

## SERVICES AGREEMENT

THIS AGREEMENT is made on March 28, 2023, by and between the CITY OF PLACERVILLE ("City"), and Cal.net ("Consultant").

WITNESSETH:

WHEREAS, the City desires to enter into this Agreement for services with Consultant for Voice Over Internet Protocol (VOIP) Phone Service for City Hall, Town Hall, and Water Reclamation Facility (Project);

WHEREAS, the Consultant presented a proposal for such services to the City, dated March 17, 2023, (attached hereto as **Exhibit A**) and is duly licensed, qualified and experienced to perform those services;

NOW, THEREFORE, the parties hereto mutually agree as follows:

### 1. SCOPE OF SERVICES:

A. Consultant shall do all work, attend all meetings, produce all reports and carry out all activities necessary to completion of the services described in **Exhibit A**.

B. Consultant enters into this Agreement as an independent contractor and not as an employee of the City. The Consultant shall have no power or authority by this Agreement to bind the City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Consultant are employees, agents, contractors or subcontractors of the Consultant and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Consultant by any such employees, agents, contractors or subcontractors, or any other person resulting from performance of this Agreement.

C. The Consultant agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Agreement is based on such independent investigation and research.

### 2. TERM:

A. The services of Consultant are to commence upon full execution of this Agreement, and shall be undertaken and completed within 90 days.

B. Consultant's failure to complete work in within 90 days may result in delayed compensation as described in Section 3.

C. The City Manager or his or her designee may, by written instrument signed by the Parties, extend the term of this Agreement in the manner provided in Section 5, provided that the extension does not require the payment of compensation in excess of the maximum compensation set forth in Section 3, Compensation.

D. The City Manager may approve change orders up to 10% of the approved contract amount.

### **3. COMPENSATION:**

A. The Consultant shall be paid for the actual fees and costs of services, but in no event shall total compensation exceed the following amounts for each specified project without City's prior written approval.:

Equipment/Material: Eight Thousand Five Hundred Ninety-Nine dollars and thirty eight cents (\$8,599.38)

Configuration/Install: Seven Thousand Six Hundred Sixty dollars and forty five cents (7,660.45)

Consultant's fees shall be as specified in the Schedule of Fees, which is attached hereto and incorporated herein as **Exhibit A**.

B. Consultant shall be paid 50% of the total cost of Equipment/Material and Configuration/Install upon execution of this contract. Total said amount being Sixteen Thousand Two Hundred Fifty Nine dollars and eighty three cents (\$16,259.83). Amount to be paid at execution of this contract shall be Eight Thousand One Hundred Twenty Nine dollars and ninety two cents (\$8,129.92). Said amount shall be paid upon submittal of an invoice showing the 50% amount to be paid. Consultant shall furnish City with invoices for all expenses as well as for all materials authorized by this Agreement. If Consultant's performance is not completed satisfactorily within the term of this agreement, payments may be delayed or denied, unless the Consultant's failure to perform is a documented result of the City's failure to meet the obligations of the agreement.

The remaining portion of the compensation shall be paid upon satisfactory activation of the VOIP Phone System as determined by the City.

C. If the work is halted at the request of the City, compensation shall be based upon the proportion that the work performed bears to the total work required by this Agreement, subject to Section 4.

### **4. TERMINATION:**

A. This Agreement may be terminated by either party, provided that the other party is given not less than thirty (30) calendar days' written notice (delivered by registered mail) of intent to terminate.

B. The City may temporarily suspend this Agreement, at no additional cost to City, provided that the Consultant is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, Consultant shall immediately suspend its activities under this Agreement.

C. Notwithstanding any provisions of this Agreement, Consultant shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by Consultant, and the City may withhold any payments due to Consultant until such time as the exact amount of damages, if any, due the City from Consultant is determined.

D. In the event of termination, the Consultant shall be compensated as provided for in this Agreement, except as provided in Section 4C. Upon termination, the City shall be entitled to all work, including but not limited to, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date in accordance with Section 7 hereof.

### **5. AMENDMENTS, CHANGES OR MODIFICATIONS:**

Amendments, changes, or modifications in the terms of this Agreement may be made at any time by mutual written agreement between the parties hereto and shall be signed by the persons authorized to bind the parties hereto.

