

Consultant Agreement

[Consultant Name]

Mace Ranch Neighborhood Park CIP No. 8136

This Agreement, made and entered into on this _____ day of _____, 2004, by and between the City of Davis, a Municipal Corporation of the State of California, hereinafter referred to as “**City**,” and **Arch/Engr Consultants**, located at Address, City, State ZIP, hereinafter referred to as “**Consultant**.”

Witnesseth:

Whereas, City desires to retain certain professional design services for **Mace Ranch Neighborhood Park, CIP No. 8136**; and

Whereas, City desires to engage **Consultant** to provide these services by reason of its qualifications and experience for performing such services, and **Consultant** has offered to provide the required services on the terms and in the manner set forth herein.

Now, Therefore, in consideration of their mutual covenants, the parties hereto agree as follows:

1. **Definition.**

a. The word “City” as used in this **Agreement** shall mean and include all the territory lying within the municipal boundaries of the City of Davis, California, as presently existing, plus all territory which may be added thereto during the term of this **Agreement** by annexation or otherwise.

b. The term “City Manager” shall mean the duly appointed City Manager of the City of Davis, California, or a designated representative.

c. The term “City Attorney” shall mean the duly appointed City Attorney of the City of Davis, California, or a designated representative.

d. The term “City Clerk” shall mean the duly appointed City Clerk of the City of Davis, California, or a designated representative.

2. **Project Coordination.**

a. **City.** The City Manager shall be representative of **City** for all purposes under this **Agreement**. *First Last Name* is hereby designated as the **Project Manager** for the City Manager, and the **Project Manager** shall supervise the progress and execution of this **Agreement**.

b. **Consultant.** **Consultant** shall assign a single **Project Manager** to have overall responsibility for the progress and execution of this **Agreement** for **Consultant**. *First Last Name* is hereby designated as the **Project Manager** for **Consultant**. Should circumstances or conditions subsequent to the execution of this **Agreement** require a substitute **Project Manager** for any reason, the **Project Manager** substitution shall be subject to the prior written acceptance and approval of the **City's Project Manager**.

3. **Duties of Consultant.**

a. **Services to be Furnished.** **Consultant** shall provide all specified services as set forth in the specific Scope of Work contained in Attachment "A" to this **Agreement**, and is incorporated herein by this reference. The **Consultant** shall provide professional design services to complete the tasks described in Attachment "A" and any amendments thereto. The Scope of Work may be amended during the application of this **Agreement**.

b. **Consultant** costs incurred to negotiate an **Agreement** with the **City** shall be included in overhead as part of the multiplier.

c. **Cost Estimating.** **Consultant** shall prepare periodic and final construction cost estimates at 35 percent, 75 percent, and 100 percent of the design.

d. **Redesign Requirement.** If the responsible low bid is greater than 12.5% of the final construction cost estimate, **Consultant** shall redesign the project at no cost to the **City**.

e. **Laws to be Observed.** **Consultant** shall provide professional design services in compliance with laws and regulations which govern the work under this **Agreement**.

f. **Ownership and Control of Proprietary Rights.** **Consultant** agrees that **City** shall be the sole and exclusive owner of all drawings, information, data, patents, copyrights, trade secrets, and other intellectual property or proprietary rights created by **Consultant**, individually, or jointly with others, in connection with this **Agreement** (collectively "**Proprietary Rights**"). **Consultant** agrees to notify **City** of the creation of any **Proprietary Rights**.

If any instruments of assignment or transfers are necessary to vest sole ownership of any **Proprietary Rights** in **City**, **Consultant** hereby assigns and transfers, and agrees to assign and transfer to **City** or **City's** nominees, successors, or assigns, all of **Consultant's** right, title and interest in and to any and all **Proprietary Rights**. **Consultant** agrees to execute, deliver or record any additional documents as **City** may reasonably request to transfer, quitclaim, or confirm sole ownership of all right, title, and interest in and to the **Proprietary Rights** in or to **City** or **City's** nominees, successors, or assigns. If a work created by **Consultant** in connection with this **Agreement** could qualify as a "work made for hire" under United States copyright laws, then **Consultant** and **City** hereby agree that the work is intended as and shall be a "work made for hire," and **City** shall be considered the "author" thereof for copyright purposes.

