

**COUNTY OF CALAVERAS
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT made and entered by and between the County of Calaveras, a political subdivision of the State of California, whose principal place of business is 891 Mountain Ranch Road, Calaveras, California 95249 (hereinafter referred to as "County") and Aspen Street Architects, Inc., California Corporation, duly qualified to conduct business in the State of California, whose principal place of business is 4949 North Main Street, (Mailing: Post Office Box 370) Angels Camp, California 95222 (hereinafter referred to as "Consultant");

RECITALS

WHEREAS, County has determined that it is necessary to obtain a Consultant to assist the County with architectural services on an "as needed" basis for the Facilities Division of the County Administrative Office; and

WHEREAS, Consultant has represented to County that it is specially trained, experienced, expert, and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

WHEREAS, County has determined that the provision of these services provided by Consultant is in the public's best interest, and that these services are authorized by Government Code 31000;

NOW, THEREFORE, County and Consultant mutually agree as follows:

SECTION 1.

Scope of Services: Consultant agrees to furnish the personnel, services, and equipment necessary to assist the County with various professional architectural consulting services for the Facilities Division of the County Administrative Office. Services shall be performed at the request of the County Administrative Officer, or designee. Work may be authorized on an "as requested" basis as directed by the County Administrative Officer or pursuant to a written Work Order detailing project specific tasks to be completed.

For each project requiring a Work Order assignment, as determined by the County Administrative Officer, or designee, the County will issue a separate Work Order to Consultant for each work assignment identifying the scope, any required deliverables, including reports or other documents to be supplied in connection with the project, a specific date by which the work shall be completed and a not-to-exceed cost to complete the work. Consultant shall not commence work until receiving the written Work Order.

All other services shall be performed on a consulting "as needed" basis and shall be invoiced in accordance with **Section 3. - Compensation for Services.**

SECTION 2.

Term: This Agreement shall become effective upon final execution by both parties hereto and shall cover expire two (2) years from the date of execution. This Agreement may be extended for one (1) additional one (1) year term if mutually agreed to by the parties hereto in writing in accordance with **SECTION 4. - Changes to Agreement.**

SECTION 3.

Compensation for Services and Reimbursement of Expenses: For services provided herein, County agrees to pay Consultant monthly in arrears and within thirty (30) days following the County's receipt and approval of itemized invoice(s) identifying services rendered.

For the purposes hereof, the billing rates for services provided shall be in accordance with Exhibit "A", marked "Fee Schedule", incorporated herein and made by reference a part hereof. The total amount of this Agreement shall not exceed \$50,000.00, inclusive of expenses.

SECTION 4.

Changes to Agreement: This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

SECTION 5.

Consultant to County: It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Consultant shall act as Consultant only to County and shall not act as Consultant to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Consultant's responsibilities to County during term hereof.

SECTION 6.

Assignment and Delegation: Consultant is engaged by County for its unique qualifications and skills as well as those of its personnel. Consultant shall not delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

SECTION 7.

Subcontracting: Consultant shall not subcontract any portion of the services required of Consultant by this Agreement without the express written consent of the County Contract Manager. If any portion of the services required of Consultant is subcontracted, the sub consultant(s) shall maintain the same insurance as required of Consultant by this Agreement and Consultant shall be fully responsible to the County for all work undertaken by sub consultant(s).

SECTION 8.

Independent Consultant/Liability: Consultant is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Consultant exclusively assumes responsibility for acts of its employees, associates, and subConsultants, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Consultant shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Consultant or its employees.

Consultants Services shall be performed consistent with and limited to the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances. Consultants shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

SECTION 9.

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, Calaveras County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

SECTION 10.

Default, Termination, and Cancellation:

- A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within fifteen (15) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part upon seven (7) calendar day's written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Consultant, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract.

Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

SECTION 11.

Notice to Parties: All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF CALAVERAS
ADMINISTRATION
891 MOUNTAIN RANCH ROAD
SAN ANDREAS, CA 95249
ATTN: TIMOTHY LUTZ, COUNTY ADMINISTRATIVE OFFICER

With a Carbon Copy to:

COUNTY OF CALAVERAS
FACILITIES DIVISION
891 MOUNTAIN RANCH ROAD
SAN ANDREAS, CA 95249
ATTN: PATRICK MARTIN, FACILITIES MANAGER

Or to such other location as the County directs.

