



PROFESSIONAL SERVICES AGREEMENT FOR ON-CALL PLANNING SERVICES

(City of Angels / Augustine Planning Associates)

1. IDENTIFICATION

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Angels, a California municipal corporation (“City”), and Augustine Planning Associates, Inc. a Corporation (“Consultant”).

2. RECITALS

- 2.1. City has determined that it requires the following professional services from a consultant: **On-Call Planning Services**
- 2.2. Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise 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.
- 2.3. Consultant represents that it has no known relationships with third parties, City Council members, or employees of City which would (1) present a conflict of interest with the rendering of services under this Agreement under Government Code Section 1090, the Political Reform Act (Government Code Section 81000 *et seq.*), or other applicable law, (2) prevent Consultant from performing the terms of this Agreement, or (3) present a significant opportunity for the disclosure of confidential information.

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 **June 29, 2023** proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2. “Agreement Administrator”: The Agreement Administrator for this project is City Administrator. The Agreement Administrator shall be the principal point of contact at

the City for this project. All services under this Agreement shall be performed at the request of the Agreement Administrator. The Agreement Administrator will establish the timetable for completion of services and any interim milestones. City reserves the right to change this designation upon written notice to Consultant “Approved Fee Schedule”: Consultant’s compensation rates are set forth in the fee schedule attached hereto as Exhibit B and incorporated herein by this reference. This fee schedule shall remain in effect for the duration of this Agreement unless modified in writing by mutual agreement of the parties.

- 3.3. “Maximum Amount”: The highest total compensation and costs payable to Consultant by City under this Agreement. The Maximum Amount under this Agreement is Ninety Thousand Dollars (\$ 90,000) per fiscal year unless amended by Council per City needs.
- 3.4. “Commencement Date”: July 1, 2023.
- 3.5. “Termination Date”: June 30, 2026.
- 3.6. “Extended”: Two-year extension period to June 30, 2028.

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 Termination Date unless extended by written agreement of the parties or terminated earlier under Section 16 (“Termination”) below. Consultant may request extensions of time to perform the services required hereunder. Such extensions shall be effective if authorized in advance by City in writing and incorporated in written amendments to this Agreement.

5. CONSULTANT’S DUTIES

- 5.1. **Services.** 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.
- 5.2. **Coordination with City.** In performing services under this Agreement, Consultant shall coordinate all contact with City through its Agreement Administrator.
- 5.3. **Budgetary Notification.** Consultant shall notify the Agreement Administrator, in writing, when fees and expenses incurred under this Agreement have reached eighty percent (80%) of the Maximum Amount. Consultant shall concurrently inform the Agreement Administrator, in writing, of Consultant’s estimate of total expenditures required to complete its current assignments before proceeding, when the remaining

work on such assignments would exceed the Maximum Amount.

- 5.4. **Business License.** Consultant shall obtain and maintain in force a City business license for the duration of this Agreement.
- 5.5. **Professional Standards.** Consultant shall perform all work to the 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 this Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code § 1090 and the Political Reform Act (Government Code § 81000 et seq.).
- 5.6. **Avoid Conflicts.** 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 such work would present a conflict interfering with performance under this Agreement. However, City may consent in writing to Consultant's performance of such work.
- 5.7. **Appropriate Personnel.** Consultant 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. City Administrator 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.
- 5.8. **Substitution of Personnel.** Any persons named in the proposal or Scope of Services constitutes a promise to the City that those persons will perform and coordinate their respective 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.
- 5.9. **Permits and Approvals.** Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.
- 5.10. **Notification of Organizational Changes.** Consultant shall notify the Agreement Administrator, in writing, of any change in name, ownership or control of Consultant's firm or of any subcontractor. Change of ownership or control of Consultant's firm may require an amendment to this Agreement.
- 5.11. **Records.** Consultant shall maintain any and all ledgers, books of account, invoices,

vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under this Agreement.