Proprietary Rights created under this **Agreement** shall not be made available to any individual or organization by **Consultant** or its subconsultants, if any, without the prior written approval of the City Manager.

g. **Copies of Reports and Information**. If **City** requests additional copies of reports, drawings, specifications, or any other material which **Consultant** is required to furnish in limited quantities as part of the services under this **Agreement**, **Consultant** shall provide such additional copies as are requested, and **City** shall compensate **Consultant** for the costs of duplicating of such copies at **Consultant's** cost.

Copies of information and their associated costs which are included in the attached Fee Schedule are: 10 copies of any Final Written Report, 1 set of original mylars of any Final Plans, 1 copy of all calculations pertinent to the Final Report and 1 electronic (disk) copy of any Computer Drawing Files (CAD). Any additional copies or products will be at cost, plus 10 percent markup.

Electronic methods of sharing documents, information, messages, etc., such as via internet shall be utilized to the extent possible to minimize extraneous copies, reimbursable expenses, and also to meet the intent of Appendix "D." **City** shall specify document format for the project to ensure compatibility, efficiency, and minimize software translation and/or transmission error.

1. Word Processor Documents - MS Word 2002
2. Spreadsheets - MS Excel 2002
3. CAD Drawings - AutoCAD 2000 (or compatible version), and shall be formatted to accommodate Plan Sheet reduction to 11" x 17" size.

h. **Electronic Copies.** **Consultant** agrees that any and all reports, drawings, specifications, or any other material required to be produced by **Consultant** under the terms of this **Agreement** shall also be made available to **City**, as part of the **Consultant's** responsibilities under this **Agreement**, in the electronic or digital form used to prepare the report, drawing, specification, or other material.

i. **Use of Recycled Paper Products.** All paper used for reports that are required to be submitted under this **Agreement** shall be produced on recycled paper conforming to the minimum content standards as contained in Attachment "D," "Definitions and Minimum Content Standards for Recycled Paper Products," and is incorporated herein by the reference. All such reports shall have the front cover labeled in such a way as to clearly identify that the report was produced on recycled paper. Where practicable, the pages of all such reports shall be produced double-sided.

j. **Qualifications of Consultant.** **Consultant** represents that it is qualified to furnish the services described under this **Agreement**. As evidence thereof, **Consultant** agrees that one or more members or employees of the firm are, and at all times shall be, appropriately licensed professionals by the State of California and that the services to be provided under this **Agreement** will be performed by them or under their direct supervision.

4. **Compensation and Invoicing.**

a. The fee for this **Agreement** shall be at time and materials with an estimated maximum not-to-exceed amount of \$0,000. Payment shall be made by the **City** within 45 days from receipt of billings.

b. The **City** shall withhold 10 percent from all progress payments. These retained funds will be paid in full upon completion of the **Agreement**.

c. For the full performance of the services described herein by **Consultant**, **City** shall pay **Consultant** monthly upon submission by **Consultant** of its itemized billings in duplicate, in accordance with the provisions and Fee Schedule contained in Attachment "B-1" to this **Agreement**, and is incorporated herein by this reference.

d. For contracts that are paid on an hourly basis, with a not-to-exceed amount, a time sheet shall be attached to **Consultant's** invoice for each person for which hours are claimed. A time sheet is also required for any subconsultant hours claimed on the invoice.

5. **Duties of City.**

City shall provide all specified data, reports, drawings, records or similar information as described in the Scope of Work contained in Attachment "A" to the **Agreement** or subsequently requested by the **Consultant**. This requirement is applicable to only such data, reports, drawings, records or similar information as may be in the possession of **City**. Nothing contained herein shall obligate **City** to incur any expense in connection with completion of studies or acquisition of information not otherwise in the possession of **City**.

