

AGREEMENT FOR ARCHITECTURAL SERVICES

This Service Agreement (hereinafter "Agreement") is made and entered into by and between the TOWN OF ATHERTON, a municipal corporation (hereinafter "Town"), and _____ name of business and description of legal entity, i.e. LLC, Partnership, Corporation, etc.]_____, (hereinafter "Consultant"). Town and Consultant may be collectively referred to herein as the "parties."

RECITALS

- A. Town requested a proposal from Consultant to perform the services generally including:

- B. In response to the Town's request, Consultant submitted a proposal, and, after negotiations, Consultant agreed to perform the services more particularly described on Exhibit "A," in return for the compensation described in this Agreement and Exhibit "B."
- C. In reliance upon Consultant's documentation of its qualifications, as set forth in Exhibit "C," the Town finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. SCOPE OF SERVICES. Consultant shall perform the services described in Exhibit "A," attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.
- 2. TIME FOR PERFORMANCE. Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Consultant shall commence performance, and shall complete all required services no later than the dates set forth in Exhibit "A." Any services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Consultant. Consultant shall submit all requests for extensions of time to the Town in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.
- 3. PAYMENT.
 - 3(A). Billing. In order to request payment, Consultant shall submit monthly invoices to the Town identifying the services performed and the charges therefor (including an identification of personnel who performed the services, hours worked, hourly rates, and reimbursable expenses), based upon the Consultant's billing rates (set forth on Exhibit "B," attached hereto and incorporated herein by reference). The Town shall make monthly payments to Consultant for services which are performed in accordance

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with this Agreement, to the satisfaction of the Town.

3(B). “Not to Exceed” Compensation. The compensation payable to Consultant for the services identified in Exhibit “A” shall not exceed \$_____. Consultant shall not perform any services beyond the services identified in Exhibit “A” without prior written authorization from the Town’s Authorized Representative. If the Town’s Authorized Representative provides authorization for additional services, the total compensation payable to the Consultant under this Agreement shall not exceed \$_____.

3(C). Consultant’s Failure to Perform. In the event that Consultant performs services which do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from the Town, re-perform the services (without additional compensation to the Consultant). If Consultant’s failure to perform in accordance with this Agreement causes damages to the Town, Consultant shall reimburse the Town for the damages incurred (which may be charged as an offset to Consultant’s payment).

4. AUTHORIZED REPRESENTATIVES.

4(A). Consultant’s Authorized Representative. Consultant understands that, in entering into this Agreement, the Town has relied upon Consultant’s ability to perform in accordance with its representations regarding the qualifications of the Consultant (including the qualifications of its Authorized Representative, its personnel, and its subconsultants, if any) identified in Exhibit “C,” attached hereto and incorporated herein by reference. Therefore, Consultant shall not replace its Authorized Representative, or any of the personnel or subconsultants identified in Exhibit “C,” without the prior written consent of the Town. All services under this Agreement shall be performed by, or under the direct supervision of, Consultant’s Authorized Representative, as identified in Exhibit “C.”

4(B). Town’s Authorized Representative. For the performance of services under this Agreement, the Consultant shall take direction from the Town’s Authorized Representative: _____, unless otherwise designated in writing by the Town’s Authorized Representative or the City Manager.

5. INFORMATION AND DOCUMENTATION.

5(A). Information from Town. Town has made an effort to provide Consultant with all information necessary for Consultant’s performance of services under this Agreement. If Consultant believes additional information is required, Consultant shall promptly notify the Town, and the Town will provide to Consultant all relevant non-privileged information in Town’s possession.

5(B). Consultant’s Accounting Records. Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four years. Consultant’s accounting records shall include, at a minimum, all documents which support Consultant’s costs and expenses related to this Agreement, including personnel, subconsultant invoices and payments, and reimbursable expenses.

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Consultant's accounting records shall be made available to Town within a reasonable time after Town's request, during normal business hours.

5(C). Ownership of Work Product. All original drawings, plans, reports, specifications, calculations, other documents and copyright interests (including all copyrightable interests arising under the 1990 Architectural Works Copyright Protection Act) developed, prepared or discovered by Consultant (including its employees and subconsultants) for this Agreement (collectively "work product"), whether complete or in progress, are the property of the Town, and shall be given to the Town at the completion of Consultant's services, or upon demand by the Town. Consultant shall have a right to make and keep copies of the work product. Consultant shall not reveal the work product, or make it available, to any third party without the prior written consent of the Town.