6. SUBCONTRACTING

- 6.1. **General Prohibition.** This Agreement covers professional services of a specific and unique nature. Except as otherwise provided herein, Consultant shall not assign or transfer its interest in this Agreement or subcontract any services to be performed without amending this Agreement.
- 6.2. **Consultant Responsible.** Consultant shall be responsible to City for all services to be performed under this Agreement.
- 6.3. **Identification in Fee Schedule.** All subcontractors shall be specifically listed and their billing rates identified in the Approved Fee Schedule, Exhibit B. Any changes must be approved by the Agreement Administrator in writing as an amendment to this Agreement.
- 6.4. **Compensation for Subcontractors.** City shall pay Consultant for work performed by its subcontractors, if any, only at Consultant's actual cost plus an approved mark-up as set forth in the Approved Fee Schedule, Exhibit B. Consultant shall be liable and accountable for any and all payments, compensation, and federal and state taxes to all subcontractors performing services under this Agreement. City shall not be liable for any payment, compensation, or federal and state taxes for any subcontractors.

7. COMPENSATION

- 7.1. **General.** City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Fee Schedule in full satisfaction for such services. Compensation shall not exceed the Maximum Amount. Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.
- 7.2. **Invoices.** Consultant shall submit to City an invoice, on a monthly basis or as otherwise agreed to by the Agreement Administrator, for services performed pursuant to this Agreement. Each invoice shall identify the Maximum Amount, the services rendered during the billing period, the amount due for the invoice, and the total amount previously invoiced. All labor charges shall be itemized by employee name and classification/position with the firm, the corresponding hourly rate, the hours worked,

a description of each labor charge, and the total amount due for labor charges.

- 7.3. **Taxes.** City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law. Consultant shall be solely responsible for calculating, withholding, and paying all taxes.
- 7.4. **Disputes.** The parties agree to meet and confer at mutually agreeable times to resolve any disputed amounts contained in an invoice submitted by Consultant.
- 7.5. **Additional Work.** Consultant shall not be reimbursed for any expenses incurred for work performed outside the Scope of Services unless prior written approval is given by the City through a fully executed written amendment. Consultant shall not undertake any such work without prior written approval of the City.
- 7.6. **City Satisfaction as Precondition to Payment.** Notwithstanding any other terms of this Agreement, no payments shall be made to Consultant until City is satisfied that the services are satisfactory.
- 7.7. **Right to Withhold Payments.** If Consultant fails to provide a deposit or promptly satisfy an indemnity obligation described in Section 11, City shall have the right to withhold payments under this Agreement to offset that amount.

8. 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. This Agreement is subject to Prevailing Wage Laws, for all work performed under this Agreement for which the payment of prevailing wage is required by those laws. 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.

9. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material, and all electronic files, including computer-aided design files, developed by Consultant in the performance of this Agreement (such written material and electronic files are collectively known as “written products”) shall be and remain the property of City without restriction or limitation upon its use or dissemination by City except as provided by law. 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.

10. RELATIONSHIP OF PARTIES

- 10.1. **General.** Consultant is, and shall at all times remain as to City, a wholly independent contractor.
- 10.2. **No Agent Authority.** 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.
- 10.3. **Independent Contractor Status.** Under no circumstances shall Consultant or its employees look to the City as an 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 California Public Employees Retirement System ("CalPERS") retirement benefits, if any, 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, and other applicable federal and state taxes.
- 10.4. **Indemnification of CalPERS Determination.** In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement claims or is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

11. INDEMNIFICATION

- 11.1 **Definitions.** For purposes of this Section 11, "Consultant" shall include Consultant, its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement. "City" shall include City, its officers, agents, employees and volunteers.
- 11.2 **Consultant to Indemnify City.** To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and defend City from and against any and all claims, losses, costs or expenses for any personal injury or property damage arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or failure to comply with any provision in this Agreement.