6. **Material and Resources Furnished by City**

- a. Staff time to assist **Consultant** in work to be conducted under Scope of Work.
- b. Reproduction of maps and as-built drawings existing and available in Public Works files.

7. **Term.**

This **Agreement** shall commence on the date first written above and shall continue in full force and effect until terminated as provided herein. **Consultant** shall begin work upon receipt of written authorization and shall proceed with due diligence to complete their work in as timely a fashion as is practical. Unless otherwise extended, the Agreement shall be deemed to be completed and shall terminate in _____ months.

8. **Temporary Suspension.**

- a. The City Manager shall have the authority to suspend this **Agreement**, wholly or in part, for such period as the City Manager deems necessary due to unfavorable conditions or to the failure on the part of **Consultant** to perform any provision of this **Agreement**.
- b. In the event suspension exceeds 90 days, the terms are subject to renegotiation.

9. **Extension of Term.**

In the event that the services called for under this **Agreement** are not completed within the time specified above, the City Manager shall have the option to extend the time for completion. This paragraph does not preclude the recovery of damages for delay by either party.

10. **Suspension; Termination.**

- a. **Right to Suspend or Terminate.** If **Consultant** should be adjudged bankrupt, if it should make a general assignment for the benefit of its creditors, if a receiver

should be appointed on account of its insolvency, or in a Termination for Convenience (see below), or if it or any of its subconsultants, if any, should violate any provision of this **Agreement**, the City Manager may serve written notice on **Consultant** or its surety, if any, of **City's** intention to suspend or terminate this **Agreement**. Such notice shall contain the reason or reasons for such suspension or termination. Unless, within 10 days after the service of such notice, **Consultant** makes arrangements satisfactory to the City Manager to correct the condition or conditions giving rise to the notice of suspension or termination, the suspension or termination shall take immediate effect, and **Consultant** shall immediately discontinue its performance under this **Agreement**.

b. **Termination for Convenience.** **City** reserves the absolute right to terminate this **Agreement**. In the event of termination without cause, **Consultant** shall be entitled to payment in an amount not to exceed the Contract price which shall be calculated as follows: 1) **Consultant's** cost for that part of the Work actually completed by **Consultant** and accepted by **City**; plus 2) Other reasonable costs actually incurred by **Consultant** and accepted by **City** in connection with the termination. There shall be deducted from such sums as provided in this section the amount of any payments made to **Consultant** prior to the date of termination of this **Agreement**. **Consultant** shall not be entitled to any claim or lien against **City** for additional compensation or damages in the event of such termination and payment.

If this **Agreement** is terminated by **City** for default, and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a Termination for Convenience under this section, and **Consultant** shall be entitled to receive only the amounts payable hereunder in the event of a Termination for Convenience.

c. **Payment.** Upon such suspension or termination, **Consultant** shall be paid for all services actually rendered to **City** to the date of such suspension or termination; provided, however, if this **Agreement** is suspended or terminated for fault of **Consultant**, **City** shall be obligated to compensate **Consultant** only for that portion of **Consultant's** services which are of benefit to **City**.

d. **Return of Materials.** Upon such suspension or termination, **Consultant** shall turn over to the City Manager computations, and other data, whether or not completed, prepared by **Consultant** or its subconsultants, if any, in connection with this **Agreement**. Such materials shall become the permanent property of **City**. **Consultant**, however, shall not be liable for **City's** use of incomplete materials or for **City's** use of complete documents if used for other than the project contemplated by this **Agreement**.

11. **Inspection.**

Consultant shall furnish **City** with every reasonable opportunity for **City** to ascertain that the services of **Consultant** are being performed in accordance with the requirements and intentions of this **Agreement**. All work done and all materials furnished, if any, shall be subject to the **Project Manager's** inspection and approval. The inspection of such work shall not relieve **Consultant** of any of its obligations to fulfill its **Agreement** as prescribed.