### **6. EXTENSIONS OF TIME TO PERFORM:**

A. *Request for Extension.* Consultant may, for good cause, request extensions of time to perform the services required hereunder. The City may consider such requests but is not obligated to grant an extension or to grant an extension for as long as Consultant requests. Any extension shall be a written amendment to Section 2 of this Agreement. Any extension shall be authorized by the City before performance of those tasks for which the extension is sought are due under this Agreement. .

B. *Delay.* The Consultant shall at all times employ such efforts to perform under this Agreement within the time limits fixed herein. If the Consultant refuses or fails to do so, with such diligence as will ensure the completion within the time specified in the Agreement, or any extension thereof, or fails to perform within such time, City may exercise the termination provisions set forth in this Agreement.

C. *Excusable Delay.* Excusable delays shall be delays in the controlling operation of the Consultant's work due to strikes, lockouts by others, fire, earthquake, unusual delay in transportation, unavoidable casualties, adverse weather conditions which could not have been reasonably anticipated, epidemic or pandemic, or any other act(s) of God beyond the Consultant's control, or by delay authorized by the City, or by any cause which City shall decide to justify the delay. The time of completion shall be extended for such reasonable time as City may decide. The Consultant's ability to obtain an extension of time for an excusable delay is expressly subject to Consultant's giving written notice within fifteen (15) days as set forth below following the date the Consultant knew or should have known of the delay. Such notice shall include all of the following and be made in the following manner in order to be valid:

1. written documentation as to the asserted cause of the delay, including identification of parties (individuals, private entities or public entities) asserted to be responsible, with such parties' contact information and an explanation as to why such party is asserted to be causing a delay, and any written evidence of the delay asserted to be caused by such party;

2. a detailed description of mitigation efforts undertaken by the Consultant, or reasons why such mitigation efforts are not practical;

3. an estimate as to the anticipated length of delay and monetary impact caused by the delay in dollars; and

4. if the asserted cause for delay involves government orders, directives or legal proceedings, a copy of all applicable orders and identification by court case number of any such legal proceeding with a general description as to why such orders or legal proceedings are asserted to be causing a delay.

D. *Compensation.* Under no circumstances shall the approval of an extension for any reason described in this Section entitle the Contractor to additional compensation from the City unless expressly provided for in the approval of the extension.

## **7. PROPERTY OF CITY:**

A. It is mutually agreed that all materials prepared by the Consultant under this Agreement shall become the property of the City, and the Consultant shall have no property right therein whatsoever. Immediately upon termination, the City shall be entitled to, and the Consultant shall deliver to the City, all data, drawings, specifications, reports, estimates, summaries and other such materials as may have been prepared or accumulated to date by the Consultant in performing this Agreement which is not Consultant's privileged information, as defined by law, or Consultant's personnel information, along with all other property belonging exclusively to the City which is in the Consultant's possession.

B. Additionally, it is agreed that the parties intend this to be a contract for services and each considers the products and results of the services to be rendered by Consultant hereunder (the "Work") to be a work made for hire. Consultant acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of the City.

## **8. COMPLIANCE WITH ALL LAWS:**

A. Consultant shall comply with all applicable laws, ordinances, and codes of federal, state and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Agreement. It shall be City's responsibility to obtain all rights of way and easements to enable Consultant to perform its services hereunder. Consultant shall assist City in providing the same.

B. Consultant warrants to the City that it is licensed by all applicable governmental bodies to perform this Agreement and will remain so licensed throughout the progress of the Work, and that it has, and will have, throughout the progress of the Work, the necessary experience, skill and financial resources to enable it to perform this Agreement.

## **9. WARRANTIES AND RESPONSIBILITIES - CONSULTANT:**

A. Consultant agrees and represents that it is qualified to properly provide the services set forth in **Exhibit A** in a manner which is consistent with the generally accepted standards of Consultant's profession.

B. Consultant agrees and represents that the work performed under this Agreement shall be in accordance with applicable federal, State and local law in accordance with Section 17A hereof.

