

RESOLUTION NO. 89-158

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF PASO ROBLES
APPROVING A CONSULTANT SERVICES AGREEMENT
WITH MERRIAM PLANNING ASSOCIATES
FOR ARCHITECTURAL SERVICES FOR CARNEGIE LIBRARY REHABILITATION
AND
APPROPRIATING \$344,000 FROM THE LIBRARY FUND
FOR THE REHABILITATION OF THE CARNEGIE LIBRARY**

WHEREAS, the City of Paso Robles was awarded \$254,000 from the State of California's Historic Preservation Grants program for the rehabilitation of the City's Carnegie Library ("project"); and

WHEREAS, the Paso Robles City Council authorized the execution of a Project Agreement with the State of California for this project; and

WHEREAS, the State Office of Historic Preservation has approved Andrew Merriam as a qualified rehabilitation architect for this project; and

WHEREAS, the attached contract, Exhibit A, has been reviewed and approved by the consultant and the City Attorney, and the consultant's fee of \$41,000.00 is an eligible cost for reimbursement from the State of California's Historic Preservation Grants program; and

WHEREAS, the total project cost is estimated at \$344,000, \$254,000 of which will be reimbursed by the State of California, with the balance of funding, \$90,000, previously approved in the adopted 1989/90 Redevelopment Agency Budget.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

Section 1. That the City Council of the City of Paso Robles approves the attached Consultant's Service Agreement (Attachment A) between the City of Paso Robles and Merriam Planning Associates and authorizes the City Manager to execute said agreement.

Section 2. That the City Council of the City of Paso Robles appropriates \$344,000 from the Library Fund for this project, with the understanding that the Fund will be reimbursed by \$254,000 from the State Grant funds and \$90,000 from the Redevelopment Agency.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement the day and year first above written.

MERRIAM PLANNING ASSOCIATES

By 
Andrew G. Merriam, C 6524

CITY OF PASO ROBLES

By 
Jerry Bankston, City Manager

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PASSED AND ADOPTED by the City Council of the City of Paso Robles, this 7th day of Nov., 1989, on the following vote:

AYES: Russell, Conway and Martin
NOES: None
ABSENT: Dolan



Steven W. Martin, Mayor

ATTEST:



Jerry Bankston, City Clerk

CONSULTANT'S SERVICES AGREEMENT

THIS AGREEMENT, made this 7th day of November, 1989, by and between the **CITY OF EL PASO DE ROBLES**, California (hereinafter referred to as "**CITY**"), and **MERRIAN PLANNING ASSOCIATES** (hereinafter referred to as "**CONSULTANT**").

WITNESSETH:

WHEREAS, **CITY** desires to retain a qualified individual, firm or business entity to provide Architectural Services, and

WHEREAS, **CITY** desires to engage **CONSULTANT** to provide services by reason of its qualifications and experience for performing such services, and **CONSULTANT** has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, in consideration of their mutual covenants, the parties hereto agree as follows:

1. **CONTRACT COORDINATION**

a. **CITY**. **The CITY LIBRARIAN, Ann Martin**, shall be the representative of **CITY** for all purposes under this Agreement. The **CITY LIBRARIAN**, or her designated representative, hereby is designated as the Contract Manager for the **CITY**. She shall supervise the progress and execution of this Agreement.

b. **CONSULTANT**. **CONSULTANT** shall assign a single Contract Manager to have overall responsibility for the progress and execution of this Agreement for **CONSULTANT**. **ANDREW MERRIAN** is hereby designated as the Contract Manager for **CONSULTANT**. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Contract Manager for any reason, the Contract Manager designee shall be subject to the prior written acceptance and approval of the **CITY's** Contract Manager. **CONSULTANT's** Contract Team is further described in Exhibit "A" attached hereto and incorporated herein by this reference. The individuals identified and the positions held as described in Exhibit "A" shall not be changed except by prior approval of **CITY**.

2. DUTIES OF CONSULTANT

a. Services to be furnished. CONSULTANT shall provide all specified services as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.

b. Laws to be observed. CONSULTANT shall:

(1) Give all notices which may be necessary and incidental to the due and lawful prosecution of the services to be performed by CONSULTANT under this Agreement;

(2) Keep itself fully informed of all existing and proposed federal, state and local laws, ordinances, regulations, orders, and decrees which may affect those engaged or employed under this Agreement, any materials used in CONSULTANT's performance under this Agreement, or the conduct of the services under this Agreement;

(3) At all times observe and comply with, and cause all of its employees to observe and comply with all of said laws, ordinances, regulations, orders, and decrees mentioned above.