12. **Independent Judgment.**

Failure of **City** to agree with **Consultant's** independent findings, conclusions or recommendations, if the same are called for under this **Agreement**, on the basis of differences in matters of judgement shall not be construed as a failure on the part of **Consultant** to meet the requirements of this **Agreement**.

13. **Assignment; Subconsultants; Employees**

a. **Assignment.** Both parties shall give their personal attention to the faithful performance of this **Agreement** and shall not assign, transfer, convey, or otherwise dispose of this **Agreement** or any right, title or interest in or to the same or any part thereof without the prior written consent of the other party, and then only subject to such terms and conditions as the other party may consent to any subsequent assignment. Any assignment without such approval shall be void, and, at the option of the other party, shall terminate this **Agreement** and any license or privilege granted herein. This **Agreement** and any interest herein shall not be assignable by operation of law without the prior written consent of the other party.

b. **Subconsultants; Employees.** **Consultant** shall be responsible for employing or engaging all persons necessary to perform the services of **Consultant** hereunder. No subconsultant of **Consultant** will be recognized by **City** as such; rather, all subconsultants are deemed to be employees of **Consultant**, and it agrees to be responsible for their performance. **Consultant** shall give its personal attention to the fulfillment of the provisions of this **Agreement** by all of its employees and subconsultants, if any, and shall keep the work under its control. If any employee or subconsultant of **Consultant** fails or refuses to carry out the provisions of this **Agreement** or appears to be incompetent or to act in a disorderly or improper manner, **Consultant** shall be discharged immediately from the work under this **Agreement** on demand of the **Project Manager**.

14. **Notices.**

All notices hereunder shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To **City**: *First Last Name*, Project Manager
Public Works Department
City of Davis
23 Russell Boulevard
Davis, California 95616-3896

To **Consultant**: *First Last Name*, Project Manager
Arch/Engr Consultants
Street Address
City, State ZIP

15. **Conflict of Interest.**

a. **Consultant** certifies that it has disclosed to **City** any actual, apparent or potential conflicts of interest that may exist or develop relative to the services to be provided in the Scope of Work and this **Agreement**.

b. **Consultant** agrees to advise **City** of any actual, apparent or potential conflicts of interest that may develop subsequent to executing this **Agreement**.

c. **Consultant** agrees to refrain from other engagements that may present an actual, apparent or potential conflict of interest with respect to this **Agreement**. **Consultant** may request, in writing, a waiver of these requirements from **City**. The request shall contain a disclosure and a description of the actual, apparent or potential conflict of interest. Approval of waiver requests shall require City Council action and amendment of the Consulting Services Agreement.

16. **Independent Contractor.**

It is expressly agreed that, in the performance of the services hereunder, **Consultant** shall at all times be deemed an independent contractor and not an agent or employee of **City**.

17. **Indemnity.**

a. **Consultant** hereby agrees to defend, indemnify, and hold harmless **City**, its officers, agents and employees of and from:

1. Any and all claims and demands which may be made against **City**, its officers, agents, or employees by reason of any injury to or death of any person or damage suffered or sustained by any person or corporation, including but not limited to, any employee, agent or subconsultant of **Consultant**, caused by any negligent act or omission of **Consultant** under this **Agreement** or of **Consultant's** employees or agents.

2. Any and all damage to or destruction of the property of **City**, its officers, agents or employees occupied or used by or in the care, custody or control of **Consultant**, or in proximity to the site of **Consultant's** work, caused by any negligent act or omission of **Consultant** under this **Agreement** or of **Consultant's** employees or agents.

b. **City**, hereby agrees to defend, indemnify and hold harmless **Consultant**, its officers, agents and employees of and from:

1. Any and all claims and demands which may be made against **Consultant**, its officers, agents, or employees by reason of any injury to or death of any person or damage suffered or sustained by any person or corporation, including but not limited to, any employee, agent or subconsultant of **City**, caused by any negligent act or omission of **City** under this **Agreement** or of **City's** employees or agents.

c. **City** agrees to timely notify **Consultant** of any such negligence claim and shall provide **Consultant** with project documentation necessary in order to allow **Consultant** to properly defend such a claim.