- 11.3 **Scope of Indemnity.** Personal injury shall include injury or damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, Property damage shall include injury to any personal or real property. Consultant shall not be required to indemnify City for such loss or damage as is caused by the sole active negligence or willful misconduct of the City.
- 11.4 **Attorneys Fees.** Such costs and expenses shall include reasonable attorneys' fees for counsel of City's choice, expert fees and all other costs and fees of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.
- 11.5 **Defense Deposit.** The City may request a deposit for defense costs from Consultant with respect to a claim. If the City requests a defense deposit, Consultant shall provide it within 15 days of the request.
- 11.6 **Waiver of Statutory Immunity.** 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.
- 11.7 **Indemnification by Subcontractors.** 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 in the performance of this Agreement on Consultant's behalf.
- 11.8 **Insurance Not a Substitute.** City does not waive any indemnity rights by accepting any insurance policy or certificate required pursuant to this Agreement. Consultant's indemnification obligations 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. **Insurance Required.** Consultant shall maintain insurance as described in this section and shall require all of its subcontractors, consultants, and other agents to do the same. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.
- 12.2. **Documentation of Insurance.** City will not execute this agreement until it has received a complete set of all required documentation of insurance coverage. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. Consultant shall file with City:
- Certificate of Insurance, indicating companies acceptable to City, with a Best's Rating of no less than A:VII showing. The Certificate of Insurance must include the following reference: City of Angels On-Call Planning Services

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- Documentation of Best’s rating acceptable to the City.
- Original endorsements effecting coverage for all policies required by this Agreement.
- Complete, certified copies of all required insurance policies, including endorsements affecting the coverage.

12.3. **Coverage Amounts.** Insurance coverage shall be at least in the following minimum amounts:

- Professional Liability Insurance: \$1,000,000 per occurrence, \$2,000,000 aggregate
- General Liability:
 - General Aggregate: \$2,000,000
 - Products Comp/Op Aggregate \$2,000,000
 - Personal & Advertising Injury \$1,000,000
 - Each Occurrence \$1,000,000
 - Fire Damage (any one fire) \$ 50,000
 - Medical Expense (any 1 person) \$ 5,000
- Workers' Compensation:
 - Workers' Compensation Statutory Limits
 - EL Each Accident \$1,000,000
 - EL Disease - Policy Limit \$1,000,000
 - EL Disease - Each Employee \$1,000,000

- Automobile Liability

Vendor 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

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be the greater of (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured

12.4. **General Liability Insurance.** Commercial General Liability Insurance shall be no less broad than ISO form CG 00 01. Coverage must be on a standard Occurrence form. Claims-Made, modified, limited or restricted Occurrence forms are not acceptable.

12.5. **Worker’s Compensation Insurance.** Consultant is aware of the provisions of Section

3700 of the Labor Code which requires every employer to carry Workers' Compensation (or to undertake equivalent self-insurance), and Consultant will comply with such provisions before commencing the performance of the work of this

Agreement. If such insurance is underwritten by any agency other than the State Compensation Fund, such agency shall be a company authorized to do business in the State of California.

- 12.6. **Automobile Liability Insurance.** Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks.
- 12.7. **Professional Liability Insurance or Errors & Omissions Coverage.** The deductible or self-insured retention may not exceed \$50,000. If the insurance is on a Claims- Made basis, the retroactive date shall be no later than the commencement of the work. Coverage shall be continued for two years after the completion of the work 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.
- 12.8. **Claims-Made Policies.** If any of the required policies provide coverage on a claims-made basis the Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Claims-Made Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.
- 12.9. **Additional Insured Endorsements.** The City, its City Council, Commissions, officers, and employees of the City of Angels must be endorsed as an additional insured for each policy required herein, other than Professional Errors and Omissions and Worker's Compensation, for liability arising out of ongoing and completed operations by or on behalf of the Consultant. Consultant's insurance policies shall be primary as respects any claims related to or as the result of the Consultant's work. Any insurance, pooled coverage or self-insurance maintained by the City, its elected or appointed officials, directors, officers, agents, employees, volunteers, or consultants shall be non-contributory. All endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. General liability coverage can be provided using an endorsement to the Consultant's insurance at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37.
- 12.10. **Failure to Maintain Coverage.** In the event any policy is canceled prior to the completion of the project and the Consultant does not furnish a new certificate of insurance prior to cancellation, City has the right, but not the duty, to obtain the required insurance and deduct the premium(s) from any amounts due the Consultant

under this Agreement. Failure of the Consultant to maintain the insurance required by this Agreement, or to comply with any of the requirements of this section, shall constitute a material breach of this Agreement.