C. Consultant shall designate a project manager who at all times shall represent the Consultant before the City on all matters relating to this Agreement. The project manager shall continue in such capacity unless and until he or she is removed at the request of the City, is no longer employed by Consultant, or is replaced with the written approval of the City, which approval shall not be unreasonably withheld.

D. Consultant shall provide corrective services without charge to the City for services which fail to meet the above professional and legal standards and which are reported to Consultant in writing within sixty (60) days of discovery. Should Consultant fail or refuse to perform promptly its obligations, the City may render or undertake performance thereof and the Consultant shall be liable for any expenses thereby incurred.

## **10. SUBCONTRACTING:**

None of the services covered by this Agreement shall be subcontracted without the prior written consent of the City, which will not be unreasonably withheld. Consultant shall be as fully responsible to the City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Consultant.

## **11. ASSIGNABILITY:**

Consultant shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City which will not be unreasonably withheld. However, claims for money due or to become due Consultant from the City under this Agreement may be assigned to a financial institution, or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the City.

## **12. INTEREST IN AGREEMENT:**

Consultant covenants that neither it, nor any of its employees, agents, contractors, or subcontractors has any interest, nor shall they acquire any interest, direct or indirect, in the subject of this Agreement, nor any other interest which would conflict in any manner or degree with the performance of its services hereunder. Consultant shall make all disclosures required by the City's conflict of interest code in accordance with the category designated by the City, unless the City Manager determines in writing that Consultant's duties are more limited in scope than is warranted by the category designated by the City code and that a narrower disclosure category should apply. Consultant also agrees to make disclosure in compliance with the City conflict of interest code if, at any time after the execution of this Agreement, City determines and notifies Consultant in writing that

Consultant's duties under this Agreement warrant greater disclosure by Consultant than was originally contemplated. Consultant shall make disclosures in the time, place and manner set forth in the conflict of interest code and as directed by the City.

**13. MATERIALS CONFIDENTIAL:**

All of the materials prepared or assembled by Consultant pursuant to performance of this Agreement are confidential and Consultant agrees that they shall not be made available to any individual or organization without the prior written approval of the City, except by court order.

#### **14. LIABILITY OF CONSULTANT-NEGLIGENCE:**

Consultant shall be responsible for performing the work under this Agreement in a manner which is consistent with the generally accepted standards of the Consultant's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome and shall not be charged with the responsibility of preventing risk to Consultant or its employees, agents, contractors or subcontractors.

#### **15. INDEMNITY AND LITIGATION COSTS:**

Consultant shall indemnify, defend, and hold harmless the City, its officers, officials, agents, and employees against all claims, damages, demands, liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees, arising from Consultant's negligent acts or negligent failure to act, errors, omissions or willful misconduct incident to the performance of this Agreement except such loss or damage caused by the active negligence, sole negligence, or willful misconduct of the City. The provisions of this paragraph shall survive termination or suspension of this Agreement and no other provision of this Agreement or any attachment thereto shall reduce the indemnification obligations imposed under this Section.

#### **16. CONSULTANT TO PROVIDE INSURANCE:**

A. Consultant shall not commence any work before obtaining and shall maintain in force at all times during the duration and performance of this Agreement, the policies of insurance specified in this Section. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A VII (an NR rating is acceptable for Worker's Compensation insurance written with the State Compensation Insurance Fund of California).

B. Prior to execution of this Agreement and prior to commencement of any work, the Consultant shall furnish the City with certificates of insurance and copies of endorsements providing evidence of coverage for all policies required by the Agreement. The Consultant and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the Agreement not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by Consultant and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this Agreement. The failure of Consultant or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this Agreement. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant.

##### **1. Commercial General Liability Insurance.**

a. Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than three million dollars (\$3,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. Consultant's general liability policies shall be primary and shall not seek contribution from the City's coverage, and be endorsed using Insurance Services Office form CG 20 10 (or equivalent) to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policies.

b. Any failure to comply with reporting provisions of the policies by Consultant shall not affect coverage provided the City.

c. Coverage shall state that Consultant insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

d. Coverage shall contain a waiver of subrogation in favor of the City.

