



# City of Grass Valley City Council Agenda Action Sheet

**Council Meeting Date:** November 8, 2011      **Date Prepared:** November 2, 2011

**Prepared by:** Joe C. Heckel, Community Development Director *JCH*  
Thomas Last, Planning Director *TJL*

**Title:** Authorize agreements to fund the preparation of an Environmental Impact Report (EIR) and the costs to process the applications for the Idaho-Maryland Mine project.

**Recommended Action:** Approve the following agreements: 1) a contract with the consultant firm Ascent Environmental to complete a Revised EIR; and 2) reimbursement agreement with the Idaho-Maryland Mine Corporation to cover all the costs necessary to process the applications.

**Agenda:** Administrative

**Background Information:** In April 2011, the City received a revised application package for the proposed Idaho-Maryland Mine project. After this submittal, the City determined the revised project would require a revised Draft EIR (REIR). In July of 2011, the applicant requested the City seek competitive bids for the REIR. The City mailed nine requests for proposals for this work and received three proposals. On October 12, 2011, a panel consisting of Councilmember Fouyer, Planning Commission Chairman Daniel Swartendruher, Joe Heckel, Tom Last, Trisha Tillotson, and Brian Foss from Nevada County, interviewed the three firms. The panel ranked Ascent Environmental as the top firm. The attached scope of work includes all the necessary tasks to complete a revised Draft EIR for the project. Ascent's proposed budget is \$499,625. Exhibit B to this agreement includes a payment schedule based on the completion of specific tasks. Also included is a reimbursement agreement with the Idaho-Maryland Mine Corporation. The reimbursement agreement includes the payment plan for this contract, the three related contracts approved by the Council on October 25, 2011, City staff, and legal assistance. The City will not authorize any of the consultants to proceed with work on this project until the applicant provides for the deposits required in the reimbursement agreement.

**Funds Available:** N/A      **Account #:** N/A

**Reviewed by:** *DL* City Administrator

**Action:** For your reference on the action taken by Council  
 Approved       Approved with Modifications  
 Denied       Other

**Council or Departmental Goal/Objective:** - N/A

- Attachments:**
1. Professional Service Agreement with Ascent Environmental
  2. Reimbursement Agreement with the Idaho-Maryland Mine Corporation

Cc: Applicant

**PROFESSIONAL SERVICES AGREEMENT**  
**City of Grass Valley**

**1. IDENTIFICATION**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between the City of Grass Valley a California municipal corporation (“City”) and Ascent Environmental, Inc., a California Corporation (“Consultant”).

**2. RECITALS**

- 2.1 City has determined that it requires the following professional services from a consultant: To prepare an Environmental Impact Report for the Idaho-Maryland Mine Project.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and professional ability 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.

**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 proposed scope of work attached hereto as **Exhibit A** and incorporated herein by this reference.
- 3.2 “Approved Fee Schedule”: Such compensation rates as are set forth in Consultant’s fee schedule and payment schedule to City attached hereto as **Exhibit B** and incorporated herein by this reference.
- 3.3 “Commencement Date”: \_\_\_\_\_.
- 3.4 “Expiration Date”: \_\_\_\_\_.

**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 Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 18 (“Termination”) below.

**5. CONSULTANT’S SERVICES**

- 5.1 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. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of \$499,625 unless specifically approved in advance and in writing by City.

- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional 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 the Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code Section 1090, and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 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 both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.
- 5.5 Consultant represents that it 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. Gary Jakobs 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.
- 5.6 Consultant has represented to the City that key personnel will perform and coordinate the 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.
- 5.7 Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.

## 6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.

- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a Lump Sum basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule.

## **7. 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. 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.

## **8. OWNERSHIP OF WRITTEN PRODUCTS**

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. 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.

## **9. RELATIONSHIP OF PARTIES**

Consultant is, and shall at all times remain as to City, a wholly independent contractor. 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.

Under no circumstances shall Consultant look to the City as his 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 PERS retirement benefits, 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.