- 12.11. **Notices.** Contractor shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. Consultant shall provide no less than 30 days' notice of any cancellation or material change to policies required by this Agreement. Consultant shall provide proof that cancelled or expired policies of insurance have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages. The name and address for Additional Insured Endorsements, Certificates of Insurance and Notices of Cancellation is: City of Angels, Attn: City Administrator, 200 Monte Verda St. Angels Camp CA 95222.
- 12.12. **Consultant's Insurance Primary.** The insurance provided by Consultant, including all endorsements, shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 12.13. **Waiver of Subrogation.** Consultant hereby waives all rights of subrogation against the City. Consultant shall additionally waive such rights either by endorsement to each policy or provide proof of such waiver in the policy itself.
- 12.14. **Report of Claims to City.** Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under this Agreement.
- 12.15. **Premium Payments and Deductibles.** Consultant must disclose all deductibles and self-insured retention amounts to the City. The City may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within retention amounts. Ultimately, City must approve all such amounts prior to execution of this Agreement.

City has no obligation to pay any premiums, assessments, or deductibles under any policy required in this Agreement. Consultant shall be responsible for all premiums and deductibles in all of Consultant's insurance policies. The amount of deductibles for insurance coverage required herein are subject to City's approval.

- 12.16. **Duty to Defend and Indemnify.** Consultant's duties to defend and indemnify City under this Agreement shall not be limited by the foregoing insurance requirements and shall survive the expiration of this Agreement.

13. MUTUAL COOPERATION

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- 13.1. **City Cooperation in Performance.** City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant’s services under this Agreement.
- 13.2. **Consultant Cooperation in Defense of Claims.** If any claim or action is brought against City relating to Consultant’s performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

14. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant’s and City’s regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

If to Consultant

Michael Hodson
 City of Angels
 200 Monte Verda St
 Angels Camp, CA 95222
 Telephone: (209) 736-2181

Augustine Planning Associates,
 Inc 270 South Barretta, Ste. C
 PO Box 3117
 Sonora, Ca 95370
 Telephone: 209-532-7376

15. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 5.11 (Records), Section 10.4 (Indemnification of CalPERS Determination), Section 11 (Indemnification), Section 12.8 (Claims-Made Policies), Section 13.2 (Consultant Cooperation in Defense of Claims), and Section 18.1 (Confidentiality) of this Agreement shall survive the expiration or termination of this Agreement, subject to the provisions and limitations of this Agreement and all otherwise applicable statutes of limitations and repose.

16. TERMINATION

- 16.1. **City Termination.** City may terminate this Agreement for any reason on five calendar days’ written notice to Consultant. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

- 16.2. **Consultant Termination.** Consultant may terminate this Agreement for a material breach of this Agreement upon 30 days' notice.
- 16.3. **Compensation Following Termination.** Upon termination, Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement. The City shall have the benefit of such work as may have been completed up to the time of such termination.
- 16.4. **Remedies.** City retains any and all available legal and equitable remedies for Consultant's breach of this Agreement.

17. INTERPRETATION OF AGREEMENT

- 17.1. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 17.2. **Integration of Exhibits.** All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on by City and Consultant.
- 17.3. **Headings.** The headings and captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the language of the section or paragraph shall control and govern in the construction of this Agreement.
- 17.4. **Pronouns.** Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 17.5. **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and shall be enforceable in its amended form. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or

unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

- 17.6. **No Presumption Against Drafter.** Each party had an opportunity to consult with an attorney in reviewing and drafting this agreement. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.

