

# PROFESSIONAL SERVICES AGREEMENT

This Agreement (“**Agreement**”) is made and entered into as of \_\_\_\_\_ by and between Tierra Resource Consultants, LLC, a limited liability Corporation located at 1501 North Broadway, Walnut Creek, CA 94596 (“**Tierra**”), and (“**CLIENT**”), for the provision of certain consulting and related professional services.

**Now therefore**, in consideration of the above, the Parties agree to the following for the provision of professional services:

## 1. Type of Agreement

This is a Time and Expenses contract with a Not-to-Exceed Price and a limited term duration.

## 2. Term of Agreement

The Professional Services called for under this Agreement shall commence on or about \_\_\_\_\_, and continue in effect until the Services provided for herein have been performed or until terminated as provided herein, but not later than \_\_\_\_\_, unless otherwise, subsequently mutually agreed upon in writing.

## 3. Compensation and Expenses

**Compensation for Professional Services.** Services for which compensation will be paid under this Agreement are described in Attachment A, “Statement of Work.” Compensation will be in the form of;

**Fixed Fee.** Client agrees to pay a fixed fee of \_\_\_\_\_ for services provided by Tierra. Services for which compensation will be paid under this Agreement and associated fees are described in Attachment A, “Statement of Work.” This amount is not to be exceeded without prior written agreement of CLIENT’s authorized representative.

**Time and Expenses.** Client agrees to pay for services provided by Tierra on a time and expenses basis for work completed and expenses incurred. Services for which compensation will be paid under this Agreement and associated fees and hourly billing rates are described in Attachment A, “Statement of Work.”

**Time and Expenses with Not-to- Exceed Amount.** Client agrees to pay for services provided by Tierra on a time and expenses basis with a not-to-exceed amount for work completed and expenses incurred. The not-to-exceed price of this Agreement is \_\_\_\_\_, as full and complete consideration and compensation for all work products, deliverables, and professional services satisfactorily performed pursuant to this Agreement. The not-to-exceed price includes a not-to-exceed amount of \_\_\_\_\_ for direct expenses incurred by Tierra in the performance of this Agreement. Services for which compensation will be paid under this Agreement and associated fees and billing rates are described in Attachment A, “Statement of Work.” This amount is not to be exceeded without prior written agreement of CLIENT’s authorized representative.

**Expenses Included.** Any expenses or material costs will be passed through to client without markup at the cost incurred by Tierra. Such expenses shall include but not be limited to travel, lodging, meals, communications (including telephone and fax), supplies, gratuities, and any other costs of any kind that Tierra may incur in the performance of this Agreement.

## 4. General Work Statement and Scope of Services

The Tierra shall provide the expertise, professional advice, and services prescribed by in Attachment A, “Statement of Work.” Tierra shall provide all services in accordance with this Agreement and the

authorized Statement of Work. In the event that Tierra has reason to believe that any work assignment is outside the scope of authorized work statement, then they shall immediately notify CLIENT's authorized representative.

## **5. Technical Direction and Changes**

The CLIENT authorized representative or his/her designee is the only person authorized to provide technical direction on Agreement work performance. Technical direction must be within the Agreement or technical direction document statement of work.

## **6. Independent Relationship**

In the performance of the work and services hereunder, Tierra shall act solely as an independent private contractor, and nothing herein contained shall at any time be so constructed as to misconstrue the relationship of employer and employee.

## **7. Assignment and Subcontracting**

The work and services required herein shall not be transferred, assigned or subcontracted out by Tierra without the written consent of CLIENT, which consent shall not be unreasonably withheld.

## **8. Potential Conflicts of Interest**

Tierra represents that, to the best of Tierra's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest, or that Tierra has disclosed all such relevant information. Prior to commencement of any work, Tierra agrees to notify CLIENT's authorized representative that, to the best of its knowledge and belief, no actual, apparent or potential conflict of interest exists, or to identify to the CLIENT's authorized representative any actual, apparent or potential conflict of interest Tierra may have.

