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**CONSULTANT AGREEMENT**

**CITY OF OAKDALE  
AND  
[Contractor Name]**

**FOR THE  
[Project Name] PROJECT**

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between CITY OF OAKDALE (CITY) and \_\_\_\_\_ (CONSULTANT) regarding \_\_\_\_\_ hereinafter referred to as (PROJECT).

**WITNESETH:**

CITY desires to retain the services of CONSULTANT regarding services for the "PROJECT". CONSULTANT desires to perform the services requested by CITY regarding the Project on the terms and conditions set forth below.

**NOW, THEREFORE,** the parties agree as follows:

1. Description of Work

CONSULTANT shall perform the work set forth in Exhibit A, attached hereto and made a part hereof.

CONSULTANT shall provide all labor, equipment, material and supplies required or necessary to properly, competently and completely perform the work or render the services under this Agreement. CONSULTANT shall determine the method, details and means of doing the work or rendering the services.

2. Compensation

The total cost of the PROJECT shall not exceed \$\_\_\_\_\_. Compensation shall be on a time-and-expense basis, based on the work described in Exhibit A.

3. Term and Time For Completion

This Agreement shall become effective on the date first hereinabove written and will continue in effect until the services provided herein have been completed, unless sooner terminated as provided in Paragraph 8.

1 4. Payment For Services

2 CONSULTANT shall submit to CITY monthly itemized bills for the services rendered.  
3 If the work is satisfactorily completed, CITY shall pay such bill within thirty (30) days of its  
4 receipt. Should CITY dispute any portion of any bill, CITY shall pay the undisputed portion  
5 within the time stated above, and at the same time advise CONSULTANT in writing of the  
6 disputed portion within 14 days.

7 5. Compliance With Laws

8 CONSULTANT agrees that it shall conduct its work and perform its services in  
9 compliance with all laws and regulations of CITY OF OAKDALE, COUNTY OF  
10 STANISLAUS and STATE OF CALIFORNIA, and any officer, department or agency  
11 thereof, as well as other laws and regulations as may be applicable thereto.

12 6. Errors and Omissions Insurance

13 CONSULTANT shall have such errors and omissions insurance as shall protect  
14 CITY, it's officers, directors, employees and agents from claims based on alleged errors or  
15 negligent acts or omissions which may arise from CONSULTANT's operations or  
16 performance under this Agreement, whether claims be made during or subsequent to the  
17 term of this Agreement, and whether such operations or performance be by CONSULTANT  
18 or its employees, consultants, agents or anyone else directly or indirectly employed by any  
19 of the foregoing. The amount of this insurance shall not be less than \$1,000,000.

20 Said policy shall be continued in full force and effect during the term of this  
21 Agreement and for a period of three (3) years following the completion of the services  
22 provided for in this Agreement. In the event of termination of said policy, new coverage  
23 shall be obtained for the required period to insure for the prior acts of CONSULTANT during  
24 the course of performing services under the terms of this Agreement.

25 CONSULTANT shall provide to CITY a certificate of insurance on a form acceptable  
26 to CITY indicating the deductible or self-retention amounts and the expiration date of said  
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1 policy, and shall provide renewal certificates within ten (10) days after expiration of each  
2 policy term.

3 7. General Insurance

4 CONSULTANT shall, at its expense, maintain in effect at all times during the  
5 duration of this Agreement not less than the following coverage and limits of insurances:

6 1. Workers Compensation CONSULTANT shall carry such insurance as will  
7 protect CITY and CONSULTANT from claims under Worker's Compensation  
8 and Employers' Liability Acts; such insurance to be maintained as to the type  
9 and amount in strict compliance with State statutes. This insurance shall also  
10 waive all right to subrogation against CITY, its employees, directors, officers  
11 and agents.

12 2. General Liability. CONSULTANT shall obtain and keep in full force and effect  
13 general liability insurance including provisions for contractual liability,  
14 personal injury, independent consultants and broad form property damage  
15 coverage. This insurance shall be on a comprehensive occurrence basis  
16 form with a standard cross liability clause or endorsement. The limit for this  
17 insurance shall be no less than \$1,000,000 per occurrence for bodily injury,  
18 personal injury and property damage. If commercial General Liability  
19 Insurance or other form with a general aggregate limit is used, either the  
20 general aggregate limit shall apply separately to this project/location or the  
21 general aggregate limit shall be twice the required occurrence limit.

22 3. Automobile Liability. CONSULTANT shall maintain automobile liability  
23 insurance with coverage for any vehicle including those owned, leased,  
24 rented or borrowed. This insurance shall have a standard cross liability  
25 clause or endorsement. The limit amount for this insurance shall be no less  
26 than \$1,000,000 per occurrence combined single limit for bodily injury and  
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1 property damage.

2 4. Certificates of Insurance. Prior to commencement of any work,  
3 CONSULTANT shall provide CITY with certificates of insurance evidencing  
4 that all insurance and/or endorsements required by this Agreement have  
5 been obtained and are in full force and effect. Approval of the insurance by  
6 CITY shall not relieve or decrease any liability of CONSULTANT. The  
7 certificates and policies shall provide that thirty (30) days' written notice of  
8 any material change, reduction in coverage or cancellation of the insurance  
9 policies will be provided to CITY. In addition, in the event any change is  
10 made in the insurance carrier, policies or nature of coverage required under  
11 this Agreement, CONSULTANT shall notify CITY prior to making such  
12 changes.

