

**SAMPLE
CITY OF ORINDA
SERVICES CONTRACT**

_____ (“Provider”) and the City of Orinda (“City”), a municipal corporation, agree as follows. City and Provider are sometimes individually referred to herein as “Party” and collectively as “Parties.”

1. **Purpose of Contract.**

a. City requires certain special services for the purpose of _____

b. Provider is qualified to provide these services and is willing to provide them according to all of the terms of this agreement, including all insurance requirements set forth herein.

2. **Duties of Provider.**

a. Provider agrees to perform services described in Exhibit A, which is attached to this agreement and incorporated by this reference. Provider agrees to perform these services diligently in accordance with the standards of its profession and to City’s satisfaction. Provider promises and agrees to furnish to City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately perform the services described in this agreement.

b. The parties may, from time to time, agree in writing that Provider, for additional compensation, shall perform additional services.

c. Provider shall assign only competent personnel to perform services pursuant to this agreement. Provider shall notify City in writing of any changes in Provider’s staff assigned. City may, in its sole discretion, determine that a person assigned to perform services is not performing in accordance with the standards required herein. If the City makes such a determination, Provider shall replace such person immediately.

3. **Time of Performance.**

a. This agreement shall not be effective and no payments shall be made to Provider until:

(i) City has received satisfactory evidence that Provider has met all of the insurance requirements, and

(ii) All required signatures have been obtained.

b. The effective date of this agreement shall be the date on which the last signature is affixed or on receipt of satisfactory evidence of insurance, whichever is later.

c. The services of Provider shall begin no sooner than the effective date and shall continue until all work is approved by City. All work shall be completed no later than _____.

4. **Compensation.**

a. City agrees to pay Provider at the rates described in Exhibit A, not to exceed a maximum contract price of \$ _____ for all services performed under this agreement.

b. Provider shall bill City on a monthly basis for work done in the preceding month. The billings shall contain, as a minimum, total hours worked on the project by position, hourly rates, total amount due for the period and a contract payment status summary showing total billed to date compared to total authorized contract amount. In addition, Provider shall describe work that was completed during the monthly billing period both in qualitative terms (e.g., listing project activities) and in quantitative terms (e.g., scope of work completion percentage). City, at its sole discretion, shall evaluate the billing and determine whether or not the amount billed is commensurate with the state of completion of the work. If City determines that the amount billed exceeds the status of completion of either an individual task or the entire project, then City may reduce the amount of the progress payment accordingly.

c. The parties shall agree in writing to any changes in compensation due to changes in Provider's services prior to performance of those changed services.

d. To the extent that Provider's insurance documentation is not in compliance with the requirements of this agreement and the City Attorney is required to intervene to explain and obtain the proper documentation from Provider's insurer, the cost of the City Attorney's services will be deducted from the contract price to which Provider would otherwise be entitled under the terms of this agreement.

5. **Provider Status.**

Provider is an independent contractor and is solely responsible for its acts and omissions. Provider is not City's agent, employee or representative for any purpose. Provider has no power to incur any debt, obligation, or liability on behalf of City. Provider shall direct and control its personnel and shall pay all wages, salaries, and other amounts due such personnel in connection with this agreement and as required by law. Provider is responsible for all reports and obligations respecting such personnel. Provider shall pay of all taxes, fees, contributions or charges applicable to the conduct of Provider's business, and shall provide City with proof of compliance upon request.

6. **Conflict of Interest.**

Provider understands that its professional responsibility is solely to City. Provider warrants that it presently has no interest, and will not acquire any direct or indirect interest, that

would conflict with its performance of this agreement. Provider shall not employ a person having such an interest in the performance of this agreement.

Provider and its agents or employees working under this agreement shall submit statements of economic interest under the Political Reform Act (Government Code section 81000 et seq.) if requested to do so by City.

7. **Work Product, Intellectual Property and Records.**

All documents furnished to Provider by City and all reports or work product (including electronically stored documents) prepared by Provider under this agreement are City's property and shall be given to City at the completion of Provider's services without restriction or limitation on use or dissemination by City. Provider grants City a royalty-free, exclusive and irrevocable license to reproduce, publish and use all original computer programs, writing, sound recordings, pictorial reproductions, diagrams, charts, computations, drawings and other works of similar nature produced in the course of the performance of this agreement. Provider shall not publish any such material without the prior written consent of City.

Provider represents and warrants that it has the legal right to utilize all intellectual property it will utilize in the performance of this agreement. Provider further represents that it shall ensure City has the legal right to utilize all intellectual property involved in and/or resulting from Provider's performance of this agreement.

In the performance of this agreement, Provider may be given access to confidential City information. Provider shall hold any such information in confidence.

Provider shall maintain and make available to City accurate books and accounting records relating to its work under this agreement. Provider will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this agreement, whether funded in whole or in part under this agreement. Provider shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this agreement or until after final audit has been resolved, whichever is later.

8. **Assignment; Subcontracts.**

Provider's services are considered unique and personal. Provider shall not assign or transfer its interest or obligation under this agreement without City's prior written consent. Provider shall not subcontract its duties under this agreement without City's prior written consent. Any attempt to do so shall be null and void, and any assignees, subcontractors or transferees shall acquire no right or interest by reason of such attempted assignment, subcontracting or transfer.