Town acknowledges that its use of the work product is limited to the purposes contemplated by the scope of work and that the Consultant makes no representation of the suitability of the work product for use in or application to circumstances not contemplated by the scope of work. The right of the Town to modify and reuse the work product for purposes other than that contemplated by the scope of work is subject to the provisions of California Business and Professions Code section 5536.25, 6735, 6735.3 or 6735.4, whichever is applicable.

5(D). Errors/Omissions. Consultant shall correct, at no cost to Town, any and all errors, omissions, or ambiguities in the work product submitted to Town, provided Town gives notice to Consultant. If Consultant has prepared plans and specifications or other design documents to be used in construction of a project, Consultant shall be obligated to correct any and all errors, omissions or ambiguities in the work product discovered prior to and during the course of construction of the project. This obligation shall survive termination of this Agreement.

5(E). Cost Estimates. If the scope of work in Exhibit A requires Consultant to submit estimates of probable construction costs, the provisions of this subsection shall apply. If the total estimated construction cost submitted at any phase of design exceeds ten percent (10%) of the Town's stated construction budget, Consultant shall make recommendations to the Town for aligning the project design with the budget, incorporate Town approved recommendations and revise the design to meet the project budget at no additional cost to Town.

6. RELATIONSHIP BETWEEN THE PARTIES. Consultant is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Consultant is not Town's agent, and shall have no authority to act on behalf of the Town, or to bind the Town to any obligation whatsoever, unless the Town provides prior written authorization to Consultant. Consultant is not an officer or employee of Town, and Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

7. CONFLICTS OF INTEREST PROHIBITED. Consultant (including its employees, agents,

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and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of the Political Reform Act (California Government Code sections 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by the Town if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the Town Clerk. If Consultant maintains or acquires a conflicting interest, any contract with the Town (including this Agreement) involving Consultant's conflicting interest may be terminated by the Town.

8. **NONDISCRIMINATION.** Consultant shall not discriminate against any person related to the performance under this Agreement (including any employee or applicant) because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, or sex.
9. **COMPLIANCE WITH LAW AND STANDARD OF CARE.** Consultant shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Consultant shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.
10. **INSURANCE.** Consultant shall, throughout the duration of this Agreement, maintain insurance to cover Consultant (including its agents, representatives, subconsultants, and employees) in connection with the performance of services under this Agreement. This Agreement identifies the minimum insurance levels with which Consultant shall comply; however, the minimum insurance levels shall not relieve Consultant of any other performance responsibilities under this Agreement (including the indemnity requirements), and Consultant may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by the Consultant, and prior to the commencement of any services, the Consultant shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the Town. Consultant shall provide substitute written proof of insurance no later than 30 days prior to the expiration date of any insurance policy required by this Agreement.

10(A). **Minimum Insurance Levels.** Consultant shall maintain insurance at the following minimum levels:

10(A)(1). Commercial General Liability (with coverage at least as broad as ISO form CG 00 01 01 96) coverage in an amount not less than \$_____ general aggregate and \$_____ per occurrence for general liability, bodily injury, personal injury, and property damage.

10(A)(2). Automobile Liability (with coverage at least as broad as ISO form CA 00 01 07 97, for "any auto") coverage in an amount not less than \$_____ per accident for bodily injury and property damage.

10(A)(3). Workers' Compensation coverage as required by the State of California.

10(A)(4). Professional Liability coverage for damages that may be the result of

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errors, omissions, or negligent acts of Consultant in an amount not less than \$_____ per claim.

10(B). Endorsements. The insurance policies shall be endorsed as follows:

10(B)(1). For the commercial general liability insurance, the Town (including its elected officials, employees, and agents) shall be named as additional insured, and the policy shall be endorsed with a form equivalent to ISO form CG 20 10 11 85.

10(B)(2). Consultant's insurance is primary to any other insurance available to the Town with respect to any claim arising out of this Agreement. Any insurance maintained by the Town shall be excess of the Consultant's insurance and shall not contribute with it.

10(B)(3). Consultant's insurance will not be canceled, limited, or allowed to expire without renewal until after 30 days written notice has been given to the Town.

