

Olivehurst Public Utility District



Agenda Item Staff Report

Meeting Date: May 16, 2019

Item description/summary:

Consider approving Professional Services Agreement with Planning Partners for preparation of CEQA documents related to annexation of the Industrial, Sports and Entertainment Zones for Water, Wastewater and Parks. In order to meet the infrastructure needs of certain areas of the southern Yuba County area, the District has been exploring and pursuing the opportunity to annex the Industrial, Sports, and Entertainment Zones currently in the District's Sphere of Influence. At the April Regular Board Meeting, Staff presented LAFCO application documents for Directors to review, and the Board instructed staff to move forward with the annexation process. As mentioned at the April Board meeting, the District is required to remain in compliance with CEQA Guidelines. Staff has been in contact with Environmental Planning Partners, Inc. in perform document review, provide responsible agency findings, and Notice of Determination preparation.

Fiscal Analysis:

Environmental Planning Partners estimates the compensation for time and materials to be \$10,970, but that it may be greater if additional tasks are requested. We have sent a letter to Yuba County requesting funding for the annexation costs including CEQA.

Employee Feedback

None

Sample Motion:

Move to approve the Professional Services Agreement with Planning Partners for preparation of CEQA documents related to annexation of the Industrial, Sports and Entertainment Zones for Water, Wastewater, and Parks

Prepared by:

John Tillotson, P.E., General Manager



PROFESSIONAL SERVICES AGREEMENT

This Agreement is entered into this 8th day of May, 2018, by and between Environmental Planning Partners, Inc. (Planning Partners), a California corporation, whose address is 2934 Gold Pan Court, Suite 3, Rancho Cordova, CA 95670, and Olivehurst Public Utility District, whose mailing address is P. O. Box 671, Olivehurst, CA 95961 (“CLIENT”) for professional and related services to be provided by Planning Partners to CLIENT for professional services as set forth in Exhibit A and subsequent exhibits.

SCOPE OF SERVICES

- a) Planning Partners shall provide to CLIENT the services set forth in Exhibit A, “Scope of Services,” attached hereto.
- b) Exhibit A includes a description of the scope of services to be provided, the time for completion, a budget, and the method of compensation for the services.

II FEES FOR SERVICES

For services provided by Planning Partners to CLIENT pursuant to this Agreement, CLIENT shall pay Planning Partners in accordance with the time and materials, not to exceed, amount set forth in Exhibit A, attached hereto.

III BILLING AND PAYMENT

Planning Partners shall submit a statement to CLIENT setting forth the amount due for services. The statement shall contain supporting documentation including, but not limited to, the billing classification, name, and hours billed. CLIENT shall pay Planning Partners within thirty (30) days after receipt of statement by the CLIENT. For balances due that remain unpaid after thirty (30) days, interest shall be charged on the amount of the unpaid balance at the rate of 1.5 percent per month.

IV INDEPENDENT CONTRACTOR

Planning Partners shall provide services to CLIENT as an independent contractor, not as an employee of CLIENT. Planning Partners shall not have or claim any right or responsibility arising from employee status.

V SUBCONTRACTORS

Planning Partners may use subcontractors to assist in providing professional services hereunder as identified in Exhibit A, attached hereto.

**VI
TERMINATION OF AGREEMENT**

- a) Unless otherwise terminated as provided herein, this Agreement shall terminate when (i) the services provided for in this Agreement have been completed or (ii) December 31, 2020, whichever occurs first.
- b) Notwithstanding any other provision of this Agreement, Planning Partners or CLIENT may terminate this Agreement by giving fifteen (15) days advance written notice thereof to the other party.
- c) Upon termination of this Agreement, Planning Partners shall have no further obligation to provide services to CLIENT pursuant to this Agreement. If the Agreement is terminated prior to completion of the services to be provided hereunder, Planning Partners shall render a final bill for services to CLIENT within thirty (30) days from the date of termination and CLIENT shall pay that bill in accordance with Section III.

**VII
COMMUNICATION OF ADVICE**

All reports, documents, or other communications prepared by Planning Partners shall be delivered in writing to an individual or individuals designated by CLIENT. Communications may also be made orally or in person when mutually convenient and mutually agreed upon by the parties.

**VIII
USE OF WORK PRODUCTS**

All reports, studies, plans, specifications, data, and other information developed, written, prepared, or delivered to CLIENT pursuant to this Agreement, shall be used by CLIENT only for the purpose and project subject to this Agreement. No use for other purposes or projects shall occur without the prior written consent of Planning Partners. CLIENT understands that such permission may entail an additional fee to be paid to Planning Partners. Planning Partners' consent to use shall not be unreasonably withheld.