2. *Business Automobile Liability.* Consultant shall provide auto liability coverage for owned, non-owned, and hired autos using ISO Business Auto Coverage form CA 00 01 (or equivalent) with a limit of no less than two million dollars (\$2,000,000) per accident.

3. *Workers' Compensation and Employers' Liability.* Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance with limits of at least one million dollars (\$1,000,000). Consultant shall submit to City, along with the certificate of insurance, a waiver of subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

4. All Coverages.

a. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

b. All self-insurance, self-insured retentions, and deductibles must be declared and approved by the City.

c. Evidence of Insurance - Prior to commencement of work, the Consultant shall furnish the City with certificates, additional insured endorsements, and waivers of subrogation evidencing compliance with the insurance requirements above. The Consultant must agree to provide complete, certified copies of all required insurance policies if requested by the City.

d. Acceptability of Insurers - Insurance shall be placed with insurers admitted in the State of California and with an A.M. Best rating of A- VII or higher.

e. Subcontractors and Consultants - A category of risk and the applicable insurance requirements will be determined on a "per subcontractor" or "per consultant" basis, considering the particular work to be done by the subcontractor or consultant and the interrelationship of that work to other work being conducted by the Consultant.

5. No other provision of this Agreement or any attachment thereto shall reduce the insurance obligations imposed under this Section.

C. In addition to any other remedy the City may have, if Consultant fails to maintain the insurance coverage as required in this Section, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due Consultant under this Agreement.

D. No policy required by this Agreement shall be suspended, cancelled, terminated by either party, or reduced in coverage or in limits unless Consultant has provided thirty (30) days prior written notice by certified mail, return receipt requested, to the City.

E. Any deductibles or self-insured retentions in excess of \$10,000 must be declared to, and approved by, the City.

F. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant under the Agreement.

**17. NOTICE:**

All notices that are required to be given by one party to the other under this Agreement shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:

City:  
M. Cleve Morris  
City Manager  
3101 Center Street  
Placerville, CA 95667

Consultant:  
Steve Souza  
Corporate Development  
4101 Wild Chaparral Dr.  
Shingle Springs, CA 95682

## 18. MISCELLANEOUS PROVISIONS:

A. All exhibits to this Agreement are incorporated into this Agreement as though they are fully set forth herein and shall have the same force and effect as this Agreement.

B. In the event of an internal conflict between the provisions of this Agreement, more specific terms shall govern over less specific terms. In the event of a conflict between the provisions of this Agreement and its exhibits, the provisions contained in this Agreement shall govern over conflicting provisions of its exhibits. In the event of a conflict between the provisions of this Agreement and the City's RFP/RFQ, the provisions contained in this Agreement shall govern over conflicting provisions of the RFP/RFQ. In the event of a conflict between the provisions of this Agreement and the Contractor's insurance documents, the provisions of the insurance documents shall govern over this Agreement.

C. Consultant shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, county and municipal laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this Agreement or the materials used or which in any way affect the conduct of the work.

D. Consultant shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship, or sexual orientation.

E. Consultant shall maintain and make available for inspection by the City and its auditors accurate records of all of its costs, disbursements and receipts with respect to any work under this Agreement. Such inspections may be made during regular office hours at any time until six (6) months after the final payments under this Agreement are made to the Consultant.

F. This Agreement and its exhibits constitute the entire agreement between the parties relative to the services specified herein and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Agreement. There are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Agreement, except those contained in or referred to in the writing.

G. This Agreement shall be interpreted and governed by the laws of the State of California.

H. Any action arising out of this Agreement shall be brought and maintained in El Dorado County California, regardless of where else venue may lie.

I. In any action brought by either party to enforce the terms of this Agreement, each party shall bear responsibility for its attorney's fees and all costs regardless of whether one party is determined to be the prevailing party.

CITY OF PLACERVILLE

By: M. Cleve Morris  
M. Cleve Morris, City Manager

ATTEST:

By: Regina O'Connell  
Regina O'Connell, City Clerk

Cal.net

By: Mark Herr  
Mark Herr, V.P. Corporate Development EXHIBIT A

Exhibit A

Consultant Proposal/Scope of Work