

## AGREEMENT FOR CONSULTANT SERVICES

THIS AGREEMENT is made and entered into this 17th day of April 2018, by and between the SADDLE CREEK COMMUNITY SERVICES DISTRICT, formed and operating pursuant to California Government Code 61000 et seq., hereinafter referred to as “District” and DAVID H RAGLAND ENGINEERING AND LAND SURVEYING, hereinafter referred to as “Consultant”.

### RECITALS

WHEREAS, District desires to obtain services from Consultant as specified in Section 1; and

WHEREAS, Consultant is duly licensed, qualified and equipped to perform said services for the benefit of District; and

WHEREAS, the performance of such services by Consultant has been determined by District to be in the public interest.

NOW, THEREFORE, District and Consultant agree as follows:

1. **Scope of Work.** District engages the services of Consultant as an independent contractor to perform professional land surveying work associated with the landscape design project. The overall Exhibit A scope of work is generally described as follows: to collect data and prepare an as-built layout for a gated community entry and access road area for Saddle Creek. Consultant will survey: Trees, utility boxes (irrigation, electrical, water, sewer, etc), drain pipes, fences, walls, gates, curbs, gutters, aprons, gate house, gates, monument signs, light fixtures, poles, utility poles, pon edges ear road as required and topography data at front gate entry zone.

Consultant shall (a) provide all labor, equipment, material, supplies, advice, consultation, analysis, administration, and preparation of policies, procedures and documents required or necessary to properly, competently and completely perform the Work; (b) determine the method, details and means of doing the Work; and (3) perform the Work in a manner commensurate with the highest professional standards of qualified and experienced personnel in Consultant’s field.

2. **Payment.** In exchange for the Work, District shall pay to Consultant a fee based on:

Consultant’s fee schedule, attached hereto as Exhibit A and incorporated herein and approved Task Orders which shall amend this agreement.

At the end of each month and upon completion of the work, Consultant shall submit to District an invoice for the Work performed which shall specifically describe the details of the Work performed for which compensation is requested, and itemize the actual time expended by Consultant in providing such work, if applicable. If the Work is satisfactorily completed and the invoice is accurately computed District shall pay the invoice within thirty (30) days of its receipt. There shall be no compensation for extra or additional work or services by Consultant other than those specifically described in Section 1 hereof, unless approved in advance in writing by District.

3. **Term.**

A. This Agreement shall take effect on the above date and shall continue in effect until completion of the Work to the satisfaction of District unless sooner terminated as provided below.

Consultant shall perform the Work diligently and as expeditiously as possible, consistent with the professional skill and care appropriate for the orderly progress of the Work, and consistent with the scope of work and schedule identified in each approved Task Order.

B. Time is of the essence in this Agreement.

C. This Agreement may be terminated for any or all portions of the Work by either party upon written notice to the other party in the event of a substantial failure of performance by such other party; or if District, by resolution of its Board of Directors, should deem it necessary or desirable to abandon or indefinitely postpone the prosecution of any part or all of the Work.

D. In the event of such abandonment, postponement or default by District, District shall pay to Consultant as full payment for all services performed and all expenses incurred under this Agreement, in an amount which bears the same ratio to the total fee otherwise payable under this Agreement as the services actually rendered hereunder by Consultant bear to the total services necessary for the full performance of the Work. There shall be deducted from such amount, however, all payments heretofore made by District to Consultant under this Agreement. In ascertaining the services actually rendered hereunder up to the date of such termination of this Agreement, consideration shall be given to both completed services and services in the process of completion.