Notices to Consultant shall be addressed as follows:

ASPEN STREET ARCHITECTS, INC.
P.O. BOX 370
ANGELS CAMP, CA 95222
ATTN: ANDY FLIES, VICE PRESIDENT

Or to such other location as the Consultant directs.

SECTION 12.

Indemnity:

- A. To the fullest extent permitted by law, including but not limited to Civil Code 2782.8, the Consultant shall indemnify and hold harmless County, its elected representatives, officers, authorized agents, and employees from and against claims, demands, losses, defense costs (including reasonable attorney fees), expenses or liability o for bodily injury or property damage to the extent caused by:
 - 1. Any negligent, reckless, or willful act, error or omission by Consultant, its officers, agents, subconsultant(s)/contractor(s), or employees, in performing the services, responsibilities or duties required of Consultant by this Agreement; or the Consultants negligent acts in the performance of professional services under this agreement and those of his or her subconsultants or anyone for whom the consultant is legally liable.

2. Any willful, reckless, or negligent breach of any statutory, regulatory, contractual, or legal duty of any kind related, directly or indirectly, to the services, responsibilities or duties required of Consultant by this Agreement.
- B. Consultant acknowledges and agrees that he/she is an independent Consultant in the performance of this Agreement and is not and shall not be an employee of the County and will defend, indemnify and save harmless the County, its Officers, Agents and Employees from any and all claims or losses for damage from death and/or injury to persons or physical damage of properties resulting from any willful act, recklessness, or negligence of Consultant or its subconsultant(s)/contractor(s), and employees in the performance of the services under this Agreement, except for claims or losses due to the negligence, willful acts or breach of this Agreement by the County, its Officers, Agents or Employees.
- C. Notwithstanding any other provision of this Section, Consultant's responsibility to indemnify and defend County shall not exceed the limits imposed on recovery from design professionals under Civil Code 2782.8.

In providing any defense under this Section, Consultant shall use counsel reasonably acceptable to the County. The County shall not unreasonably withhold its consent.

SECTION 13.

Insurance:

- A. During the term of this Agreement, Consultant shall at all times maintain, at its expense commercial general liability insurance, Workers' Compensation and Employers' Liability insurance as required by the State of California, and automobile liability insurance.
- B. The comprehensive general liability insurance shall include broad form property damage insurance.
1. The limits of such insurance shall be no less than \$1,000,000 per occurrence; \$2,000,000 in aggregate for the commercial general liability insurance, \$1,000,000 for the Workers' Compensation/Employers' Liability insurance per accident for bodily injury or disease, (as required by the State of California, see Section 13), and \$1,000,000 combined single limit for each accident for the automobile liability insurance.
 2. The above-described policies shall remain in force through the life of this Agreement and shall be payable on a "per occurrence" basis, except for Consultant's professional liability policy, which shall be on a "per claim" basis.
 3. The County, its elected representatives, officers, agents, employees, and volunteers shall be named as additional insured on the commercial general and automobile liability insurance policies.

4. Retentions must be declared to and are subject to the approval of the County Risk Manager.
 5. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days' prior written notice, return receipt requested, has been given to the County Contract Manager.
 6. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-: VII, unless otherwise approved by the County Risk Manager.
 7. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Consultant's liability insurance policy.
- C. During the term of this Agreement, the Consultant shall at all times maintain, at its expense, professional errors and omission liability insurance in an amount not less than \$1,000,000 combined single limit (per accident), covering negligent acts, errors or omissions which may be committed by the Consultant in the performance of its services under this Agreement.
- D. Prior to commencing services pursuant to this Agreement, Consultant shall furnish the County Contract Manager with certificates of insurance reflecting coverage required by this Agreement. The certificates are to be signed by a person authorized by that insurer to bond coverage on its behalf. All certificates are to be received by, and are subject to the approval of, County Risk Manager before work commences. Consultant may use forms provided by the County Risk Manager or, as an alternative, may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.
- E. During the term of this Agreement, and upon request by the County Risk Manager, Consultant shall furnish the County Risk Manager with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf.