Tierra agrees that if an actual, apparent or potential organizational conflict of interest is identified during performance, Tierra shall immediately make a full disclosure in writing to the CLIENT Authorized representative. This disclosure shall include a description of actions which Tierra has taken or proposes to take, after consultation with the CLIENT Authorized representative, to avoid, mitigate, or neutralize the actual, apparent or potential conflict of interest. Tierra shall continue performance until notified by the CLIENT Authorized representative of any contrary action to be taken. CLIENT may terminate this Agreement, in whole or in part, if it deems such termination necessary to avoid a conflict of interest.

## **9. Invoicing and Payment**

Tierra shall submit by no later than the fifth business day of each month for the all work performed in the preceding month, an invoice for the previous month's labor and other expenditures to:

CLIENT NAME

ADDRESS  
CITY, STATE, ZIP

CONTACT NAME  
CONTACT EMAIL  
(FOR INVOICING)

Tierra shall identify each invoice by sequential numbers.

CLIENT shall pay amounts properly invoiced after receipt of payment from CLIENT on a net 30-day basis for such costs. CLIENT will notify Tierra within 5 days of receipt of Tierra's invoice if there is any issue with the invoice that would prevent the normal payment schedule.

## **10. Electronic Communications**

When the CLIENT visits the Tierra Services website or send e-mails to Tierra, the CLIENT is communicating with Tierra electronically. The CLIENT consents to receive communications from us electronically. Tierra will communicate with the CLIENT by e-mail or by posting notices on the Tierra Services website. CLIENT agrees that all agreements, notices, disclosures and other communications that Tierra provides the CLIENT electronically satisfy any legal requirement that such communications be in writing.

## **11. Indemnification**

Each party shall indemnify and hold harmless the other party, its directors, officers, employees, and agents (collectively, Indemnitees) from any and all claims, demands, suits, losses, costs, and damages of every kind and description, including reasonable attorney fees, brought or made against or incurred by any of the Indemnitees resulting from, arising out of, or in any way connected with, any act of a party, its employees, agents, representatives, or subcontractors of any tier, their employees, agents, or representatives in the performance or nonperformance of a party's obligations under this Contract or in any way related to this Contract. The indemnity obligations under this Section shall include without limitation:

- Loss of or damage to any property of a party or any third party;
- Bodily or personal injury to, or death of any person(s), including without limitation employees of a party or its subcontractors of any tier; and
- Claims arising out of workers' compensation, unemployment compensation, or similar such laws or obligations applicable to employees of a party or its subcontractors of any tier.

A party's indemnity obligation under this Section shall not extend to any liability caused by the negligence of any of the Indemnitees. Each party shall indemnify and hold harmless the other party and its Indemnitees from all claims, losses, harm, liabilities, damages, costs, expenses (including, but not limited to, attorney fees) and royalties arising out of or in connection with any claims, action, suit or proceeding based upon infringement (or alleged infringement) of any patent, copyright, trade name or trademark, or upon the or subcontractors' wrongful use (or alleged wrongful use) of any confidential or proprietary concept, method, process, product, writing, information or other item, and arising out of, or in connection with, this Contract, performance of the Tasks or the use of any of the Tasks.

## **12. Limitation of Liability**

In no event shall Tierra Resource Consultants, LLC be liable for any claim or damage related to, or as a result of, this Agreement exceeding the total amount paid and to be paid to Tierra hereunder for the specific Statement of Work giving rise to the claim or damages. In addition, in no event shall Tierra be liable for special, indirect, consequential, exemplary, or incidental damages for any damages whatsoever related to, or as a result of, this Agreement.

## **13. Confidential Matters and Proprietary Information**

Tierra recognizes that in performing this Agreement Tierra staff may have access to data, either provided by CLIENT or generated during Agreement performance, of a sensitive nature which should not be released to the public without CLIENT or the CLIENT's approval. Tierra shall keep in strictest confidence all information produced during the performance of this Agreement or which may be acquired in connection with or as a result of this Agreement. During the term of this Agreement and at any time thereafter, Tierra shall not publish, communicate, divulge, disclose or use any information which has been designated by CLIENT as proprietary or which, in good conscience, ought to be treated as proprietary. Except with the prior written consent of CLIENT, Tierra or its personnel shall not make public the recommendations formulated in the course of, or as a result of, the Services.

