

AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____ by and between Paradise Irrigation District (District), and CONSULTANT Planning Group, (Consultant).

WITNESSETH:

District desires to retain the services of Consultant regarding environmental and planning consulting services for the XXX for the District.

Consultant desires to perform the services requested by District on the terms and conditions set forth below.

NOW, THEREFORE, the parties agree as follows:

The Consultant shall be responsible for the scope of work as generally described in Exhibit A attached hereto and incorporated by reference herein and other related work agreed upon by the District and Consultant. In the event of a conflict between the terms of this Agreement and the terms of the proposal, the terms of this Agreement shall prevail.

I. Scope of Work - attached

The consultant has provided for this Project, a scope of work and an estimate for the Project.

II. SCHEDULE

- A. The Project will be completed upon a mutually agreed schedule after execution of this agreement and Consultant's receipt of written Notice to Proceed on the Project from the District.

III. DISTRICT RESPONSIBILITIES

- A. The District shall provide the following items, personnel and /or services to be utilized in connection with this work.
 - 1) The District shall make available to the Consultant reasonable and timely staff input for purposes of conference discussion, reviewing submissions from the consultant, providing available factual information and/or suggestions relating to the work in a manner such that the Consultant may meet the project completion schedule.
 - 2) The District shall provide access to all District facilities upon request by the Consultant at time and in the manner mutually agreed upon as required to accommodate work of Consultant.
 - 3) District will provide payment on monthly progress estimates to the Consultant based upon work accomplished during the previous month or portion thereof.

IV. WORK PRODUCT

A. The District designee shall at all times have reasonable access to the work product of the Consultant while it is under preparation or in progress. Upon completion or termination of the project, all drawings, documents and notes shall become property of the District, including all renderings, slides, sketches and correspondence. Any reuse of Consultant prepared documents, except for the specific purpose intended hereunder, will be at District's sole risk and without liability or legal exposure to Consultant or its subconsultants.

V. DESIGNATED REPRESENTATIVES

A. Project shall be under direct control of XXXX, Project Manager, to whom all questions may be directed. It is understood the District's representative will be Mr. George Barber, who will provide the interface between the District's Staff and Consultant.

VI. COMPENSATION

A. Consultant will be paid a "not to exceed" amount of \$XXXX for the Project in this Agreement. No work in addition to the work described in this Agreement shall be performed by Consultant without written authorization by District. Progress payments shall be made monthly for work completed based upon the billing rates contained in Exhibit "B".

B. District shall make payment to Consultant within thirty (30) days from the date of Consultant's invoice. Any amounts remaining unpaid more than thirty (30) days after the invoice date shall entitle Consultant to suspend its work on the project until payment in full is received. In the event that suspension remains in effect longer than sixty (60) days, Consultant may elect to terminate this Agreement as provided in Article X of this Agreement.

VII. TERM AND TIME FOR COMPLETION

This Agreement shall become effective on the date first herein above written and shall remain in effect until the services provided herein have been completed unless sooner terminated in accordance with article X - Termination. The provisions of this Agreement pertaining to indemnification and insurance shall survive the termination of this Agreement.

VIII. COMPLIANCE WITH LAWS

Consultant agrees that it will conduct its work and perform its services in compliance with all applicable Federal, State and local laws, regulations and ordinances, provided however that, if any of such laws, regulations and ordinances conflict with one another, Consultant's obligation shall be only to use its professional judgment and work with District to resolve the situation.

IX. INSURANCE AND INDEMNIFICATION

Consultant agrees with the District that:

- A. When the law establishes a professional standard of care for the Consultant's services, to the fullest extent permitted by law, Consultant will defend, indemnify and hold harmless the Paradise Irrigation District, its directors, officers, or employees from all claims and demands of all persons arising out of the performance (or actual non-performance) of the work under this agreement, for damages to persons or property due to the extent caused by the negligent acts, errors, omissions or willful misconduct committed by Consultant or sub-consultants. Consultant shall defend itself against any and all liabilities, claims, losses, damages, and costs arising out of Consultant's or sub-consultant's performance or non-performance of the work hereunder, and shall not tender such claims to the District nor to its directors, officers or employees, for defense or indemnity.
- B. Other than in the performance of professional services, to the fullest extent permitted by law, Consultant will defend, indemnify and hold harmless the Paradise Irrigation District, its directors, officers, or employees from all claims and demands of all persons arising out the performance of the work or furnishing of materials by Consultant or sub-consultants; including but not limited to, claims by the Consultant's employees *or* sub-consultant's employees for damages to persons or property except for the sole negligence or willful misconduct or active negligence of the Paradise Irrigation District, its directors, officers, or employees.
- C. By his/her signature hereunder, Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and that Consultant will comply with such provisions before commencing the performance of the professional services under this agreement. Consultant and sub-consultants will keep workers' compensation insurance for their employees in effect during all work covered by this agreement.
- D. Consultant will file with the District, before beginning professional services, a certificate of insurance satisfactory to the District evidencing professional liability coverage of not less than \$1,000,000 per claim and annual aggregate, requiring 30 days notice of cancellation (10 days for non-payment of premium) to the District. Any insurance, self-insurance or other coverage

maintained by the District, its directors, officers, or employees shall not contribute to it. Coverage is to be placed with a carrier with an A.M. Best rating of no less than A-:VII, or equivalent, or as otherwise approved by the District. The retroactive date (if any) is to be no later than the effective date of this agreement. In the event that the Consultant employs other consultants (sub-consultants) as part of the work covered by this agreement, it shall be the Consultant's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above, however the District may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and/or forms of such insurance are either not commercially available or that District's interests are otherwise fully protected.