18. GENERAL PROVISIONS

- 18.1. **Confidentiality.** All data, documents, discussion, or other information developed or received by Consultant for performance of this Agreement are deemed confidential and Consultant shall not disclose it without prior written consent by City. City shall grant such consent if disclosure is legally required. All City data shall be returned to City upon the termination or expiration of this Agreement.
- 18.2. **Conflicts of Interest.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subcontractor to file, a Statement of Economic Interest with the City's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 18.3. **Non-assignment.** Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 18.4. **Binding on Successors.** This Agreement shall be binding on the successors and assigns of the parties.
- 18.5. **No Third-Party Beneficiaries.** Except as expressly stated herein, there is no intended third-party beneficiary of any right or obligation assumed by the parties.
- 18.6. **Time of the Essence.** Time is of the essence for each and every provision of this Agreement.
- 18.7. **Non-Discrimination.** Consultant shall not discriminate against any employee or applicant for employment because of race, sex (including pregnancy, childbirth, or

related medical condition), creed, national origin, color, disability as defined by law, disabled veteran status, Vietnam veteran status, religion, age (40 and above), medical condition (cancer-related), marital status, ancestry, or sexual orientation. Employment actions to which this provision applies shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; or in terms, conditions or privileges of employment, and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, the provisions of this nondiscrimination clause.

- 18.8. **Waiver.** No provision, covenant, or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver. The waiver by City or Consultant of any breach of any provision, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other provision, covenant, or condition.
- 18.9. **Excused Failure to Perform.** Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 18.10. **Remedies Non-Exclusive.** Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies.
- 18.11. **Attorneys' Fees.** If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs expended in the action.
- 18.12. **Venue.** The venue for any litigation shall be the Superior Court of California for the County of Placer and Contractor hereby consents to sole jurisdiction in that court for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”
City of Angels

“Consultant”
Augustine Planning Associates, Inc.

By: _____
Signature

By: _____
Signature

Printed: _____

Printed: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest:

By: _____
Haley Bugarin, City Clerk

Date: _____

Approved as to form:

By: _____
William Creger, City Attorney

Date: _____

Exhibit A
Scope of Services

D. Description and Approach

Amy Augustine, AICP (APA) will provide on-call and in-house planning services and environmental documentation for all short-term and long-range planning projects. Through meetings with developers, engineers, property owners, members of the public, stakeholder agencies, agency staff, preparation of local and regional plans, participation in public meetings, outreach events and residency in the Sierra foothills; APA is familiar with City of Angels community goals and the planning tasks necessary to achieve them. APA will continue to evaluate the economic, social, environmental, and physical factors affecting the area to devise and refine implementable plans to guide the community in meeting its short and long-term goals. APA is familiar with most of the City's existing short and long-range plans and; as funding allows; will facilitate the implementation of those plans and other special projects or assist in securing the funds necessary to do so when approved by the City.

APA proposes two days in-house per week, unless otherwise requested by the City. Amy will continue to be available by phone/text/e-mail on days when she is not "in house". In short, APA will continue to provide full-service planning both in-house and on-call from APA's Sonora office when not present in-house. Should demands for planning services exceed the workload of a single planner, Amy will call upon Aimee Dour-Smith and Breanna Kalson, AWE, to provide additional planning support.

Short-term planning tasks

Short-term planning tasks will include, but are not limited to processing current (private development) project reviews for all forms of land use entitlements, building permits, home occupation permits, sign permits, and business licenses as needed.

APA will answer public inquiries at the front counter, by telephone, mail, e-mail, website portal or other means or find the answer from the appropriate staff, department, or agency. APA views public contacts and requests for assistance as a representative of the City as one of the most important tasks of a planner. Public contact provides insight into community concerns, priorities, and ideas that could influence planning decisions. She views her role as being someone that the public should be able to depend upon to provide an accurate answer as quickly and courteously as possible.

