



CONTRACT NO. _____
CONTRACT DATE: _____

Consulting Agreement

This Consulting Agreement (“Agreement”) is made and entered into by and between W J Kavanagh Consulting & Management, LLC (“Consultant”), whose principle place of business is 1325 Deerwood Place, Auburn, CA 95603, and _____ (“Owner”), whose address is _____.

1. **Purpose.** Owner desires to retain Consultant to provide certain project and construction consulting and management services as described in Paragraph 2 in connection with the work of improvement located at _____ (the “Property”).

2. **Scope of Work.** Consultant agrees to provide work to Owner in accordance with the Scope of Work set forth in Exhibit A attached hereto and incorporated herein by this reference (the “Work”), and in accordance with the Terms and Conditions set forth in Exhibit C attached hereto and incorporated herein by this reference (the “Terms and Conditions”). **Consultant will not be performing any services or work as a licensed contractor or in any capacity whatsoever requiring a contractor’s license, including but not limited to, constructing any portion of the work improvement. Consultant will serve exclusively as a consultant to Owner and Owner will hire all contractors, as necessary.**

3. **Payments.** Owner agrees to pay Consultant according to the Payment Terms and Conditions set forth in Exhibit B attached hereto and incorporated herein by this reference, subject to adjustment to reflect any increase or decrease in the amount due Consultant for additions or deletions in the Work ordered, plus reimbursement of any other cost or expense incurred or advanced by Consultant in the performance of the Work.

4. **Contractors, Subcontractors, Material Suppliers, and Other Vendors.** In connection with the Work under this Agreement, Owner will be entering into separate and distinct contracts with contractors, subcontractors, material suppliers, and other vendors. Consultant may review and assess other contracts as part of the Work, but Consultant will not be a party to, nor be responsible or liable for, the contracts entered into by and between Owner and contractors, subcontractors, material suppliers, and other vendors.

5. **Rights and Obligations.** The rights and obligations of Owner and Consultant are governed by this Agreement and the attached Exhibits A - C which are hereby incorporated by reference as if fully set forth at length.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement and acknowledge receipt of the Scope of Work and Terms and Conditions as of the date set forth below.

Owner
By: _____
Date: _____

W J Kavanagh Consulting & Management, LLC
By: _____
Date: _____

Exhibit A – Scope of Work

Pre-Construction Phase

1. Meet with Owner to review and discuss the work of improvement at the Property and develop an understanding as to design, baseline schedule, and estimated cost.
2. Secure plans and proposals for Owner's review and approval.
3. Create scope of work for each phase of construction
4. Create project schedule to be agreed to by Owner using CPM (critical path method)
5. Recommend designers, architects, and engineers, as necessary
6. Recommend contractors, subcontractors, material suppliers and other vendors, as necessary
7. Review and assess bids, contracts, and subcontracts
8. Assist with the permitting process, if necessary. Consultant will not, however, be obtaining any permits in its name.

Construction Phase

9. Provide oversight and review of construction schedule
10. Oversee change order process and final punch list completion
11. Coordinate with local agencies, as necessary

Post-Construction Phase

12. Oversee project close out

Exhibit B – Payment Terms and Conditions

Payment Options (Select One)

Option 1

This is a lump sum contract whereby Owner agrees to pay Consultant the contract sum of \$_____ in consideration of the performance of the Work, subject to adjustment to reflect any increase or decrease in the amount due Consultant for additions or deletions in the Work ordered, plus reimbursement of any other cost or expense incurred or advanced by Consultant in the performance of the Work. From time to time Consultant shall provide a good faith estimate as to the percentage of the Work that has been completed and provide Owner with invoices as set forth in Payment Terms for a corresponding percentage of the lump sum amount minus payments to Consultant made to date. (e.g. If the lump sum was \$10,000 and the Consultant's estimate was that the Work was 60% complete then Consultant would be owed \$6,000 minus any payments already made by Owner toward the lump sum amount.)

Option 2

In consideration of the performance of the Work, Owner agrees to pay Consultant as compensation for his services _____ % of all construction costs incurred over the length of the project. From time to time Consultant shall tabulate such costs and provide Owner with invoices as set forth in Payment Terms below.

Option 3

In consideration of the performance of the Work, Owner agrees to pay Consultant the sum of \$_____ per hour for all Work performed under this Agreement.

Payment Terms

Consultant shall submit invoices to Owner from time to time but no more frequently than twice per month. Owner agrees to pay all invoices and billings submitted by Consultant within 15 days of receipt.

Owner further agrees that Owner will issue direct payments to contractors, subcontractors, material suppliers, and other vendors. Consultant shall have no responsibility or liability relating to the payment of contractors, subcontractors, material suppliers, and other vendors.

Exhibit C - Terms and Conditions

These Terms and Conditions are a binding part of the Consulting Agreement (which, along with these Terms and Conditions, its other Exhibits and all other items incorporated therein by reference is referred to herein as the "Agreement"). You are advised to carefully read and understand these Terms and Conditions and all other portions of the Agreement.