**IX
INDEMNIFICATION**

CLIENT shall indemnify and hold harmless Planning Partners, its directors, officers, agents, and employees from and against any and all liability, claims, demands, damages, losses, and expenses, including but not limited to attorney's fees, resulting from negligent acts, errors, or omissions, whether active or passive, of CLIENT, its directors, officers, partners, agents, employees, and subcontractors in the use of, or reliance upon, reports, studies, plans, specifications, data, and other information developed, written, prepared, or delivered to CLIENT pursuant to this Agreement. Liability, claims, demands, damages, losses, or expenses resulting from the negligent acts, errors, or omissions, whether active or passive, of Planning Partners, its directors, officers, agents, employees, or by others are excluded from the CLIENT's obligations pursuant to this section. All reports, studies, plans, specifications, data, and other information developed, written, prepared, or delivered to CLIENT pursuant to this Agreement, shall be used by CLIENT only for the purpose and project subject to this Agreement. Planning Partners shall have no obligations with respect to this section for work products used for purposes or projects outside of this Agreement unless prior written consent for such use has been obtained from Planning Partners pursuant to Clause VIII above.

Planning Partners agrees to maintain in force professional liability insurance, providing coverage of at least \$1,000,000. CLIENT will be provided with evidence of insurance by Planning Partners.

**X
SUCCESSORS IN INTEREST**

This Agreement shall be binding on, and inure to the benefit of, each party's successors in interest, including their heirs, legatees, assignees, and legal representatives.

**XI
ASSIGNMENT**

Neither party shall transfer or assign its rights nor delegate its duties under this agreement, in whole or in part, without the written consent of the other party, which consent shall not be unreasonably withheld. Any attempt to effect an assignment, transfer, or delegation made without such written consent shall be null and void and confer no right on any third party.

**XII
WAIVER**

Any waiver at any time by either party of its rights with respect to a default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed a waiver with respect to any subsequent default or other matter.

**XIII
SEVERAL OBLIGATIONS**

Except where specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either party. Each party shall be individually and severally liable for its own obligations under this Agreement.

**XIV
AMENDMENT**

All changes or modifications to this Agreement shall be in writing and signed by both parties.

**XV
GOVERNING LAW**

This Agreement shall be construed and interpreted according to, and the rights of the parties shall be governed by, the laws of the State of California. Venue for any legal actions between the parties arising from this Agreement shall be in Sacramento County, California.

**XVI
ATTORNEY'S FEES**

If either party becomes involved in litigation arising out of this Agreement or the performance thereof, the prevailing party shall be entitled to reasonable attorney's fees, costs and expenses, in addition to any other relief to which that party may be entitled. This provision shall be construed as applicable to the entire Agreement.

**XVII
ENTIRE AGREEMENT**

This Agreement constitutes the complete and final expression of the agreement of the parties and is intended as a complete and exclusive statement of the terms of their agreements and supersedes all prior and contemporaneous offers, promises, representations, negotiations, discussions, communications, and agreements which may have been made in connection with the subject matter hereof.

**XVIII
SEVERABILITY**

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

**XIX
NOTICES**

- a) Any notice, demand, information, invoice, report, or item otherwise required, authorized, or provided for in this Agreement, unless otherwise specified herein, shall be deemed properly given if delivered in person or sent by United States Mail, First Class postage prepaid:

To Planning Partners: Environmental Planning Partners, Inc.
2934 Gold Pan Court, Suite 3
Rancho Cordova, CA 95670
Attn: Robert D. Klousner

To CLIENT: Olivehurst Public Utility District
P. O. Box 671
Olivehurst, CA 95961
Attn: John Tillotson

- (b) All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

1. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.
2. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office or mailbox.
3. Certified Mail. When mailed by certified mail, return receipt requested. Notice is effective upon receipt, if delivery is confirmed by a return receipt.
4. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.
5. Facsimile Transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective upon receipt, provided that: a) a duplicate copy of the notice is promptly given by first class mail or certified mail or by overnight delivery, or b) the receiving party delivers a written confirmation of receipt. Any notice given by fax shall be deemed received on the next business day if received after 5:00 P.M. (recipient's time) or on a non-business day.

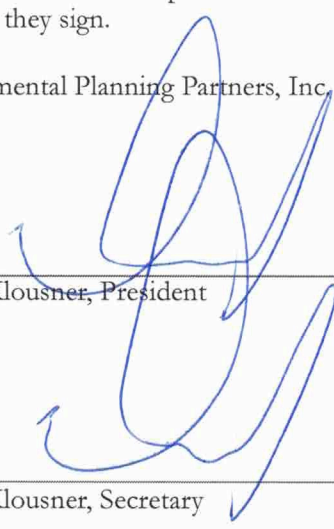
Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

**XX
SIGNATURE CLAUSE**

The signatories hereto represent that they are authorized to enter into this Agreement on behalf of the party for whom they sign.