Similarly, APA has in the past and will continue to meet with potential developers (large and small) to guide application submittal, project design, determine application completeness, and, once applications are submitted, determine the appropriate level of environmental documentation and keep applicants apprised of the status and "next steps" for their projects. APA also works with the applicant to identify project design solutions or alternatives where necessary. She will continue to establish and maintain good working relationships with the public, developers, other departments, jurisdictions and agencies.

APA will interpret and apply applicable ordinances, municipal codes, and general plan policies. Amy will analyze project compliance with the City's General Plan 2020, written by APA; design guidelines, Greenhouse Gas Emissions Plan (pending) and consistency with the City's transportation plans, capital improvement plan, water and wastewater master plan, strategic plan, and all other applicable local, state and federal plans and regulations.

APA also emphasizes gathering input from a wide variety of sources early in the planning process and interdepartmental coordination. As a result, she notifies other city departments, local, state and federal agencies, interested stakeholders and neighboring landowners (advisory agency and adjoining landowner notices) at the start of the planning process to solicit input with a goal of identifying and addressing concerns from the outset, rather than at the end of the planning process. This approach supports identifying (and preparing to address) potential issues before public hearings. This, in turn, assists in moving projects forward without undue delay.

During project review, APA will analyze and ensure project compliance with state regulations including the California Environmental Quality Act (CEQA) Guidelines, State Subdivision Map Act, Permit Streamlining Act, and other land use regulations. As a member of the American Institute of Certified Planners (AICP), Amy participates in continuing education in the planning field, including changes in land use laws and regulations, keeping her apprised of the everchanging land use regulations.

She will prepare environmental documents and determinations, feasible mitigation measures, mitigation monitoring and reporting plans, and responses to comments. APA will prepare staff reports, resolutions, and ordinances for planning projects and provide staffing for the City of Angels Planning Commission. She will attend City Council meetings, public hearings, community meetings, make public presentations, and serve on special project committees, as requested. APA also will review environmental documentation prepared by others and prepare comments on behalf of the City (e.g., Cal 49 Mobility Improvement Project).

APA will continue to prepare and ensure publication of all necessary legal notices prior to public hearings and file all required documents with the State Clearinghouse upon completing necessary steps in the environmental review process as necessary to minimize the timeline for legal challenges to land use actions. After project completion, APA will ensure that mitigation measures for projects are passed along to and incorporated in subsequent development permits (e.g., building, grading, construction).

Amy is familiar with the City's software programs necessary for processing current planning projects including: SmartSheet, IWorQ, and Sharepoint.

APA will continue to participate in representing City interests on special projects [e.g., Clean California (Monument Signs), Foundry Lane decertification, Utica Park / Lightner Mine Expansion and Rehabilitation) etc.].

Long-range planning tasks

Long-range planning tasks to be provided will include, but are not limited to: implementing existing plans [e.g., General Plan 2020, Angels Camp SR 4 and SR 49 Gateway and Corridor Study (including Foundry Lane), Angels Creek Master Plan and Trail Plan, Calaveras County Evacuation and Access Needs Assessment and Preparedness Plan (Draft), Greenhouse Gas Emissions Plan (Draft), Water Master Plan, Wastewater Master Plan, Angels Camp Wayfinding System, Angels Camp Main Street Plan, Angels Camp North Main Street Plan, Strategic Plan, etc.]; preparing or guiding preparation of specific plans, annexations, general plan updates and amendments; maintaining, updating, and preparing new zoning and development codes, participation on long-range planning committees (e.g., greenhouse gas emissions plan, vehicle miles traveled plan), identifying funding sources for City projects, assisting with special project

oversight (Utica Park expansion and rehabilitation). APA can provide grant writing services, upon request.

APA will continue collaborating with other departments to evaluate and address short and long-range demand and infrastructure needs relative to public water and public sewer services and infrastructure, transportation needs, and reviewing and consolidating multiple plans for consistency.

The APA Team also can provide environmental documentation and studies for public projects, preconstruction surveys and training, and on-site biological and cultural resources construction monitoring.

