

CITY OF YUBA CITY
STAFF REPORT

Date: May 21, 2019
To: Honorable Mayor & Members of the City Council
From: Development Services Department
Presentation by: Darin Gale, Interim Development Services Director

Summary

Subject: Professional Services Agreement with Denis Cook for Planning Consulting Services.

Recommendation: Authorize the City Manager to amend the existing Professional Services Agreement between the City of Yuba City and Denis Cook of Yuba City, CA, to increase the contract amount from \$47,500 to \$87,500, subject to approval as to legal form by the City Attorney, with the finding that it is in the best interest of the City.

Fiscal Impact: \$40,000 – Account No. 1910-62701

Purpose:

Extending the current contract by \$40,000 with Denis Cook to continue providing Consulting guidance to Development Services.

Background:

Denis Cook was the City's Development Services Director and for the past five years provided a variety of contracting planning services to the City. Many jurisdictions use outside planning consulting firms to assist on a variety of projects to ensure timely processing of entitlements and other planning relates services.

Analysis:

Recently the Development Services Department hired a new Planning Manager, however that position was vacant for over a year and the City utilized Mr. Cook to assist with a variety of entitlements and planning projects. Mr. Cook is currently assisting the City with the Bogue Stewart Master Plan, El Margarita Master Plan, Central City Specific Plan Update, drafting CEQA documents and other general planning purposes.

Each of these projects continue to be a priority for the City and our current contract is running out of funding. In order to continue processing the projects mentioned above in a timely manner we need to increase the existing contract with Mr. Cook originally approved for \$47,500 to \$87,500.

Fiscal Impact:

The cost to increase the existing contract is \$40,000. There is sufficient salary savings in the Planning Division budget to cover the costs due to the department recently filling the Planning Manager position and the Administrative Analyst position being vacant from July to November.

Alternatives:

Direct staff to obtain proposals from other Planners.

Recommendation:

Authorize the City Manager to amend the existing Professional Services Agreement between the City of Yuba City and Denis Cook of Yuba City, CA, to increase the contract amount from \$47,500 to \$87,500, subject to approval as to legal form by the City Attorney, with the finding that it is in the best interest of the City.

Attachments:

- A. Denis Cook – Agreement for Professional Services
- B. Amendment to Agreement

Prepared by:

[/s/ Jaspreet Kaur](#)

Jaspreet Kaur
Analyst

Submitted by:

[/s/ Diana Langley](#)

Diana Langley
Interim City Manager

Reviewed by:

Department Head

[DG](#)

Finance

[RB](#)

City Attorney

[SLC by email](#)

ATTACHMENT A

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of **February 1, 2019**, by and between the City of Yuba City, a municipal corporation ("City") and **Denis Cook** ("Consultant").

RECITALS

- A. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and
- B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein; and
- C. City desires to retain Consultant to render professional services as set forth in this Agreement.

AGREEMENT

1. Scope of Services. The Consultant shall furnish the following services in a professional manner.

OR

**See Attached Scope of Services
(Exhibit A)**

2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is completed and approved by the City. Finalization shall be completed at the direction of the City of Yuba City.
3. Compensation. Compensation to be paid to Consultant shall be in accordance with the Schedule of Charges set forth in Exhibit A, which is attached hereto and incorporated herein by reference. In no event shall Consultant's compensation exceed **\$47,500** without additional written authorization from the City. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
4. Method of Payment. Consultant shall submit monthly billings to City describing the work performed during the preceding month. Consultant's invoices shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a

description of any reimbursable expenses. City shall pay Consultant not later than 30 days after approval of the monthly invoice by City staff. When payments made by the City equal 90% of the maximum fee provided for in this Agreement, no further payments shall be made until the final work under this Agreement has been accepted by City.

5. Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City.
6. Termination. This Agreement may be terminated by the City immediately for cause or by either party without cause upon fifteen days written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination. Such compensation is subject to the conditions of Section 4 of this agreement.
7. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees, agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's expense, provide such reports, plans, studies, documents and other writings to City upon request.
- * Licensing of Intellectual Property. This Agreement creates a nonexclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regards to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the services under this Agreement. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Consultant, which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs relating to project for which Consultant's services are rendered, or any publicity pertaining to the Consultant's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

8. Consultant's Books and Records:

- a. Consultant shall maintain any and all ledgers, books of accounts, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.
- b. Consultant shall maintain all documents and records which demonstrated performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.
- c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Administrator, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.
- d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

9. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

- a. Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and
 - b. Possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(B)(2).)
10. Interest of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.
11. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.
13. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.
14. Licenses. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature, which are legally required of Consultant to practice its profession. Consultant

18. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.
19. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the City. Consultant shall not subcontract any portion of the work to be performed under the Agreement without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.
20. Waiver. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
21. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
22. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Sutter.
23. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.
24. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and shall divide the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS/ENDISPUTE ("JAMS") or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear

the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

25. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
26. Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.
27. Prohibited Interest. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising there from.
28. Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF YUBA CITY:

CONSULTANT:

By:  _____

By:  _____

Darin Gale
Interim Development Services Director

Denis Cook
Planning Consultant

Attachments: Exhibit A – Scope of Services
 Exhibit B - Insurance Requirements

ATTACHMENT B



AMENDMENT NO. 1 TO THE STANDARD AGREEMENT
Denis Cook

Mr. Denis Cook
P.O. Box 3255
Yuba City, CA 95992

SUBJECT: Planning Consultant Agreement

This Amendment to the Standard Agreement with Denis Cook dated February 1, 2019 (“Amendment”) is made and entered into as of the ____ day of May 2019 by and between the City of Yuba City (“City”) and Denis Cook (“Contractor”).

RECITALS

Whereas, by Standard Agreement with Denis Cook dated February 1, 2019 (“Prime Agreement”), City awarded to Contractor for planning consultant for \$47,500.00; and

Whereas, the Parties desire to amend the Prime Agreement to include Contractor’s additional compensation for the amended scope of services in the amount of \$40,000, for a contract total of \$87,500, and to amend the Prime Agreement to modify terms as set forth herein.

A G R E E M E N T

In consideration of the foregoing Recitals and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and Contractor agree as follows:

1. The paragraph of Section 3. Compensation of the first page of the Prime Agreement is amended as follows, with ~~striketrough~~ text indicating deleted text and underline text indicating added text:

In no event shall Consultant’s compensation exceed \$87,500 (~~\$47,500.00~~) without additional written authorization from the City.

2. A copy of the Prime Agreement is attached hereto as Exhibit A and, except as otherwise amended in Section 1 of this Amendment, is incorporated as though set forth in full herein.
3. Except as expressly provided in this Amendment, all other terms and conditions of the Prime Agreement shall remain in full force and effect.

Development Services



4. This Amendment is not effective until approved and executed by the authorized City representative.

IN WITNESS WHEREOF, the Parties hereto executed this Amendment to be effective as of the Effective Date first written above.

CITY OF YUBA
a municipal corporation

CONTRACTOR
Denis Cook

Diana Langley, Interim City Manager

Name: Denis Cook
Title: Planning Consultant

Approved as to legal form:

Shannon Chaffin, City Attorney

Kindly execute the original and two (2) copies and return to City Hall at 1201 Civic Center Boulevard, Yuba City, CA 95993; the City will return a fully-executed copy to you via mail for your files.

Development Services



EXHIBIT A

Standard Agreement