



# City of Biggs

## Agenda Item Staff Report For the Regular City Council Meeting: July 9, 2013

TO: Honorable Mayor and Members of the City Council

FROM: City Administrator

SUBJECT: PMC Agreement for Services – City Planner

### **Background**

For many years the City of Biggs has contracted with PMC for City Planning and Code Enforcement activities. The attached agreement proposes to extend those services at the same costs for Fiscal Year 2013-2014

### **Recommendation:**

Authorize the Mayor to sign the Agreement for Professional Consulting Services for Planning and Code enforcement activities with PMC for the 2013-2014 fiscal year.

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Mark Sorensen, City Administrator

**AGREEMENT FOR  
PROFESSIONAL CONSULTING SERVICES**

This Agreement is entered into July 1, 2013, between PMC ("CONSULTANT") and the City of Biggs ("CITY"), a municipal corporation.

**RECITALS**

This Agreement is predicated on the following facts:

1. CITY requires professional consultant services in conjunction with City of Biggs planning activities as well as with various projects which may arise from time to time.
2. CONSULTANT is qualified to provide these services and is willing to provide them according to the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

1. DUTIES OF CONSULTANT

A. CONSULTANT shall designate an individual who will provide on-site planning services and will be primarily responsible for providing the services outlined in Exhibit A with assistance as needed from other staff of CONSULTANT.

2. DUTIES OF CITY

A. CITY agrees to make available to CONSULTANT relevant public records including copies of reports, maps, and other file materials as may be needed for the CONSULTANT to perform his duties and to cooperate in the collection of information which CONSULTANT may request.

B. CITY shall promptly:

- (1) notify CONSULTANT of any defect in CONSULTANT's performance; and
- (2) review any documents submitted by CONSULTANT for CITY's comment.

C. CITY agrees that CITY shall not, during the term of this Agreement, nor for a period of one year after termination, solicit for employment, hire or retain, whether as an employee or independent contractor, any person who is or has been employed by Consultant. Should CITY desire to hire CONSULTANT's employee, CITY agrees to pay CONSULTANT equitable compensation for the loss of said employee.

3. CONSULTANT'S STATUS

CONSULTANT is an independent contractor and is solely responsible for its acts or omissions. CONSULTANT (including its agents and employees) is not CITY's agent, employee or representative for any purpose, except as specifically designated herein. Consultant will meet with City representatives at least once per year, scheduled at the City's discretion, to discuss performance of services per this Agreement. Meeting may be executive (closed to public) session.

4. CONFLICT OF INTEREST

CONSULTANT understands that its professional responsibility is solely to CITY. CONSULTANT represents that it presently has no interest and will not acquire any direct or indirect interest that would conflict with its performance under this Agreement. CONSULTANT shall not in the performance under this Agreement, employ a person having such an interest.

5. COMPENSATION

A. CITY agrees to pay CONSULTANT for all services described in Exhibit A, performed under this Agreement and for performance under any project which has been approved in writing by the CITY. Total compensation for services paid for out of CITY funds shall not exceed \$30,000 for FY 2013-2014, unless otherwise authorized by an amendment to this Agreement, signed by both parties. It is understood and agreed that certain projects may be paid for by a third party ("pass through funds") and will not subtract from the not-to-exceed amount contained herein.

B. CONSULTANT may invoice CITY monthly for work done in the preceding month. The invoice shall generally describe services rendered and fees charged in reasonable detail. CITY shall pay CONSULTANT within 30 days of receipt of the invoice.

C. CONSULTANT agrees to testify at CITY's request if litigation is brought against CITY in connection with CONSULTANT's work. Unless the action is brought by CONSULTANT or is based upon CONSULTANT's negligence, CITY will compensate CONSULTANT for the testimony at CONSULTANT's standard hourly rate.

6. TIME OF PERFORMANCE

CONSULTANT shall begin performance of its services upon signing of this Agreement and delivery of insurance certificates to the City. Services shall continue until the project is completed as agreed unless terminated by the City Administrator/Finance Director, with the concurrence of the City Council.

7. TERMINATION

Either party may terminate this Agreement by giving 30 days' written notice to the other party. Upon termination, CONSULTANT shall give CITY all work done toward completion of its services. CITY shall pay CONSULTANT for work delivered to CITY under the terms of this Agreement.

8. OWNERSHIP OF WORK

All documents furnished to CONSULTANT by CITY and all reports and supportive data prepared by CONSULTANT under this Agreement are CITY's property and shall be given to CITY at the completion of CONSULTANT's services. Any reuse of such reports or material is done at the sole risk of the CITY. Computer models used in the preparation of the study shall remain the property of the CONSULTANT.