Environmental Reviews

As illustrated in the attached resumes, the APA Team has written and gained approval for nearly every type and level of environmental documentation from most local, state, and federal agency processes.

The APA Team has worked extensively with public agencies to complete hundreds of environmental documents including:

- CEQA exemptions
- NEPA exclusions
- Negative Declarations / Mitigated Negative Declaration
- Environmental Assessment
- Environmental Impact Report
- Environmental Impact Statement

The APA team has also completed more specialized technical studies and plans and obtained specialized permits associated with specific agency procedures including, but not limited to:

- CEQA + (CEQA Plus) packages – generally required for projects with a state lead agency using federal pass-through funds

- Community Development Block Grant environmental clearance

- Caltrans, Federal Highway Administration:

Visual Impact Assessment (with photo-simulations)

Natural Environment Study (NES) and NES-minimal impact (NES-MI)

Biological Assessment (BA)

Not Likely to Adversely Affect Letter (NLAA)

Air Quality & Climate Change Study Report

Wetland delineations and wetland permitting application packages

Community Impact Assessment (Relocation and Agricultural Conversion)

Historic Property Survey Report (HPSR)/Historic Resources Compliance Report (HRCR)

Noise Study Report

Farmland assessments (AD-1006, California Department of Conservation)

...and others

All of the preceding in accordance with the Caltrans Standard Environmental Reference (SER)

- Section 7 (endangered species) consultations (United States Fish and Wildlife Service)
- Section 10 incidental take permits (species specific and multi-species regional habitat conservation plans)
- Streambed Alteration Agreement (1600 Permits – California Department of Fish and Wildlife)
- Section 404 Permits (wetlands) U.S. Army Corps of Engineers
- Section 401 Permits (water quality) Regional Water Quality Control Boards
- Section 106 Consultations (State Office of Historic Preservation)

Professional Services Agreement – Consultant Services

- Native American consultation
- Air quality conformity analysis

In addition, the APA Team has worked with:

- California Dpt. of Toxic Substances Control (DTSC) addressing hazardous materials Sites

Many of the preceding studies were prepared for public works projects ranging from bridge replacements/widenings, new parks, highway widening; bicycle and pedestrian trails; sewer and water line replacements; sidewalk replacements; intersection realignments and reconfigurations; congestion relief projects; construction of new intermodal facilities, new public facilities (e.g., a new community center), and similar projects.

Project Management Approach

APA has a proven record of managing multiple projects on-time and within budget with competing priorities while maintaining quality control and meeting project schedules and deadlines. In addition, APA's philosophy is solution oriented. The members of the APA Team believe that if they identify a problem, they will also identify a solution.

Most members of the City of Angels APA Team have worked together for more than 20 years. We believe in having a single point-of-contact and one back-up appraised of large, ongoing projects. Invoicing will come as a consolidated invoice through a single point-of-contact (APA).

Exhibit B

Proposed Costs In-House/On-Call Planning/Annual

<p>Augustine Planning Associates, Inc.</p> <p>Amy Augustine, AICP Principal Planner</p>	<ul style="list-style-type: none"> ✓ @ \$85/hour (2023-2025); @ \$90/hr. (2026/2027) ✓ Two days in-house weekly unless otherwise requested ✓ On-call when not in-house ✓ Not-to-exceed annual cost \$90,000 ✓ Task orders for tasks outside of scope ✓ No mileage charged to/from Angels Camp from APA's Sonora office or within Calaveras County
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E2. Additional Tasks (Task Orders)

Additional tasks, as determined by the City, may be done pursuant to task orders at the following costs. Additional tasks include preparation of mitigated negative declarations or environmental impact reports (or their federal equivalent) requiring specialized technical studies, grant-funded projects with budgets specifically assigned to planning services, special projects as determined by the City and APA, or tasks outside of contract scope. APA acts as the project prime consultant and subcontracts with the appropriate staff, as needed. APA does not mark-up subconsultant costs.