E. In the event of default in performance by Consultant, the provisions of Section 4 hereof shall apply.

4. **Default by Consultant.** If Consultant fails to expeditiously advance the Work, or performs work that does not comply with the requirements of this Agreement, or fails to perform any task or produce any documents required by this Agreement, or is guilty of any other material breach of the terms of this Agreement, District may (1) suspend payment until such time as the default is remedied by Consultant; or (2) by written notice to Consultant terminate Consultant's right to perform all or any portion of the Work. Consultant hereby agrees to pay District all damages sustained as a result of default by Consultant. If District terminates Consultant's right to perform the Work, District may have the work performed by others and charge the cost to Consultant. The cost of completion by District shall include reasonable reimbursement for additional executive and administrative expenses along with all damages for delay and other damages sustained by District as a result of Consultant's default. If the cost and expense of completing the Work, when added to the sum of amounts previously paid to Consultant under this Agreement and any amounts due but unpaid to Consultant at the time of such termination, exceed the contract price, District may deduct the amount of the excess from any such amounts then due Consultant. If the amount of such excess is larger than the amounts then due Consultant, Consultant shall immediately pay such excess or the balance thereof to District.

5. **Ownership of Documents.** Every document prepared by Consultant under this Agreement shall be the exclusive property of District. By this Agreement, Consultant transfers all of its right, title and interest in such documents to District. To the extent any document prepared under this Agreement constitutes a copyrightable work, the Work under this Agreement shall be considered a work for hire and by this Agreement Consultant shall be deemed to transfer all rights, title and interest in the copyrightable work to District, including the exclusive copyright. Documents prepared by Consultant under this Agreement shall not be provided by Consultant to any other person without District's prior written approval.

6. **Compliance with Laws.** Consultant shall perform the Work in compliance with all applicable federal, state and local laws and regulations regarding safety of persons and property and their protection from damage, injury or loss, including applicable Cal-OSHA regulations. Consultant also shall possess and maintain all permits, licenses and certificates that may be required for it to perform the Work. Consultant shall comply with all laws and regulations as required by local, state and federal agencies regarding nondiscrimination including, but not limited

to, Title VII of the Civil Right of 1964, the Americans with Disabilities Act, the Age Discrimination Employment Act of 1967, and the California Fair Employment and Housing Act. The Consultant is aware of the District's anti-harassment policy and agrees to abide by the policy, practices and procedures set forth and established by the District.

7. **Indemnification.** Consultant shall indemnify, defend, protect, and hold harmless Client, and its officers, employees, volunteers and agents from and against liability, losses, claims, and damages, resulting from: (1) the performance of or failure to perform the Work or any other obligations of this Agreement by Consultant or Consultant's agents or employees; or (2) any negligent act or omission of Consultant, or Consultant's agents or employees in connection with any acts performed or required to be performed pursuant to this Agreement. This indemnification shall not include any claim arising from the negligence or willful misconduct of the Client or its employees or agents and shall only be applicable to the extent, or proportion that the Consultant's act or omission contributed to liability, loss, claim or damage. Consultant's obligations under this indemnification provision shall survive the termination, or completion of Work, under this Agreement.

8. **Insurance.**

A. Types and Limits. Consultant at its sole cost and expense shall procure and maintain for the duration of this agreement the following types and limits of insurance:

| <u>Type</u>                              | <u>Limits</u>              |
|--|----------------------------|
| Commercial Public Liability              | \$1,000,000 per occurrence |
| Property Damage and Automobile Liability | \$1,000,000 per accident   |
| Workers' Compensation                    | statutory limits           |
| Employers' Liability                     | \$1,000,000 per accident   |

B. Other Requirements. Said insurance shall also specifically cover the contractual liability of Consultant. If Consultant fails to maintain such insurance, Client may declare a default in the performance of this Agreement and exercise the remedies specified in Section 5 of this Agreement.

C. Consultant shall be permissibly self insured or shall carry full workers' compensation coverage for all persons employed, either directly or through subcontractors, in carrying out the Work contemplated by this Agreement and in accordance with the Workers' Compensation Act contained in the Labor Code of the State of California. If Consultant fails to maintain such insurance, Client may declare a default in the performance of this Agreement and exercise the remedies specified in Section 5 of this Agreement.