- E. Consultant will file with the District, before beginning professional services, certificates of insurance satisfactory to the District evidencing general liability coverage of not less than \$1,000,000 per occurrence (\$2,000,000 general and products-completed operations aggregate (if used)) for bodily injury, personal injury and property damage; auto liability of at least \$1,000,000 for bodily injury and property damage each accident limit; workers' compensation (statutory limits) and employer's liability (\$1,000,000) (if applicable); requiring 30 days (10 days for non-payment of premium) notice of cancellation to the District. Any insurance, self-insurance or other coverage maintained by the District, its directors, officers, or employees shall not contribute to it. The general liability coverage shall give the Paradise Irrigation District, its directors, officers, and employees additional insured status using ISO endorsement CG2010, CG2033, or equivalent. Coverage is to be placed with a carrier with an A.M. Best rating of no less than A-:VII, or equivalent, or as otherwise approved by the District. In the event that the Consultant employs other consultants (sub-consultants) as part of the work covered by this agreement, it shall be the Consultant's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above.
- F. If any of the required coverages expire during the term of this agreement, the Consultant shall deliver the renewal certificate(s) including the general liability additional insured endorsement to the District at least ten (10) days prior to the expiration date.

X. TERMINATION

This Agreement may be terminated at any time and for any reason by either party upon twenty five (25) days' advance written notice. In the event of such termination, Consultant is to be fairly compensated for all work performed to the date of termination, at Consultant's customary hourly rates, plus the necessary and reasonable cost of termination (not to exceed \$500), provided that the total amount shall not in any case exceed the established project budgets for any uncompleted projects. Compensation under this paragraph shall not include costs related to lost profit associated with the expected completion of the work or other such payments relating to the benefit of the bargain.

XI. ENTIRE AGREEMENT

This writing constitutes the entire Agreement between the parties relative to the services specified herein, and no modifications hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Agreement.

There are no understandings, agreements, conditions, representations, warranties or promises with respect to the subject matter of this Agreement except those contained in or referred to in this writing.

XII. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by the parties hereto that Consultant's relationship to District is that of an independent contractor. All persons hired by Consultant and performing the work shall be Consultant's employees or agents. District shall not be obligated in any way to pay any wages or other claims by any such employees or agents or any other person by reason of this Agreement. Consultant shall be solely liable to such employees and agents for losses, costs, damage or injuries by said employees or agents during the course of the work.

Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of one year after termination of this Agreement except with the written permission of the other party, except that nothing in this paragraph shall preclude either party from publishing or otherwise distributing applications and information about job openings where such publication or distribution is directed to the general public.

XIII. SUCCESSORS AND ASSIGNMENT

This Agreement shall be binding on the heirs, successors, executors, administrator and assigns of the parties; however, Consultant agrees that it will not assign, transfer, convey or otherwise dispose of this Agreement or any part thereof, or its rights, title or interest therein, or its power to execute the same without the prior written consent of District.

XIV. SEVERABILITY

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

XV. WAIVER OF RIGHTS

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

XVI. REMEDIES NOT EXCLUSIVE

The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of any other remedy provided by law.

XVII. NOTICES

All notices, statements, reports, approvals or requests or other communications that are required either expressly or by implication to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivery personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in the U.S. post office for delivery. Unless and until formally notified otherwise, all notices shall be addressed to the parties at their addresses shown below:

Paradise Irrigation District	xxx
P. O. Box 2409	xxx
Paradise, CA 95967-2409	xxx
	xxx

XVIII. SUB CONSULTANTS

No other subcontract shall be awarded or another outside Consultant engaged by Consultant unless prior written approval is obtained from District. Payment to Consultant includes full payment for services to sub-consultants.

XIX. ATTORNEY'S FEES

If any action arising out of this Agreement is brought by either party hereto against the other, then and in that event the unsuccessful party to such action shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred by such prevailing party, and if the prevailing party shall recover judgment in such action, such costs, expenses and attorneys' fees shall be included in and as part of such judgment. District and Consultant agree to notify each other promptly in writing of any claims arising under this Agreement, and to endeavor to resolve them without the need for legal action.

XX. INTERPRETATION

Unless the context otherwise clearly requires, the terms in the body of this Agreement shall prevail over any inconsistent terms that may be found in the Exhibits hereto.

XXI. CONTROLLING LAW; JURISDICTION AND VENUE

This Agreement shall be governed by and construed under the laws of the State of California. Jurisdiction and venue for any action brought to enforce or interpret the terms of this Agreement shall be in the Superior Court of the State of California in and for the County of Butte.

XXII HAZARDOUS MATERIALS

The Consultant and Consultant's subconsultants shall have no responsibility for the discovery, presence, handling, removal, disposal or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, mold, polychlorinated biphenyl (PCB) or other toxic substances. In the event the Consultant discovers hazardous materials in any form at the project site, the Consultant shall promptly notify the District of the discovery.

IN WITNESS WHEREOF the parties execute this Agreement on the day and year first herein above written.

CONSULTANT Planning Group

Signature

Printed Name and Title

ATTEST:

Printed Name and Title

TAXPAYER ID _____

Business Type:

Corporation Yes No

Other _____

(Complete W-9 enclosed)

PARADISE IRRIGATION DISTRICT

ATTEST:

Georgeanna Borrayo, District Secretary

George Barber, Manager

Attachment: Exhibit A – Proposal dated xxx Exhibit B- Billing Rates.