10(C). Qualifications of Insurers. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A.M Best's rating of not less than "A:VII."

11. REPORTING DAMAGES. If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the Town Risk Manager's office by telephone at 510-284-4050, and Consultant shall promptly submit to the Town's Risk Manager and the Town's Authorized Representative, a written report (in a form acceptable to the Town) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Consultant's insurance company, and (d) a detailed description of the damage and whether any Town property was involved.

12. INDEMNIFICATION. Consultant shall, to the fullest extent permitted by law, hold harmless, defend (with counsel approved by the Town) and indemnify Town and its officers, officials, employees and volunteers from and against all claims (including all litigation, demands, damages, liabilities, costs, and expenses, and including court costs and attorney's fees) arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Consultant and its employees, agents and subconsultants, except where caused by the active negligence, sole negligence or willful misconduct of the Town. The provisions of this section survive completion of the services or the termination of this Agreement. The provisions of this section are not limited by the provisions of Section 11 relating to insurance.

13. TERM OF THE AGREEMENT. The term of this Agreement shall commence on the date last signed by the parties, below, and shall continue until completion of all services in accordance with the timing requirements set forth in Exhibit "A" and paragraph 2 of this Agreement. This Agreement may be terminated by the Town without cause upon fifteen (15) days written notice to Consultant. If the Town exercises its right to terminate this Agreement in accordance with this paragraph, the Town shall pay Consultant for all services satisfactorily performed in accordance with this Agreement, through and

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including the date of termination, but not to exceed the payments according to the rates specified in Exhibit “B” or the maximum amount authorized under paragraph 3 of this Agreement.

14. DEFAULT. If either party (“demanding party”) has a good faith belief that the other party (“defaulting party”) is not complying with the terms of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default to be cured within ten days of the notice. If: (a) the defaulting party fails to cure the default within ten days of the notice, or, (b) if more than ten days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.

15. NOTICES. All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party’s Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

To: Town
Attn: _____

91 Ashfield Road

Atherton CA 94027

To: Consultant
Attn: _____

16. HEADINGS. The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

17. SEVERABILITY. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties’ intent under this Agreement.

18. GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

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- 19. ATTORNEY'S FEES.** In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.
- 20. ASSIGNMENT AND DELEGATION.** This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Consultant's duties be delegated, without the written consent of the Town. Any attempt to assign or delegate this Agreement without the written consent of the Town shall be void and of no force or effect. A consent by the Town to one assignment shall not be deemed to be a consent to any subsequent assignment.
- 21. MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- 22. WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- 23. ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.
- 24. SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Consultant and the Town. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the Town and Consultant do hereby agree to the full performance of the terms set forth herein.

TOWN OF ATHERTON

CONSULTANT [see selection below]

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

By: _____
Title: City Attorney

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CORPORATIONS

XYZ Land Development Inc,
a California corporation

By: _____

Its: _____
(needs to be officer from the operations side: President, CEO, Vice President)

By: _____

Its: _____
(needs to be officer from the finance side: treasurer, CFO, secretary)

One corporate signature is acceptable if the person is an officer if the signature is notarized (although we would like you to ask for a corporate resolution showing that person is authorized to sign). A single signature where the person is not a corporate officer – eg general manager, etc – must be supported by a corporate resolution indicating that person has been delegated authority to sign contracts on behalf of the corporation

GENERAL PARTNERSHIPS

XYZ Land Development,
a California general partnership

By: _____

Its: General Partner

LIMITED PARTNERSHIPS

XYZ Land Development, LLP,
A California limited partnership

By: _____

Its: General Partner (need limited partnership agreement or certificate filed with state showing the person or entity is the general partner)

In many cases the general partner will be a corporation so the signature block would look like this:

XYZ Land Development, LP,
A California limited partnership

By: ABC Developers, Inc,
a California corporation

Its: General Partner

By: _____

Its: President, CEO, VP

By: _____

Its: Secretary, Treasurer, CFO

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LIMITED LIABILITY COMPANY

XYZ Land Development, LLC,
a California Limited Liability Company

By: _____

Its: Managing Member (we need to see the operating agreement or certificate filed with secretary of state showing the person or entity is the managing member)

If the Managing Member is not an individual, but is a business entity then you would indent the signature block for the appropriate persons to sign as in the example for the limited partnership above.