D. Consultant agrees to furnish a certificate or certificates substantiating the fact that it has taken out the insurance set forth above for the period covered by the Agreement and all evidence substantiating coverage of Client and its agents and employees. All insurance is to be placed with insurers with a current A.M. Best rating A:VII or better unless otherwise accepted in writing by Client.

Each such certificate shall bear an endorsement precluding the cancellation or reduction in coverage of any policy covered by such certificate before the expiration of thirty (30) days after Client shall receive notification of such cancellation or reduction.

9. **Independent Contractor.** The parties hereto agree that at all times during the term of this Agreement Consultant, Consultant's employees and agents hired to perform services pursuant to this Agreement are independent contractors and are not agents or employees of District. Consultant shall have control over the means,

methods, techniques, sequences, and procedures for performing and coordinating the Work required by this Agreement. District shall have the right to control Consultant only insofar as the result of Consultant's services rendered pursuant to this Agreement. If, in the performance of this Agreement, any third parties are employed or contracted by Consultant, such employees or subcontractors shall be entirely and exclusively under the direction, supervision and control of Consultant. All terms of employment, including hours, wages, working conditions, discipline, hiring and discharging or any other term of employment or contract shall be determined by Consultant, and District shall have no right or authority over such persons or the terms of their employment or contract.

Therefore, neither Consultant or any third persons employed by or contracted by Consultant to perform services pursuant to this Agreement shall be entitled to workers' compensation benefits from District should Consultant or any of its employees or contractors sustain an injury in the course of performing services specified in this Agreement. Furthermore, neither Consultant nor any third persons or contractors employed by Consultant shall be entitled to any other benefits payable to employees of District. Consultant hereby agrees to defend and hold District harmless from any and all claims that may be made against District based on any contention by any third party that an employer/employee relationship exists or that a contractual relationships exists between District and that third party by reason of this Agreement. Consultant represents that it, and its employees and contractors, if applicable, are properly licensed and will remain so during the progress of the Work contemplated by this Agreement.

10. **Entire Agreement.** This writing and the documents incorporated herein by reference as Exhibits A, B and approved Task Orders, represent the sole, entire, exclusive and integrated contract between the parties concerning the Work, and supersedes all prior oral and/or written negotiations, representations or contracts. Each party to this Agreement acknowledges that no representations or promises have been made by any party hereto which are not embodied herein, and that no other agreement or promise not contained in this Agreement or in the incorporated documents shall be valid or binding. This Agreement may be amended only by a subsequent written contract approved and executed by both parties.

11. **Successors and Assignment.** This Agreement shall bind and inure to the benefit of the heirs, successors and assigns of the parties; however, Consultant shall not subcontract, assign or transfer this Agreement or any part of it without the prior written consent of District.

12. **No Waiver of Rights.** Any waiver at any time by either party of its rights as to a breach or default of this Agreement shall not be deemed to be a waiver as to any other breach or default. No payment by District to Consultant shall be considered or construed to be an approval or acceptance of any Work or a waiver of any breach or default.

13. **Severability.** If any part of this Agreement is held to be void, invalid or unenforceable, then the remaining parts will nevertheless continue in full force and effect.

14. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California.

15. **Notice.** Any notice, invoice or other communication that is required or permitted to be given under this Agreement shall be in writing and either served personally or sent by prepaid, first class U.S. mail addressed as follows:

District: Saddle Creek Community Services District  
1000 Saddle Creek Dr.  
Copperopolis, CA 95228  
Attention: Peter Kampa, GM

Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any party may change its address by notifying the other party of the change in the manner provided above.

**16. Attorneys Fees.** In the event of litigation between the parties, or if a party becomes involved in a litigation because of wrongful acts of the other party, the prevailing or innocent party shall be entitled to an award of reasonable attorneys fees from the other party. The prevailing party will be entitled to an award of attorneys fees in an amount sufficient to compensate the prevailing for all attorneys fees incurred in good faith.

**SADDLE CREEK COMMUNITY SERVICES DISTRICT**

By: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**CONSULTANT**

By: \_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title