1. Notices. Any demand, notice, or other communications to be given in connection with this Agreement shall be given in writing by personal delivery, Federal Express, or other reliable private delivery service, addressed to the recipients as follows:

Consultant
Attn: Bill Kavanagh
1325 Deerwood Place
Auburn, CA, 95603

Owner
Attn: _____

2. Cooperation. Owner shall cooperate with Consultant in the performance of the Work, including, without limitation, providing Consultant access to all information and locations reasonably required to perform the Work.
3. Force Majeure/Damages Caused by Delays. Consultant shall not be liable to Owner for any loss or damages resulting from delays or impacts from any cause whatsoever, including but not limited to, labor disputes, strikes, acts of God, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, unavoidable computer viruses, power failures, earthquakes or other disasters, weather changes, changes to the scope of work, deficient plans or specifications, acts or omissions of the Owner or its agents, acts or omissions of contractors, subcontractors, material suppliers, and other vendors performing work on the project. Owner hereby waives any and all claims for relief should Consultant default in the timely performance of its Work, thereby causing delay to any portion of the project. Owner's sole source of relief shall be against all contractors, subcontractors, material suppliers, and other vendors performing work on the project.
4. Insurance. Owner shall maintain any and all insurance to cover all losses or claims occurring on the Property or relating to or arising out of the work on the project. Consultant is not insuring the Property or the work. Owner assumes all risks of loss related to the Property or the work performed on the project.
5. Responsibility for Damages to Property or Project. **Consultant shall not be liable for any loss or damage to the Property, or any work, equipment, or materials on the project site.** Owner's sole source of relief shall be against all contractors, subcontractors, material suppliers, and other vendors performing work on the project.
6. Waiver and Disclaimer of Warranties. Consultant makes no representations or warranties, and hereby specifically disclaims and Owner hereby waives all warranties, whether express, implied, statutory or otherwise with respect to the Work under this Agreement.
7. Limitation of Liability. **Consultant shall not be liable for consequential, special, incidental, or punitive damages, in connection with this Agreement or the performance of the Work. To the extent Consultant may be found liable for any loss or damage, the loss or damage recoverable by Owner against Consultant shall be limited to and shall not exceed the sum of the payments made by Owner to Consultant. Owner expressly agrees that the foregoing limitation of liability and the disclaimer of warranties is reasonable under the circumstances and is part of the bargained for exchange. Owner understands and agrees that Consultant is performing the Work at the agreed upon price based on these Terms and Conditions, including but not limited to, this limitation of liability.**
8. Indemnification. To the fullest extent permitted by law, Owner shall indemnify, defend, and hold harmless Consultant and all of its managers, members, officers, agents, and employees (collectively "Consultant" or "Indemnitees") from all losses, claims, liabilities, injuries, attorneys' fees, costs, and expenses that Indemnitees may incur by reason of any injury, damage, or loss sustained to any person, property, or entity to the extent, resulting from, arising out of, or connected in any way with the performance of Work under this Agreement. Owner's indemnity obligation shall relate to all such claims, regardless of whether any such claims or alleged claims is caused in whole or in part by either: (i) any action or omission of Consultant or those for whom Consultant is responsible; (ii) the breach of any obligations of Consultant under this Agreement; or (iii) the use of any products, materials, or equipment furnished by Consultant. Owner's duty to defend is separate and distinct from the duty to indemnify and shall immediately arise upon the date when Consultant tenders in writing a defense request to Owner. This provision shall remain in full force and effect following termination or expiration of this Agreement.
9. Expiration or Termination. This Agreement shall expire 30 days after completion of the Work. Owner or Consultant may terminate this Agreement at any time with or without cause and without further obligations under this Agreement, except for payment due for Work performed and costs and expenses incurred prior to the date of such termination. In the event of a lump sum contract, the payment due

for Work performed and costs and expenses incurred prior to the date of such termination will be determined based on a pro-rata calculation of the portion of Work completed as determined by Consultant. In the event of a percentage based contract, the payment due for Work performed and costs and expenses incurred prior to the date of such termination will be determined by the percentage of all construction costs incurred, whether or not already billed, for any and all work performed through the date of termination.

10. Entire Agreement. This Agreement contains the entire agreement and understanding between the parties hereto and supersedes any and all prior or contemporaneous written or oral agreements, representations, and warranties respecting the subject matter hereof or the hiring of Consultant. Consultant reserves the right to update the attached exhibits at any time. The parties have not relied on any inducements, promises or representations made by any party hereto, except as provided herein in writing.
11. Interpretation. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. This Agreement shall be interpreted in accordance with the plain meaning of its terms and no rule of legal construction calling for interpretation of this Agreement in favor of one party or the other based on the party drafting the Agreement shall apply. Headings are for convenient reference only. No modification or amendment to this Agreement shall be effective unless made in writing and signed by Consultant and Owner. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, nor shall any one waiver constitute a continuing waiver. No waiver shall be valid or binding unless made in writing. If a court of law holds any provision of this Agreement to be illegal, invalid or unenforceable, then that provision shall be deemed amended to achieve an economic or legal effect that is as near as possible to that provided by the original provision and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.
12. Full Understanding. This Agreement is freely and voluntarily entered into after it has been read and fully understood. The parties have had an opportunity to consult with their own attorneys concerning the rights and responsibilities arising under this Agreement.
13. Binding Effect. This Agreement shall inure to the benefit of the parties and their respective successors and assigns.
14. Attorneys' Fees. In the event of any legal action or other proceeding arising out of or related to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs, and expert witness fees incurred in addition to such other relief as may be granted. The term "legal action" shall include, without limitation, any action commenced in any court as well as any mediation, arbitration, bankruptcy, collection efforts, and appeal.
15. Counterparts. The parties may execute this Agreement in two (2) or more counterparts and by facsimile signatures, each counterpart being deemed an original instrument as against any party who has signed the Agreement.