18. **Workers' Compensation.**

Consultant certifies that it is aware of the provisions of the Labor Code of the State of California, which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work of this **Agreement**.

19. **Insurance.**

Consultant, at its sole cost and expense, shall obtain and maintain in full force and effect from the date of execution of this **Agreement** the following described insurance coverage insuring not only **Consultant** and its subconsultants, if any, but also **City**, its officers,

agents and employees, with the exception of Workers' Compensation and Employer's Liability Insurance, and Professional Liability:

| | Policy | Coverage |
|---|---|--|
| (a) | Commercial General Liability, including Broad Form Contractual and Personal Injury | <u>Bodily Injury and Property Damage:</u> \$1,000,000 Each Person, Each Occurrence, <u>Bodily Injury and Property Damage:</u> \$2,000,000 Aggregate |
| (b) | Automobile Liability, including Owned (if any), Hired and Non-Owned Auto vehicles | <u>Bodily Injury:</u> \$100,000 Each Person \$300,000 Each Occurrence <u>Property Damage:</u> \$100,000 Each Occurrence |
| (c) | Worker's Compensation <i>(Note: Waiver of Subrogation is required for this project.)</i> | Statutory |
| (d) | Professional Liability, including Errors, Omissions, Malpractice (if applicable), Negligent Performance | <u>All Damages:</u> \$1,000,000 on a Claims-Made Annual Aggregate Basis |
| <i>(Insurance underwriter shall submit proof of insurance using the enclosed City forms.)</i> | | |

20. **Agreement Binding.**

The terms, covenants and conditions of this **Agreement** shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subconsultants of both parties.

21. **Waivers.**

The waiver by either party of any breach or violation of any term, covenant or condition of this **Agreement** or of any provisions, ordinance, or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this **Agreement** or of any applicable law or ordinance.

22. **Costs and Attorneys' Fees.**

The prevailing party in any action brought to enforce the terms of this **Agreement** or arising out of this **Agreement** may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other party.

23. **Nondiscrimination.**

No discrimination shall be made in the employment of persons under this **Agreement** because of the race, color, national origin, ancestry, religion, physical or mental handicap, sex, or sexual orientation of such persons. The contents of Attachment "C" are hereby incorporated and made a part of this **Agreement**.

24. **This Agreement** shall be deemed to include any provision required by law to be inserted herein, whether actually inserted or not.

25. **Agreement Contains All Understandings.**

This document represents the entire and integrated **Agreement** between **City** and **Consultant** and supersedes all prior negotiations, representations, or **Agreements**, either written or oral. This document may be amended only by written instrument, signed by both **City** and **Consultant**. All provisions of this **Agreement** are expressly made conditions. The **Agreement** shall be governed by the laws of the State of California.

In Witness Whereof, City and Consultant have executed this **Agreement** the day and year first above written.

City of Davis
A Municipal Corporation,
State of California

Consultant

Arch/Engr Consultants

James W. Antonen
City Manager

First Last Name
Title

Approved as to Form:

Harriet Steiner
City Attorney

Consultant Agreement
[Consultant Name]

Mace Ranch Neighborhood Park
CIP No. 8136

Attachment A
Scope of Work

Project Scope

To be determined.

Consultant Agreement
[Consultant]

Mace Ranch Neighborhood Park
CIP No. 8136

Attachment B-1
Fee Schedule

A. Compensation

For items listed in Attachment A, Scope of Work, the **City** shall compensate **Consultant** on a time and materials basis with a not-to-exceed amount of \$00,000 or *not-to-exceed lump sum amount of \$00,000 [use either situation]*.

