

CITY OF YUBA CITY
STAFF REPORT

Date: November 5, 2019
To: Honorable Mayor & Members of the City Council
From: Administration
Presentation by: Terrel Locke, Assistant to the City Manager

Summary

Subject: Professional Services Agreement with Land Logistics for Planning Consulting Services

Recommendation: Authorize the City Manager to amend the existing Professional Services Agreement between the City of Yuba City and Land Logistics of Davis CA, subject to approval as to legal form by the City Attorney, to increase the contract amount from \$75,000 to up to \$261,400 with the finding that it is in the best interest of the City

Fiscal Impact: \$186,400 - Account No. 1910-62701. This expense is offset by Salary Savings from vacant positions in the Development Services Department

Purpose:

To provide for planning and development services to the public until such time as vacancies are filled in the Development Services Department.

Background:

The Development Services Director position became vacant on July 1, 2019. A Professional Services Agreement with Brian Millar of Land Logistics was approved for \$75,000 by the City Council at the meeting of June 18, 2019, to provide planning services and Development Services Department oversight. Besides Mr. Millar serving as the Interim Director of Development Services, Land Logistics provides additional staffing for the Assistant Planner and Planning Manager positions that are currently vacant. The Assistant Planner position became vacant in July 2019 and the Planning Manager position became vacant in October 2019.

The initial agreement with Land Logistics was to provide for services through September 2019, until the new City Manager started with the City in the beginning of September and could evaluate the Departmental needs. This amendment to the agreement will provide services by Land Logistics until such time as the Assistant Planner, Planning Manager, and Development Services Director positions are filled, which is anticipated to be in early 2020.

Analysis:

The Development Services Department is responsible for functions related to development, the evolution of the City, enhancement, and preservation. Areas of responsibility include:

- City planning and zoning
- Building inspections
- Code enforcement

- Housing

Specific task areas include current and advanced planning, zoning administration, downtown redevelopment, environmental impact studies, management of historic structures, code compliance, and public information.

The City's Planning Division provides assistance to ensure that future growth and change happens in accordance with the community's adopted vision. This happens through the development and implementation of the City's General Plan, Specific Plans, and the Zoning Ordinance. The division provides services including:

- Development review for current planning projects
- Design review
- Environmental review to implement the California Environmental Quality Act (CEQA)
- Long-range planning services, including general plans, infill development, and strategies for new growth
- Urban planning to ensure design and historic preservation remains intact
- Support staff to the Planning Commission

Fiscal Impact:

The cost to increase the existing contract is \$186,400. There is sufficient salary savings in the Planning Division budget to cover the costs due to current vacancies in the Department.

Alternatives:

Direct staff to obtain proposals from other Planners/Firms.

Recommendation:

Authorize the City Manager to amend the existing Professional Services Agreement between the City of Yuba City and Land Logistics of Yuba City, CA, to increase the contract amount from \$75,000 to up to \$261,400 with the finding that it is in the best interest of the City.

Attachments:

1. Land Logistics – Agreement for Professional Services
2. Proposed Scope of Services

Prepared by:

/s/ Terrel Locke

Terrel Locke
Assistant to the City Manager

Submitted by:

/s/ Michael Rock

Michael Rock
City Manager

Reviewed by:

Finance

City Attorney

SM

SLC by email

ATTACHMENT 1

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of the July 1, 2019, by and between the City of Yuba City, a municipal corporation (“City”) and Land Logistics (“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.

Attachment 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 \$75,000 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 represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession. Consultant shall maintain a City of Yuba City business license.
14. Indemnity. Consultant agrees to defend, indemnify and hold harmless the City, its officers, officials, agents, employees and volunteers from and against any and all claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all costs, including attorney fees and expenses in connection therein), arising out of the performance of this Agreement in whole or in part by any negligent act or omission of the Consultant, or anyone directly or indirectly employed by the Consultant or anyone for whose acts the Consultant may be liable, or its failure to comply with any of its obligations contained in this Agreement, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, agents, employees or volunteers.
15. Insurance Requirements. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, necessary insurance policies as described in Exhibit B.

16. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City City of Yuba City
 1201 Civic Center Blvd
 Yuba City, CA 95993

If to Consultant: Brian Millar
 Land Logistics
 216 F Street #38
 Davis CA 95616

17. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

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: *Diana Langley*
Diana Langley
Interim City Manager
City of Yuba City

By: *Brian Millar*
Brian Millar
Title President_

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

ATTACHMENT A

**SCOPE OF SERVICES
LAND LOGISTICS**

June 21, 2019

Diana Langley
City Manager's Office
City of Yuba City
1201 Civic Center Boulevard
Yuba City, CA 95993

RE: Provision of Planning Support Services to City of Yuba City

Dear Ms. Langley,

On behalf of Land Logistics, I am pleased to submit this summary proposal to provide contract Planning support services to the City of Yuba City.

Understanding of City's Request for Services

The City seeks support services for provision of an interim Community Development Director, interim Assistant Planner, as well provision of Project Management services.

Proposed Scope of Work

General work responsibilities under this contract include the following:

- Provision of Interim Community Development Director. Brian Millar, AICP, would serve in this role. Mr. Millar would perform all regular duties of the Director's position for an anticipated period of six months. This would consist of an average of three days per week at the City offices, with additional work performed remotely each week, for an estimated 27-30 hours of work each week.
- Provision of Interim Assistant Planner. Land Logistics would provide the services of two planners for this work, Kathleen Franklin and Masud Kiburi-Cunningham. Our proposal envisions sharing of these duties to ensure coverage of the position five days per week at the City offices. Anticipated duties include: responding to general public inquiries at the front counter, through email and correspondence; processing of building, sign and related permits; processing of minor use permit, parcel map and similar development proposals; and assisting with other Planning duties as assigned.
- Provision of Project Manager. Land Logistics would provide the services of Gary Pedroni, Senior Planner, to serve in this role on an as-needed basis. Anticipated duties include:
 - Review of development applications (such as use permits, tentative maps, rezonings and similar projects) for completeness.
 - Application routing.
 - Coordination with project applicants.

- Completion of draft and final staff reports, including conditions of approval.
- Completion of Initial Studies and Mitigated Negative Declarations.
- Preparation of notices.
- Making presentations to the Planning Commission and City Council.
- The majority of these would be performed away from the City offices.

Billing Rates and Budget

Land Logistics will provide the above services at the following rates and overall cost:


- Billing rates:
 - Mr. Millar: \$135.00 per hour.
 - Mr. Pedroni: \$110 per hour.
 - Ms. Franklin: \$95.00 per hour.
 - Mr. Kiburi-Cunningham: \$85.00 per hour
- Land Logistics will provide a monthly invoice summarizing work efforts.
- Noted is that this scope of work and budget is generalized, and if more detailed work is required, adjustment to this scope of work would be necessary.

Term of Contract

It is anticipated that the term of this contract would run through April 30, 2020, with extension possible upon agreement by the City and Land Logistics.

If you have any questions regarding this proposal, please contact me at (530) 902-9218.

Sincerely,



Brian Millar, AICP
President

ATTACHMENT 2



October 18, 2019

Michael Rock
City of Yuba City
1201 Civic Center Blvd
Yuba City CA 95993

RE: Provision of Planning support Services to City of Yuba City

Dear Mr. Rock,

On behalf of Land Logistics, below is my estimate of costs, inclusive of our work in October 2019, and based on the following assumptions:

- 1) my continuation in the dual role of Interim Development Services Director and Planning Manager through February 2020, at the continued rate of \$135/hr at an average of 36 hrs/wk for 20 weeks = \$97,200. (Assumes the Director position is filled by end of February 2020.)
- 2) continuation of our staffing coverage for the vacant Assistant Planner position through December 2019, at the continued rate of \$90/hr at an average of 40 hrs/wk for 12 weeks = \$43,200. (Assumes the Assistant Planner position is filled starting in January 2020.)
- 3) use of other Land Logistics senior staff for project management/project processing, through February 2020, at the continued rate of \$115/hr at an average of 20 hrs/wk for 20 weeks = \$46,000.

Totals for the above services: \$186,400.

Sincerely,

Brian Millar, AICP
President