(4) Immediately report to the CITY's Contract Manager in writing any discrepancy or inconsistency it discovers in said laws, ordinances, regulations, orders, and decrees mentioned above in relation to any plans, drawings, specifications, or provisions of this Agreement.

c. Release of reports and information. Any video tape, reports, information, data, or other material given to, or prepared or assembled by, CONSULTANT under this Agreement shall be the property of CITY and shall not be made available to any individual or organization by CONSULTANT without the prior written approval of the CITY's Contract Manager.

d. Copies of video tapes, reports and information. If CITY requests additional copies of videotapes, reports, drawings, specifications, or any other material in addition to what the CONSULTANT is required to furnish in limited quantities as part of the services under this Agreement, CONSULTANT shall provide such additional copies as are requested, and CITY shall compensate CONSULTANT for the costs of duplicating of such copies at CONSULTANT's direct expense.

e. Qualifications of CONSULTANT. CONSULTANT represents that it is qualified to furnish the services described under this Agreement.

3. DUTIES OF CITY

CITY agrees to cooperate with CONSULTANT and to perform that work described in Exhibit "A" attached hereto and incorporated by this reference.

4. COMPENSATION

The CONSULTANT will perform the work in phases as described in Exhibit "A". If separate phases are not indicated on said exhibit, then all work to be performed by CONSULTANT shall be considered to be included in a single phase.

CONSULTANT will bill CITY on a time and material basis upon completion of the project or as set forth in Exhibit "A." CITY will pay this bill(s) within 30 days of receipt. The CONSULTANT may not charge more than the amount shown in Exhibit "A" without prior approval of the CITY's Contract Manager.

5. TIME FOR COMPLETION OF THE WORK

Program scheduling shall be as described in Exhibit "A" unless revisions to the exhibit are approved by the CITY's Contract Manager and CONSULTANT's Contract Manager.

Time extensions may be allowed for delays caused by CITY, other governmental agencies, or factors not directly brought about by the negligence or lack of due care on the part of the CONSULTANT.

6. TEMPORARY SUSPENSION

The CITY's Contract Manager shall have the authority to suspend this Agreement wholly or in part, for such period as he deems necessary due to unfavorable conditions or to the failure on the part of the CONSULTANT to perform any provision of this Agreement. CONSULTANT will be paid the compensation due and payable to the date of temporary suspension.

7. SUSPENSION; TERMINATION

a. Right to suspend or terminate. The CITY retains the right to terminate this Agreement for any reason by notifying CONSULTANT in writing seven (7) days prior to termination and by paying the compensation due and payable to the date of termination; provided, however, if this Agreement is terminated for fault of CONSULTANT, CITY shall be obligated to compensate CONSULTANT only for that portion of CONSULTANT services which are of benefit to CITY. Said compensation is to be arrived at by mutual Agreement of the CITY and CONSULTANT and should they fail to agree, then an

independent arbitrator is to be appointed and his decision shall be binding upon the parties.

b. Return of materials. Upon such termination, CONSULTANT shall turn over to the CITY immediately any and all copies of videotapes, studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT, and for which CONSULTANT has received reasonable compensation, or given to CONSULTANT in connection with this Agreement. Such materials shall become the permanent property of CITY. CONSULTANT, however, shall not be liable for CITY's use of incomplete materials or for CITY's use of complete documents if used for other than the project or scope of services contemplated by this Agreement.

8. INSPECTION

CONSULTANT shall furnish CITY with every reasonable opportunity for CITY to ascertain that the services of CONSULTANT are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the CITY's Contract Manager's inspection and approval. The inspection of such work shall not relieve CONSULTANT of any of its obligations to fulfill its Agreement as prescribed.

9. OWNERSHIP OF MATERIALS

All original drawings, videotapes and other materials prepared by or in possession of CONSULTANT pursuant to this Agreement shall become the permanent property of the CITY, and shall be delivered to the CITY upon demand.

10. ASSIGNMENT: SUBCONTRACTORS: EMPLOYEES

This Agreement is for the performance of planning services of the CONSULTANT and is not assignable by the CONSULTANT without prior consent of the CITY in writing. The CONSULTANT may employ other specialists to perform services as required with prior approval by the CITY.