Environmental Planning Partners, Inc.

CLIENT

By: 

Robert Klousner, President

By: _____
John Tillotson

By: _____
Robert Klousner, Secretary

Its: _____

Date: 5/8/19

Date: _____

EXHIBIT A

SCOPE OF WORK

Task 1 – Document Review. Planning Partners will coordinate with Yuba County and the Yuba Local Agency Formation Commission (LAFCO) to obtain electronic copies, in their original format if possible, of the following documents:

- Yuba County 2030 General Plan, including approval resolution(s)
- Yuba County 2030 General Plan EIR (including the DEIR, FEIR, Findings, Statements of Overriding Consideration, Notice of Determination, and certification resolution)
- An example of a tiered CEQA document prepared by Yuba County for a subsequent project that was consistent with General Plan and Zoning requirement
- Yuba County LAFCO Policies and Procedures
- LAFCO Approval Resolutions adopting a Sphere of Influence Update for the Olivehurst Public Utility District for Parks, Lighting, Drainage, Water and Wastewater Services
- Attachments 1 and 2 to the Staff Report for the OPUD Sphere of Influence Amendment prepared for the March 7, 2012 meeting of the Yuba LAFCO
- Any other pertinent documentation provided by the County and LAFCO

If necessary, we will meet with both agencies to discuss our proposed CEQA compliance strategy and obtain documents. Once documents have been obtained, we will review them to ensure the consistency of the proposed annexation with the County's General Plan land use map and applicable policies, and LAFCO's sphere of influence map and annexation policies.

Task 2 – Responsible Agency Findings. After we have completed the document review and determined that the proposed annexation project is consistent with County and LAFCO plans, procedures, and requirements, we will prepare Responsible Agency Findings consistent with Section 15096 of the State CEQA Guidelines, including a consistency review, findings regarding impacts and mitigation measures, and statements of overriding consideration as necessary. We assume that OPUD or LAFCO will provide us with an accurate map of the proposed annexation boundaries.

We will provide an electronic copy of the administrative draft Responsible Agency Findings to OPUD for review. We will additionally provide electronic copies to LAFCO and the County if requested by OPUD. Upon the completion of review by OPUD, and/or LAFCO or the County, we will revise the findings as necessary and submit them to OPUD for its use in approving the proposed annexation project. Typically, the approval action would consist of a direction to staff to submit an annexation application to LAFCO.

Task 3 – Notice of Determination. After approval by OPUD, Planning Partners will prepare a Notice of Determination for OPUD filing with the County Clerk, thereby establishing a 30-day statute of limitations for the filing of legal action challenging the adequacy and completeness of the Responsible Agency Findings document.

Task 4 – Meetings. Planning Partner's project manager, Robert Klousner, will attend one initiation meeting with OPUD staff to obtain background information from the District. If Yuba County and Yuba LAFCO have requested meetings pursuant to Task 1, we will attend

a single meeting of all parties, or sequential meetings on the same day with the other agencies. At the end of the process, we will attend one OPUD public hearing to answer any Board questions regarding the CEQA document or its environmental conclusions. Other meetings, such as those to discuss agency comments on administrative draft documents, are assumed to be by telephone.

Fee for Services

In exchange for completing the Scope of Work, Planning Partners will be compensated on a Time and Materials basis for a total of \$10,970. Should additional tasks be requested beyond those specified above, a revised or new agreement would be required.

Timing

Depending on data and project information availability, we will complete the administrative draft analysis within six (6) weeks after the receipt of requested documents. The time required to complete the Project may be extended should delays be incurred in the provision of required data or information from OPUD, Yuba County, Yuba LAFCO or other entity possessing information that is critical to completion of the project. We assume that the initiation meeting(s) discussed in Task 4 will be scheduled within 1 week of a notice to proceed, and that requested documents will also be provided within that week.

Invoices

Planning Partners will provide an invoice that lists hours worked, hourly rate, and indirect costs incurred on the project during the month. The invoice will also describe the work completed during the invoice period, and will list the total cost for the invoice; total prior invoiced amount; total budget remaining; and total unpaid invoice costs. Planning Partners will invoice for work completed on a monthly basis during periods when work has occurred.

Payment of Invoices

All undisputed items on an invoice are due and will be paid within 30 days of the date on the invoice. For balances due that remain unpaid after thirty (30) days, interest shall be charged on the amount of the unpaid balance at the rate of 1.5 percent per month. Payments should be made to:

Planning Partners
2934 Gold Pan Court, Ste 3
Rancho Cordova CA 95670