13 Such insurance shall include a provision for endorsement naming CITY, its  
14 officers, directors, employees and agents as additional insured's with respect  
15 to liability arising out of the performance of any work under this Agreement,  
16 and providing that such insurance is primary insurance with respect to the  
17 interest of CITY and that any other insurance maintained by CITY is excess  
18 and not contributing insurance with the insurance required hereunder.

19 5. All companies shall be licensed by the California Department of Insurance to  
20 write the type of insurance provided.

21 8. Indemnification and Hold Harmless

22 CONSULTANT shall protect, indemnify, hold harmless and defend CITY, its  
23 directors, officers, employees and agents, from any and all claims, fines, demands, costs,  
24 expenses (including but not limited to attorney's fees and costs of litigation or arbitration),  
25 liability, losses, penalties, causes of action, awards, suits or judgments for damages of any  
26 nature whatsoever (hereinafter collectively referred to as "Claims") to the extent arising out  
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1 of the breach of this Agreement in whole or in part by, or willful or fraudulent misconduct or  
2 negligent acts, errors or omissions by CONSULTANT, its employees, agents or  
3 consultants, or the agent, employee or consultant of any one of them in the performance of  
4 their duties or in their operations under this Agreement, but not including the sole or active  
5 negligence or the willful misconduct of CITY.

6 Neither termination of this Agreement nor completion of the acts to be performed  
7 under this Agreement shall release CONSULTANT from its obligations to indemnify as to  
8 any claims so long as the event upon which such Claims is predicated shall have occurred  
9 prior to the effective date of any such termination or completion and arose out of or was in  
10 any way connected with performance or operations under this Agreement by  
11 CONSULTANT, its employees, agents or consultants, or the employee, agent or consultant  
12 of any one of them.

13 Submission of insurance certificates or other proof of compliance with the insurance  
14 requirements in this Agreement does not relieve CONSULTANT from liability under this  
15 indemnification and hold harmless clause. The obligation of this indemnity article shall  
16 apply whether or not such insurance policies shall have been determined to be applicable  
17 to any of such damages or claims for damages.

18 9. Termination

19 This Agreement may be terminated at any time and for any reason by CITY upon  
20 five (5) days advance written notice. In the event of such termination, CONSULTANT is to  
21 be fairly compensated for all work performed to the date of termination as calculated by  
22 CITY based on Paragraph 2 hereof, provided that such compensation shall not in any case  
23 exceed the maximum sum set forth in Paragraph 2 hereof. Compensation under this  
24 paragraph shall not include costs related to lost profit associated with the expected  
25 completion of the work or other such payments relating to the benefit of the bargain.

26 10. Attorney's Fees

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1 In the event that any arbitration, litigation or other action or proceeding of any nature  
2 between CITY and CONSULTANT becomes necessary to enforce or interpret all or any  
3 portion of this Agreement or because of an alleged breach by either party of any of the  
4 terms hereof, it is mutually agreed that the losing or defaulting party shall pay the prevailing  
5 party's reasonable attorney's fees, costs and expenses incurred in connection with the  
6 prosecution or defense of such action or proceeding.

7 11. Entire Agreement

8 This writing constitutes the entire Agreement between the parties relative to the  
9 services specified herein, and no modifications hereof shall be effective unless and until  
10 such modification is evidenced by a writing signed by both parties to this Agreement. There  
11 are no understandings, agreements, conditions, representations, warranties or promises  
12 with respect to the subject matter of this Agreement except those contained in or referred to  
13 in this writing.

14 12. Non-Collusion

15 CONSULTANT will sign a non-collusion affidavit pursuant to California Public  
16 Contract Code Section 7106.

17 13. Mediation and Arbitration

18 The parties shall comply with California Public Contract Code Sections 20104, et  
19 seq.

20 14. Prevailing Wage

21 Pursuant to Section 1770, et seq., of the California Labor Code, the CONSULTANT  
22 shall pay not less than the prevailing rate of per diem wages as determined by the Director  
23 of the California Industrial Relations Department.

24 15. Independent CONSULTANT

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

6 16. Successors and Assignment

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

11 17. Severability

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

14 18. Waiver of Rights

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

18 19. Remedies Not Exclusive

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

22 20. Notices

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

5 CITY OF OAKDALE  
6 Public Works Department  
7 455 S. Fifth Avenue  
8 Oakdale, CA 95361

9 CONSULTANT:

10 Company Name: \_\_\_\_\_  
11 Address: \_\_\_\_\_  
12 Phone: \_\_\_\_\_  
13 Fax: \_\_\_\_\_

14 21. Sub-Consultants

15 No subcontract shall be awarded or an outside consultant engaged by  
16 CONSULTANT unless prior written approval is obtained from CITY except as designated in  
17 the PROJECT.

18 **IN WITNESS WHEREOF** the parties execute this Agreement on the day and year  
19 first hereinabove written.

20 CITY OF OAKDALE

CONSULTANT

21 \_\_\_\_\_  
22 STEVE HALLAM, City Manager

23 \_\_\_\_\_  
24 Name:  
25 Title:

26 APPROVED AS TO FORM:

27 \_\_\_\_\_  
28 THOMAS HALLINAN, City Attorney