11. NOTICES

All notices hereunder shall be given in writing and mailed, postage prepaid, by Certified Mail, addresses as follows:

CITY: CITY OF PASO ROBLES
1030 SPRING STREET
P.O. BOX 307
PASO ROBLES, CA. 93447
Attention: Ann Martin
805-238-0315

**CONSULTANT: MERRIAM PLANNING ASSOCIATES
979 OSO STREET, SUITE C-3
SAN LUIS OBISPO, CA 93401
Attention: Andrew Merriam**

12. INTEREST OF CONSULTANT

CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. **CONSULTANT** further covenants that, in the performance of this Agreement, no subcontractor or person having such an interest shall be employed. **CONSULTANT** certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of **CITY**. It is expressly agreed that, in the performance of the services hereunder, **CONSULTANT** shall at all times be deemed an independent contractor and not an agent or employee of **CITY**.

13. INDEMNITY

CONSULTANT hereby agrees to indemnify and save harmless **CITY**, its officers, agents and employees of and from:

a. Any and all claims and demands which may be made against **CITY**, its officers, agents, or employees by reason of any injury to or death of or damage to any person or corporation caused by any negligent act or omission of **CONSULTANT** under this Agreement or of **CONSULTANT**'s employees or agents;

b. Any and all damage to or destruction of the property of **CITY**, its officers, agents, or employees occupied or used by or in the care, custody, or control of **CONSULTANT**, or in proximity to the site of **CONSULTANT**'s work, caused by any negligent act or omission of **CONSULTANT** under this Agreement or of **CONSULTANT**'s employees or agents;

c. Any and all claims and demands which may be made against **CITY**, its officers, agents, or employees by reason of any injury to or death of or damage suffered or sustained by any employee or agent of **CONSULTANT** under this Agreement, however caused, excepting, however, any such claims and demands which are the result of the sole negligence or willful misconduct of **CITY**, its officers, agents, or employees;

d. Any and all claims and demands which may be made against **CITY**, its officers, agents, or employees by reason of any infringement or alleged infringement of any patent rights or copyrights or claims caused by the use of any apparatus, appliance, or materials produced or furnished by **CONSULTANT** under this Agreement; and

e. Any and all penalties imposed or damages sought on account of the violation of any law or regulation or of any term or condition of any permit, when said violation of any law or regulation or of any term or condition of any permit is due to negligence on the part of the **CONSULTANT**.

f. **CONSULTANT**, at its own cost, expense, and risk, shall defend **CITY** from any and all claims, demands, suits, actions, or other legal proceedings, including those to enforce any penalty that may be brought against **CITY**, its officers, agents or employees, and pay and satisfy any judgment or decree that may be rendered against **CITY**, its officers, agents, or employees in any such suit, action or other legal proceeding, when same were due to negligence of the **CONSULTANT**.

14. **WORKERS COMPENSATION**

CONSULTANT certifies that it is aware of the provisions of the Labor Code of the State of California, which require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with such provisions before commencing the performance of the work of this Agreement.

15. **INSURANCE**

At the request of the **CITY**, **CONSULTANT** shall provide proof of comprehensive general liability insurance (\$300,000) (including automobile) satisfactory to the **CITY**.

16. **AGREEMENT BINDING**

The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

17. **WAIVERS**

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

18. **COSTS AND ATTORNEY'S FEES**

The prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

19. **DISCRIMINATION**

No discrimination shall be made in the employment of persons under this Agreement because of the race, color, national origin, ancestry, religion or sex of such person.

If CONSULTANT is found in violation of the nondiscrimination provisions of the State of California Fair Employment Practices Act or similar provisions of federal law or executive order in the performance of this Agreement, it shall thereby be found in material breach of this Agreement. Thereupon, CITY shall have the power to cancel or suspend this Agreement, in whole or in part, or to deduct from the amount payable to CONSULTANT the sum of Twenty-five Dollars (\$25) for each person for each calendar day during which such person was discriminated against, as damages for said breach of contract, or both. Only a finding of the State of California Fair Employment Practices Commission or the equivalent federal agency or officer shall constitute evidence of a violation of contract under this paragraph.

If CONSULTANT is found in violation of the nondiscrimination provisions of this Agreement or the applicable affirmative action guidelines pertaining to this Agreement, CONSULTANT shall be found in material breach of the Agreement. Thereupon, CITY shall have the power to cancel or suspend this Agreement, in whole or in part, or to deduct from the amount payable to CONSULTANT the sum of Two Hundred Fifty Dollars (\$250) for each calendar day during which CONSULTANT is found to have been in such noncompliance as damages for said breach of contract, or both.

20. **AGREEMENT CONTAINS ALL UNDERSTANDINGS**

This document (including all exhibits referred to above and attached hereto) represents the entire and integrated Agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, or Agreements, either written or oral. This document may be amended only by written instrument, signed by both

CITY and CONSULTANT. All provisions of this Agreement are expressly made conditions. This Agreement shall be governed by the laws of the State of California.