9. LITIGATION

If either party brings an action to enforce this Agreement, the prevailing party is entitled to reasonable attorneys' fees and costs.

10. ASSIGNMENT; SUBCONTRACTS

CONSULTANT's services are considered unique and personal. CONSULTANT will not assign or transfer its interest or obligation under this Agreement without CITY's written consent. CONSULTANT shall not subcontract its duties under this Agreement without CITY's written consent.

11. INSURANCE

Without in any way limiting CONSULTANT's liability pursuant to the indemnification described below, CONSULTANT shall maintain, during the term of this contract, at least the following insurance:

Coverage	Minimum Limits
<i>General Liability</i> Comprehensive General Liability, including: Premises and Operations Contractual Liability Personal Injury Liability	\$1,000,000 Combined Single Limit Per Occurrence, and Aggregate
<i>Automobile Liability</i> Comprehensive Automobile Liability, including: Non-Owned and Hired Autos	\$1,000,000 Combined Single Limit Per Occurrence
<i>Workers' Compensation and Employer's Liability</i> Workers' Compensation Insurance Employer's Liability	Statutory \$1,000,000
<i>Professional Liability</i> Professional Liability Insurance	\$1,000,000 Per Claim

CONSULTANT shall provide CITY with Certificate of Insurance evidencing each of the above coverages. Each such Certificate (excepting that for Workers' Compensation and Professional Liability Coverage) shall indicate that City is an additional insured; that the coverage afforded is primary to any other coverages which may be available to CITY in the event of loss; and that CITY will be provided with thirty (30) days' prior notice of cancellation in coverage, unless cancelled for nonpayment of premium, then ten (10) days prior notice will be given to CITY.

12. INDEMNIFICATION

CONSULTANT shall defend, indemnify, and hold CITY harmless from damages, costs or expenses that may arise from damage to property or injury to persons to the extent caused by CONSULTANT's negligent act, error, or omission.

CITY shall defend, indemnify, and hold CONSULTANT harmless from damages, costs or expenses that may arise from damage to property or injury to persons to the extent caused by CITY's negligent act, error, or omission.

13. EQUAL EMPLOYMENT OPPORTUNITY

CONSULTANT is an Equal Opportunity Employer and agrees to comply with applicable regulations governing equal employment opportunity.

14. NOTICES

Any notice given under this Agreement shall be in writing and deemed given when personally delivered or deposited in the mail (certified or registered) addressed to the parties as follows:

CITY

City of Biggs  
465 C. Street  
Biggs, CA 95917  
Attention: Roger Frith

CONSULTANT

PMC  
2729 Prospect Park Drive, Suite 220  
Rancho Cordova, CA 95670  
Attention: Philip O. Carter

15. 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.

16. MODIFICATIONS

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

17. SEVERABILITY

If any term of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in effect.

18. ENTIRE AGREEMENT

This Agreement sets forth the entire understanding between the parties. Changes or amendments shall be made in writing and signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date above written.

CITY:  
City of Biggs

By \_\_\_\_\_  
Roger Frith  
Mayor

CONSULTANT:  
PMC

By  \_\_\_\_\_  
Philip O. Carter  
President

**PROFESSIONAL CONSULTING SERVICES  
TO THE CITY OF BIGGS  
FY 2013-2014**

**EXHIBIT A**

PMC (Consultant) will provide planning consulting services to the City of Biggs (City) on an on-going basis as requested by the City and as approved for the current budget year (FY 2013-2014). Consultant will provide these services in an amount not to exceed \$30,000 dollars as outlined in more detail below.

City shall compensate Consultant on a time and materials basis at the hourly rates below, or as applicable, in accordance with the City-approved budget for specific projects assigned to Consultant.

**Hourly Rates**

Senior Planner                      \$85/hr.

Associate/Assistant Planner   \$70/hr.

*\*\*Additional staff and hourly rates for specific projects may be used as authorized by the City*

**Additional Services**

Both parties agree that certain services/projects will be requested by City that will not be paid for by City funds, but by outside parties ("pass through funds"). The approved budgets for such projects shall not subtract from the not-to-exceed amount set for FY 2013-2014. Charges for such "pass through funds" shall be shown on monthly invoices separate from billings for City-funded services.

**Carryover of Code Enforcement Services from FY 2010-2011**

At the direction of the City Administrator, Consultant may continue to provide Code Enforcement Services under this Contract in accordance with Consultant's proposal dated January 14, 2011, incorporated herein by reference.