Proposed Task Order Costs:

Personnel	Classification	Hourly Rate					Costs
		2023	2024	2025	2026	2027	
Augustine Planning Associates, Inc.	Principal Planner Project Manager Biologist	\$85	85	85	90	90	Mileage (no charge Calaveras County)
WK Shijo Consulting	Project Manager Air Quality Greenhouse Gas	\$175	175	200	200	200	Mileage: Current IRS rate
Wilson's Geospatial Services 84	Drafting/mapping	\$100	105.00	110.25	115.76	121.55	Mileage: Current IRS rate
	GIS Management/Consulting	\$120	126.00	132.30	138.92	145.87	
Solano Archaeological Services	Field Work	\$80	84.00	88.20	92.83	97.47	Mileage: Current IRS rate
	Project Administrator	\$114.73	118.17	121.91	125.56	129.32	
	Principal Investigator GIS Analyst	\$103.81	106.92	110.12	113.42	116.82	
Area West Environmental	Project Manager Field Director Laboratory Director	\$98.34	101.29	104.34	107.47	110.69	Mileage – Current IRS rate Per Diem current federal rate /b/
	Senior Archaeologist	\$92.89	95.68	98.55	101.50	104.54	
	Crew chief	\$76.49	78.78	81.14	83.57	86.07	
	Field Technician	\$195	204.75	214.99	225.74	237.03	
	Principal	\$185	194.25	204.96	215.16	225.92	
	Senior Conservation Planner	\$180	189.00	198.45	208.37	218.79	
	Project Manager	\$110	115.50	121.28	127.34	133.71	
	Field Monitor Supervisor	\$180	189.00	198.45	208.37	218.79	
	CEQA/NEPA Specialist	\$145	152.25	159.86	167.85	176.24	
	Permit Specialist	\$130	136.50	143.33	150.50	158.02	
	Planner 3/Senior Land Use Planner	\$110	115.50	121.28	127.34	133.71	
	Planner 2/Project Coordinator	\$75	78.75	82.69	86.82	91.16	
	Planner 1	\$125	131.25	137.81	144.79	151.94	
	Biological Resources Lead	\$120	126.00	132.30	138.92	145.87	
	Biologist 3	\$95	99.75	104.74	109.98	115.48	
	Biologist 2	\$85	89.25	93.71	98.40	103.32	
	Biologist 1/Biological Monitor	\$135	141.75	148.84	156.28	164.09	
	Environmental Scientist 3/Senior Scientist	\$115	120.75	126.79	133.13	139.79	
	Environmental Scientist 2	\$95	99.75	104.74	109.98	115.48	
	Environmental Scientist 1	\$115	120.75	126.79	133.13	139.79	
Water Quality Specialist (QSD/QSP)	\$90	94.50	99.23	104.19	109.40		
Water Quality Monitor	\$125	131.25	137.81	144.70	151.94		
Archaeologist 3/Senior Cultural Resources Specialist	\$100	105.00	110.25	115.76	121.55		
Archaeologist 2	\$85	89.25	93.71	98.40	103.32		
Archaeologist 1	\$155	162.75	170.89	179.43	188.40		
GIS Specialist	\$95	99.75	104.74	109.98	115.48		
GIS2	\$85	89.25	93.71	98.40	103.32		
GIS1	\$75	78.75	82.69	86.82	91.16		
Admin Assistant 2	\$65	68.25	71.66	75.24	79.00		
Admin Assistant 1	\$85	89.25	93.71	98.40	103.32		
Editor	\$90	94.50	99.23	104.19	109.40		
Project Accountant	\$125	131.25	137.81	144.70	151.94		
Senior Technical Writer	\$85	89.25	93.71	98.40	103.32		
Technician							

/b/ AWE Jon Boat – nonmotorized - \$40/day Electronic Field Data Forms \$38/user
Costs cont'd: ATV - \$150/day Web Based Wetland Delineation Data Collection Form at cost/form