9. **Licenses and Compliance with Laws.**

Provider represents and warrants to City that it has all licenses, permits, qualifications, insurance, and approvals legally required for Provider to practice its profession

and/or provide services under this agreement. Provider shall, at its sole cost and expense, keep in effect such licenses, permits, qualifications, insurance, and approvals at all times during the term of this agreement. Provider shall keep itself fully informed of and in compliance with all applicable laws affecting its performance under this agreement.

10. **Insurance Types and Limits.**

Provider shall procure and maintain for the duration of this agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with its performance under this agreement. Coverage shall be at least as broad as:

a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with a limit of no less than _____ per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

b. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Provider has no owned autos, Code 8 (hired) and 9 (nonowned), with a limit of no less than \$1,000,000 per accident for bodily injury and property damage.

c. Workers’ Compensation insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease. Workers’ Compensation insurance will not be required if Provider furnishes to City a written verification that it has no employees.

d. Professional Liability (Errors and Omissions) Insurance appropriate to the Provider’s profession, with a limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If Provider maintains higher limits than the minimums shown above, City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

11. **Additional Insurance Requirements.**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

a. Additional Insured Status: City, its officers, officials, employees, and volunteers are to be covered as insureds on the Auto Liability policy and on the Commercial General Liability policy.

b. Primary Coverage: For any claims related to this agreement, Provider’s insurance coverage shall be primary insurance as respects City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials,

employees, or volunteers shall be excess of the Provider's insurance and shall not contribute with it.

c. Notice of Cancellation. Provider shall not cancel, assign, or change any policy of insurance required by this agreement or engage in any act or omission that will cause its insurer to cancel any insurance policy required by this agreement except after providing 30 days prior written notice to the City. If an insurance policy required by this agreement is unilaterally cancelled or changed by the insurer, the Provider shall immediately provide written notice to the City and obtain substitute insurance meeting the requirements of this agreement. Nothing in this subsection relieves Provider of its obligation to at all times maintain all insurance required by this agreement.

d. Waiver of Subrogation: Provider hereby grants to City a waiver of any right to subrogation which any insurer of Provider may acquire against City by virtue of the payment of any loss under such insurance. Provider agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer.

e. Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by City. City may require Provider to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

f. Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to City.

g. Claims Made Policies: If any of the required policies provide coverage on a claims-made basis:

- (i) The retroactive date must be shown and must be before the effective date of this agreement or the beginning of work, whichever is earlier.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the of work.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date/beginning of work. Provider must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

h. Subcontractors: Provider shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

i. Special Risks or Circumstances: City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

12. **Verification of Insurance.**

Provider shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required herein. Such evidence of insurance shall be attached hereto as Exhibit B and considered an integral part of this agreement, which shall not become effective until satisfactory evidence of insurance has been received by City. All evidence of insurance must be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Provider obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

13. **Indemnification.**

To the fullest extent allowed by law, Provider shall defend, indemnify and hold harmless City and its officers, employees, agents and volunteers from and against any and all liability, claims, suits, losses, injuries, damage, demands, expenses and costs (including, without limitation, attorney fees and expert fees) arising out of, pertaining to or relating to the negligence, recklessness, or willful misconduct of Provider in the performance of this agreement. Provider shall not be obligated to indemnify City against liability arising from the sole negligence or willful misconduct by City. The provisions of this section survive termination of this agreement.

14. **Equal Employment Opportunity.**

Provider is an equal opportunity employer and agrees to comply with applicable regulations governing equal employment opportunity. In the performance of this agreement, Provider shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability or medical condition.

15. **Notices.**

Any notice to be given under this agreement shall be in writing and addressed to the parties as follows:

City	Provider
City Manager	_____
City of Orinda	_____
22 Orinda Way	_____
Orinda, CA 94563	_____

16. **Litigation.**

If either party brings an action to enforce this agreement, the prevailing party is entitled to reasonable attorney fees and costs (including, but not limited to, expert witness fees and discovery costs).

17. **Waivers.**

Waiver of a breach or default under this agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this agreement.

18. **Modification.**

No waiver, modification or termination of this agreement is valid unless made in writing.

19. **Severability.**

If any provision of this agreement is held invalid by a court of competent jurisdiction, the remainder of this agreement shall remain in effect to the greatest extent permitted by law.

20. **Termination.**

a. Termination Without Cause: At any time and without cause, either party may terminate this agreement by giving 10 days written notice. In the event of such termination without cause, City shall pay Provider for services rendered to date and Provider shall deliver to City any work product, whether complete or incomplete.

b. Termination For Cause: In the event of Provider's substantial failure to meet its obligations under this agreement, City may elect to give Provider 10 days written notice and an opportunity to cure. If Provider has not cured the defects in its performance within 10 days, City may terminate the agreement for cause. City shall then pay Provider for services satisfactorily rendered to date and Provider shall deliver to City any work product, whether complete or incomplete.

c. Suspension: City may, at any time, temporarily suspend Provider's performance, in whole or in part, by giving a written notice of suspension to Provider. If City gives such notice, Provider shall immediately suspend its activities under this agreement as specified.

21. **Entire Agreement.**

This agreement, together with its attachments, sets forth the entire understanding between the Parties and supersedes any oral or written understanding they may have had prior to the execution of this agreement. No other contract, statement, or promise relating to the subject matter of this agreement shall be valid or binding.

22. **Governing Law and Venue.**

Exhibit A
Proposal Documents: Scope of Services, Hourly Rates and Payment Schedule
(pages attached)

Exhibit B
Evidence of Insurance: Certificates, Endorsements and Policy Language
(pages attached)

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