## 10. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

## 11. INDEMNIFICATION

- 11.1 The parties agree that City, its officers, agents, and employees should, as permitted by law, be protected from all loss, injury, damage, claim, lawsuit, cost, expense, to the extent actually caused by the negligent or reckless performance of Work under this Agreement or willful misconduct by the Consultant. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law per the language agreed to herein. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 11.2 Consultant shall indemnify, and hold harmless, City, its officers, agents, and employees from and against all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, or otherwise, and injury to any property to the extent actually caused by Consultant's negligence, recklessness or willful misconduct or other intentionally wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its material obligations contained in this Agreement, except to the extent such loss or damage as is caused by the active negligence or willful misconduct of the City or any Third Party. However, Consultant's shall have no duty to defend the City and its officers, agents, and employees with respect to a claim that the environmental analyses prepared under this Agreement does not satisfy the requirements of the California Environmental Quality Act.
- 11.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 11 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.
- 11.4 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, its officers, agents, employees and volunteers.

- 11.5 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 by, for, with or on behalf of Consultant in the performance of this Agreement. City does not, and shall not; waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall 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 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 12.1.1 Commercial General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
- 12.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with Combined single limit of One Million Dollars (\$1,000,000) 12.1.3
- 12.1.3 Worker's Compensation insurance as required by the laws of the State of California.
- 12.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) per claim and Annual Aggregate.

If the insurance is on a Claims-Mace basis, the retroactive date shall be no later than the commencement of the work.

Coverage applicable to the work performed under this agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided 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.

The City and the Consultant recognize that the Hausrath Economics Group will operate under the terms of this agreement as a sole proprietor and such work will not involve the preparation of plans and/or specifications.

The Subconsultant shall be responsible for providing the City and Consultant with staff assistance and specialized expertise and input on mining and reclamation matters. Based on this determination, the City and Consultant will not require the issuance of professional liability insurance from the Hausrath Economics Group. However, should the Hausrath Economics Group be involved with the preparation of plans, specifications, or materials that would lead to the development of any structure, building, or project, the City would require the issuance of professional liability insurance policies appropriate to the respective professions and the work to be performed.

- 12.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 12.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 12.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.
- 12.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and, for general and auto liability only, naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- 12.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement 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.
- 12.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. Contractor shall provide a 30- Day 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.
- 12.8 The insurance provided by Consultant 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.
- 12.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving

the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City (for General Liability, Auto Liability and Workers Compensation).

- 12.10 Any deductibles or self-insured retentions over \$35,000 must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 12.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 11 of this Agreement.
- 12.12 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 the Agreement.

### **13. MUTUAL COOPERATION**

- 13.1 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 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. RECORDS AND INSPECTIONS**

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

### **15. 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.



**16. 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

City of Grass Valley  
125 East Main St.  
Grass Valley CA 95945  
Telephone: (530) 274-4310

If to Consultant:

Ascent Environmental, Inc  
455 Capitol Mall, Suite 205  
Sacramento, CA 95814  
Telephone: (916)930-3182  
Facsimile: (916)444-3927

With courtesy copy to:

Michael G. Colantuono, Esq.  
Grass Valley City Attorney  
Colantuono & Levin, P.C.  
11406 Pleasant Valley Road  
Penn Valley, CA 95946-9024  
Telephone: (530) 432-7359  
Facsimile: (530) 432-7356

**17. SURVIVING COVENANTS**

The parties agree that the covenants contained in Section 10, Section 11, Paragraph 13.2 and Section 14 of this Agreement shall survive the expiration or termination of this Agreement.

**18. TERMINATION**

18.1 City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on thirty calendar days' written notice to City. 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.

18.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then 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.

19. GENERAL PROVISIONS

- 19.1 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.
- 19.2 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.
- 19.3 This Agreement shall be binding on the successors and assigns of the parties.
- 19.4 Except as expressly stated herein, there is no intended third party beneficiary of any right or obligation assumed by the parties.
- 19.5 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 19.6 The 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 section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. 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).
- 19.7 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, 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.

- 19.8 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.
- 19.9 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 of 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 of all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 19.10 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 in its amended form shall be enforceable. 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 thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 19.11 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 19.12 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 by City and Consultant.

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 Grass Valley

**“Consultant”**  
*Name of Company or Individual*

By: \_\_\_\_\_  
*Jan Arbuckle, Mayor*

By: \_\_\_\_\_  
*Gary D. Jakobs, Principal/Vice President,  
Ascent Environmental, Inc.*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
*Amanda K. Olekszulyn, Principal, Ascent  
Environmental, Inc.*

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
*Kristi K. Bashor, City Clerk*

Date: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_  
*Michael G. Colantuono, City Attorney*

Date: \_\_\_\_\_

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