



**City of Grass Valley
City Council
Agenda Action Sheet**

Council Meeting Date:

November 8, 2011

Date Prepared:

November 2, 2011

Prepared by:

Joe C. Heckel, Community Development Director

Thomas Last, Planning Director

Title:

Authorize agreements to fund the preparation of an Environmental Impact Report (EIR) and the costs to process the applications for the Idaho-Maryland Mine project.

Recommended Action:

Approve the following agreements: 1) a contract with the consultant firm Ascent Environmental to complete a Revised EIR; and 2) reimbursement agreement with the Idaho-Maryland Mine Corporation to cover all the costs necessary to process the applications.

Agenda:

Administrative

Background Information:

In April 2011, the City received a revised application package for the proposed Idaho-Maryland Mine project. After this submittal, the City determined the revised project would require a revised Draft EIR (REIR). In July of 2011, the applicant requested the City seek competitive bids for the REIR. The City mailed nine requests for proposals for this work and received three proposals. On October 12, 2011, a panel consisting of Councilmember Fouyer, Planning Commission Chairman Daniel Swartendruher, Joe Heckel, Tom Last, Trisha Tillotson, and Brian Foss from Nevada County, interviewed the three firms. The panel ranked Ascent Environmental as the top firm. The attached scope of work includes all the necessary tasks to complete a revised Draft EIR for the project. Ascent's proposed budget is \$499,625. Exhibit B to this agreement includes a payment schedule based on the completion of specific tasks. Also included is a reimbursement agreement with the Idaho-Maryland Mine Corporation. The reimbursement agreement includes the payment plan for this contract, the three related contracts approved by the Council on October 25, 2011, City staff, and legal assistance. The City will not authorize any of the consultants to proceed with work on this project until the applicant provides for the deposits required in the reimbursement agreement.

Funds Available: N/A

Account #: N/A

Reviewed by:

DL City Administrator

Action:

For your reference on the action taken by Council

Approved

Approved with Modifications

Denied

Other

Council or Departmental Goal/Objective: - N/A

Attachments:

1. Professional Service Agreement with Ascent Environmental
2. Reimbursement Agreement with the Idaho-Maryland Mine Corporation

Cc: Applicant

Agenda Item #

8.1

PROFESSIONAL SERVICES AGREEMENT
City of Grass Valley

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Grass Valley a California municipal corporation (“City”) and Ascent Environmental, Inc., a California Corporation (“Consultant”).

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: To prepare an Environmental Impact Report for the Idaho-Maryland Mine Project.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and professional ability of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 “Scope of Services”: Such professional services as are set forth in Consultant’s proposed scope of work attached hereto as **Exhibit A** and incorporated herein by this reference.
- 3.2 “Approved Fee Schedule”: Such compensation rates as are set forth in Consultant’s fee schedule and payment schedule to City attached hereto as **Exhibit B** and incorporated herein by this reference.
- 3.3 “Commencement Date”: _____.
- 3.4 “Expiration Date”: _____.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 18 (“Termination”) below.

5. CONSULTANT’S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City

shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of \$499,625 unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code Section 1090, and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. Gary Jakobs shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.
- 5.6 Consultant has represented to the City that key personnel will perform and coordinate the services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. If City and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.
- 5.7 Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.

- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a Lump Sum basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule.

7. PREVAILING WAGES

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

8. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

9. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

Under no circumstances shall Consultant look to the City as his employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned PERS retirement benefits, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation.

10. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

11. INDEMNIFICATION

- 11.1 The parties agree that City, its officers, agents, and employees should, as permitted by law, be protected from all loss, injury, damage, claim, lawsuit, cost, expense, to the extent actually caused by the negligent or reckless performance of Work under this Agreement or willful misconduct by the Consultant. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law per the language agreed to herein. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 11.2 Consultant shall indemnify, and hold harmless, City, its officers, agents, and employees from and against all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, or otherwise, and injury to any property to the extent actually caused by Consultant's negligence, recklessness or willful misconduct or other intentionally wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its material obligations contained in this Agreement, except to the extent such loss or damage as is caused by the active negligence or willful misconduct of the City or any Third Party. However, Consultant's shall have no duty to defend the City and its officers, agents, and employees with respect to a claim that the environmental analyses prepared under this Agreement does not satisfy the requirements of the California Environmental Quality Act.
- 11.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 11 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 11.4 The obligations of Consultant under this Section 11 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

- 11.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. City does not, and shall not; waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

12. INSURANCE

- 12.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 12.1.1 Commercial General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
- 12.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with Combined single limit of One Million Dollars (\$1,000,000) 12.1.3
- 12.1.3 Worker's Compensation insurance as required by the laws of the State of California.
- 12.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) per claim and Annual Aggregate.

If the insurance is on a Claims-Mace basis, the retroactive date shall be no later than the commencement of the work.

Coverage applicable to the work performed under this agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

The City and the Consultant recognize that the Hausrath Economics Group will operate under the terms of this agreement as a sole proprietor and such work will not involve the preparation of plans and/or specifications.