B. Reimbursable Expenses

1. The hourly billing rate as indicated in Attachment B-2, Charge Out Rate, shall cover standard overhead and profit, including telephone charges, miscellaneous copying costs, first class postage and computer use. *These expense items shall not be reimbursable as separate expenses or fees.*
2. Other reimbursable expenses specific to the project are itemized below:
 - a. For round trips exceeding 75 miles, mileage exceeding 75 miles will be reimbursable at \$0.375; otherwise, mileage is included in overhead as part of the multiplier.
 - b. Express Mail.
 - c. Third Party Reprographic Services: Invoice plus 10%.
 - d. Other items as may be pre-approved by **City**.

C. Mark up

Mark up for subconsultants shall be limited to 10 percent.

D. Additional Services

Should the **City** desire that **Consultant** provide additional services, such services shall be authorized, in writing, by the **City**. Compensation for additional services shall be at the Attachment B-2, Charge Out Rate.

Consultant Agreement
[Consultant]

Mace Ranch Neighborhood Park
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Attachment B-2
Charge Out Rate

| <u>Classification</u> | <u>Hourly Rate</u> |
|-----------------------|--------------------|
| Outside Services | Cost + 10% |

Consultant Agreement

[Consultant Name]

Mace Ranch Neighborhood Park CIP No. 8136

Attachment C Fair Employment Practices Addendum

1. **In the performance of this contract/Agreement, the Consultant** will not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, sex*, age*, national origin, physical or mental handicap*, marital status, sexual orientation*, or place of birth. The **Consultant** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, ancestry, sex*, age*, national origin, physical or mental handicap*, marital status, sexual orientation, or place of birth. Such action shall include, but not be limited, to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The **Consultant** shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the **City** setting the provisions of this Fair Employment Practices section.

2. The **Consultant** will permit access to his records of employment, employment advertisement, application forms, and other pertinent data and records by the State Fair Employment Practices Commission, or any other agency of the State of California designated by the awarding authority, for the purposes of investigation to ascertain compliance with the Fair Employment Practices section of this contract/Agreement.

3. Remedies for Willful Violation:

(a) The **City** may determine a willful violation of the Fair Employment Practices provision to have occurred upon receipt of a final judgment having that effect from a court in an action to which **Consultant** was a part, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the **Consultant** has violated the Fair Employment Practices Act and has issued an order, under Labor Code Section 1426, which has become final, or obtained an injunction under Labor Code Section 1429.

*See Labor Code Section 1411-1432.5 and City Code, Chapter 10 for further details.

(b) For willful violation of this Fair Employment Practices provision, the **City** shall have the right to terminate this contract/Agreement either in whole or in part, and any loss or damage sustained by the **City** in securing the goods or services hereunder shall be borne and paid for by the **Consultant** and by his surety under the performance bond, if any, and the **City** may deduct from any money due or that thereafter may become due to the **Consultant**, the difference between the price named in the contract/Agreement and the actual cost thereof to the **City**.

Consultant Agreement

[Consultant Name]

Mace Ranch Neighborhood Park CIP No. 8136

Attachment D Recycle Paper Requirements

Definitions

Postconsumer Materials means only those paper products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid wastes for the purposes of collection, recycling and disposition.

Recovered Paper Materials means paper waste generated after the completion of a papermaking process, such as postconsumer materials, envelope cuttings, bindery trimmings, printing wrappers, obsolete inventories, and rejected unused stock. Recovered paper material, however, shall not include fibrous wastes generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls (mill broke), or fibrous byproducts of harvesting, extractive or woodcutting processes, or forest residues such as bark.

Minimum Content Standards

The following categories of paper must contain the minimum percentages of material listed under both "Recovered Material" and "Postconsumer Material." The "Postconsumer Material" percentage is included within the total "Recovered Material" percentage. Note: When utilizing a category of paper not listed below, the paper shall contain the highest percentage of recycled paper available.

| Paper Category | Minimum Percentage of Recovered Material | Minimum Percentage of Postconsumer Material |
|-------------------------------------|--|---|
| High Speed Xerographic | 50% | 10% |
| Bond Paper | 50% | 10% |
| Cover Paper | 50% | 10% |
| Computer Paper (Continuous Form) | -- | 100% |
| Envelopes | 50% | 10% |