTRICT, a public agency (“District”), and [REDACTED], a California [REDACTED] (“Consultant”).

RECITALS

WHEREAS, following District’s Request for Proposal process, the District desires to contract with Consultant for certain professional planning services necessary for the development of an Open Space, Trail, and Greenway Planning Study (“Project”).

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 August 2017 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 environmental, planning, and engineering 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 herewithin.

Consultant agrees to undertake the discrete tasks outlined in Exhibit “B” only upon consultation with and authorization from the District’s General Manager and Park Superintendent.

As further described on Exhibit “B”, Consultant’s Services include:

1.

2.

3.

2. Term of Contract

Unless otherwise earlier terminated as specified in Section 9, this Agreement shall commence on the date set forth above and shall expire at completion of the Project no later than [REDACTED]. 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 Contractor Relationship

- a. 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 contractor. District shall not be required to make any payroll deductions or provide Workers' Compensation Insurance coverage or health benefits to Consultant.
- b. 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.

- c. Pursuant to this Agreement, Consultant is rendering professional services only and any payments made to it are compensation solely for such services as it may render and recommendations it may make in the performance of services.

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. 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.

7. 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.

8. Acknowledgment 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

- a. District shall pay Consultant monthly in proportion to the services performed plus reimbursable expenses and charges for additional services 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. Payment terms are further described on Exhibit "C".

Total Project Cost not to Exceed: \$ _____

- b. 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.

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 Mary Otten, General Manager.

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

Consultant specifically acknowledges and agrees that the District may at any time during the term of this Agreement terminate Consultant's services with or without cause, and without penalty, at the completion of any phase of Consultant's services as set forth in Exhibit "B." Any termination or any special instructions hereunder from District shall be made in writing. 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.

13. Indemnification and Hold Harmless; Insurance Requirements

- a. Indemnity for Professional Liability. When the law establishes a professional standard of care for Consultant's services, to the fullest extent permitted by law, 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 of subcontractors (or any entity or individual for which Consultant shall bear legal liability) in the performance of professional services under this Agreement.

b. Indemnity for Other Than Professional Liability. Other than in the performance of 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. 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.

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

14. No Assignment

This Agreement is a personal services contract and work hereunder shall not be delegated or assigned by Consultant to any person or entity without the advance written consent of District. Consultant shall not employ any subcontractors for its work.

15. 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.

16. 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: _____

To District: PLEASANT VALLEY RECREATION & PARK DISTRICT
Attn: Mary Otten, General Manager
1605 E. Burnley Street
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.

17. 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.

18. 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.

19. 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.

20. Incorporation of Recitals

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

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

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:
XXXX, a California corporation &
PARK DISTRICT

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT "A"

**PLEASANT VALLEY RECREATION & PARK DISTRICT
INSURANCE REQUIREMENTS**

Consultant shall procure and maintain for the duration of the Agreement (and thereafter as specified herein) insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01).
2. Insurance Services Office form number CA 00 01 covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

Consultant shall maintain limits no less than:

1. General Liability (Including operations, products and completed operations, as applicable): \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions Liability: A policy of professional liability insurance in an amount not less than \$1,000,000 per occurrence.

5. Contractors Pollution Liability: N/A
6. Asbestos Pollution Liability: N/A

DEDUCTIBLES AND SELF-INSURED RETENTION

Any deductibles or self-insured retentions must be declared to and approved by the District. At the option of the District, either (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the District and its directors, officers, employees, agents and volunteers (collectively "District Parties"), or (2) Consultant shall provide a financial guarantee satisfactory to the District guaranteeing payment of losses and related investigations, claim administration and defense expenses.

OTHER INSURANCE PROVISIONS`

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

1. The District and District Parties are to be covered as insured's as respects: liability arising out of work or operations performed by or on behalf of the Architect; or automobiles owned, leased, hired or borrowed by Consultant.
2. For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects the District and District Parties. Any insurance or self-insurance maintained by the District and District Parties shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) day's prior written notice has been provided to the District.

If General Liability, Contractors Pollution Liability and/or Asbestos Pollution Liability and/or Errors & Omissions coverage's are written on a claims-made form:

1. The retroactive date must be shown, and must be before the date of this Agreement or the beginning of work on the Project.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of the Project.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement

effective date, Consultant must purchase an extended period coverage for a minimum of five (5) years after completion of the Project.

4. A copy of the claims reporting requirements must be submitted to the District for review and approval.

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 District. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

VERIFICATION OF COVERAGE

Consultant shall furnish the District with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the District, or on other than the District's forms provided those endorsements conform to District requirements and are acceptable to the District. All certificates and endorsements are to be received and approved by the District before work commences. However, failure to do so shall not operate as a waiver of these insurance requirements. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

SUB-CONTRACTORS

Consultant shall include all subcontractors as insured's under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractor shall be subject to all of the requirements stated herein.

END OF PAGE

EXHIBIT "B"
SCOPE OF WORK

DRAFT

EXHIBIT "C"
COMPENSATION

DRAFT