SECTION 14.

Public Records Act: Consultant is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Consultant to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

SECTION 15.

Interest of Public Official: No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Consultant under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

SECTION 16.

Interest of Consultant: Consultant covenants that Consultant presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed by Consultant.

SECTION 17.

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees.

Consultant attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement.

County represents that it is unaware of any financial or economic interest of any public officer or employee of Consultant relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

SECTION 18.

Ownership of Data: The Owner acknowledges the Consultants construction documents as instruments of professional service. Nevertheless, the plans and specifications prepared under this Agreement shall become the property of the Owner upon completion of the work and payment in full of all monies due to the Design Professional. The Owner shall not reuse or make any modification to the plans and specifications without the prior written authorization of the Consultant. The Owner agrees, to the fullest extent permitted by law, to indemnify and hold the consultants harmless from any claim, liability or costs (including reasonable attorneys' fees and defense costs) arising or allegedly arising out of any unauthorized reuse or modification of the construction documents by the Owner or any person or entity that, through a willful, reckless, or negligent act or omission of the Owner, acquires or obtains the plans and specifications from or through the Owner without the written authorization of the consultant.

Consultant shall furnish County all necessary copies of data including data stored in electronic format, needed to complete the review and approval process of the services and deliverables provided under this Agreement.

SECTION 19.

Taxpayer Identification Number (Form W-9): All independent Consultants or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

SECTION 20.

County Business License: It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of Calaveras County without possessing a County business license unless exempt under County Code Section 5.04.090.

SECTION 21.

Authorized Signatures: The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

SECTION 22.

Partial Invalidity: If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

SECTION 23.

Venue: Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in Calaveras County, California, and shall be resolved in accordance with the laws of the State of California.

SECTION 24.

No Third Party Beneficiaries: Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

SECTION 25.

Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

Exhibit "A"

**Aspen Street Architects, Inc.
Rate Schedule**

Hourly Rates for Professional Personnel

Principal/Architect	170.00	Civil Engineer	155.00
Senior Architect	170.00	Engineering Intern II	105.00
Architect IV	155.00	Engineering Intern I	100.00
Architect III	135.00		
Architect II	120.00	Certified Access Specialist (CASp)	150.00
Architect I	110.00	Senior Planner	170.00
Architect Intern II	105.00	Facilities Manager	140.00
Architect Intern I	100.00	Project Manager	125.00
Sr. Job Captain	95.00		
Project Designer	85.00	Construction Contract Administrator	95.00
Job Captain	85.00	Project Administrator	75.00
Senior Production	75.00		
Production	65.00		

Consultants Fees Under Contract:

Billed per consultant's invoice, plus 15% coordination fee.

Reimbursable Expenses Not Included in Contract:

Engineering Xeroxes (white 24" x 36")	\$ 4.00/each
Engineering Xeroxes (white 30" x 42")	\$ 6.00/each
Color Printing (8.5"x11")	\$ 1.00/page
Color Printing (11"x17")	\$ 2.00/page
Photocopies	\$ 0.15/each
Data Disc	\$ 2.00/each
Facsimile	\$ 0.50/page
Report Binding	\$ 3.50/each

Miscellaneous reimbursable charges, including but not limited to, photographs, outside printing, maps, renderings, postage and freight will be billed at actual cost plus 15%.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below, the latest of which shall be deemed the effective date of this Agreement.


-- COUNTY OF CALAVERAS --

By: 
Timothy Lutz
County Administrative Officer
"County"

Dated: 8/9/2018

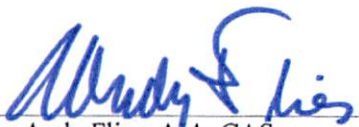
Approved As To Form:

Date: 8/6/18

By: 
Deputy County Counsel

-- CONSULTANT --

Aspen Street Architects, Inc.
A California Corporation

By: 
Andy Flies, AIA, CASp
Vice President
"Consultant"

Dated: 8/6/18