**14. Termination of Agreement**

Each party may terminate this Agreement by providing at least thirty (30) days written notice to the other party. Following termination of this Agreement, (CLIENT) shall, within thirty (30) days of such termination, pay Tierra for all satisfactory work performed through and including the date of termination according to the fees and rates set forth in the Statement of Work.

**15. Disputes and Arbitration**

Both parties shall make all reasonable efforts to settle any subsequent disputes on an amicable basis. In the event that agreement cannot be reached, then the facts of the dispute shall be submitted in good faith to mediation. The parties will jointly appoint an acceptable mediator and share equally in the cost of mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved 30 days from the date written notice requesting mediation is sent by one party to the other. In the event the mediation is unsuccessful, then both parties agree to submit their dispute for settlement to a board of Arbitration for settlement in accordance with the rules of the American Arbitration Association then in effect.

**16. Entirety of Agreement and Governing Law**

This Agreement, together with its attachments, contains the entire agreement of the parties and no amendment, alteration, or other change to any provision which is inconsistent with or in addition to the terms and conditions herein shall be effective unless implemented by a mutually agreed upon, written modification to this Agreement accepted by Tierra. Failure of either party to enforce any of its rights hereunder shall not constitute a waiver of such rights or of any other rights hereunder. This Agreement shall be interpreted in accordance with the laws of the State of California.

**17. Order of Precedence**

In the event of any inconsistencies, ambiguities, or conflicts of interpretation between this Agreement document and the Attachments hereto, the order of precedence for governance of intent and meaning shall be (1) this Agreement; (2) Attachment A, "Statement of Work."

**AGREEMENT**

Check here to indicate that you are an authorized representative of the project identified in section three above and have read as well as agree to the Terms and Conditions in this document.

The parties hereby agree to the foregoing and the terms and conditions described in this Tierra Agreement.

**For CLIENT:**

**For Tierra**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name:

Name:

Title:

Title:

Date:

Date:

## Attachment A, "Statement of Work."

### Basic Project Details

#### BESO Compliance Scope of Work

Tierra is a Registered Energy Assessor with the City of Berkeley and our service professionals will provide comprehensive energy assessment support for the requirements of Berkeley's Energy Savings Ordinance (BESO), including:

- Confirmation of energy assessment and reporting requirements based on building size
- Determination of the timing, frequency, and specific type of energy assessment (or opportunity for exemption)
  - Provide proof of Green Building Certification to qualify for a high performance building exemption
  - Support the Energy Star Portfolio Manager and Energy Star Verification process to verify exemption
- Determination of eligibility for deferral
  - Time of sale deferral, deferral for new or planned construction, hardship deferral, etc.
- Completion of the Application for Compliance with BESO
- Performance of applicable energy assessment specific to each building type and size:
  - Commercial Buildings under 50,000 sf shall meet or exceed requirements established by the American Society of Heating, Refrigeration, and Air-Conditioning Engineers (ASHRAE) Level I Site Assessment
  - Commercial Buildings 50,000 sf or more shall meet or exceed requirements established by ASHRAE Level II Energy Analysis
  - For residential buildings, complete the Home Energy Score report and supporting documentation for HES Scorable Buildings, or Energy Upgrade California analysis for HES Non-Scorable Buildings
  - For multi-family buildings, complete a building energy analysis using Title 24 ACM approved modeling software or utility interval data analysis. The Building Energy Assessment shall also meet or exceed standards established in the 2011 edition of ASHRAE's Procedures for Commercial Building Energy Audits, 2nd Edition
- Registration of building on the BESO web portal and upload of all required documentation
- Finalization and submittal of a copy of the Energy Report to the customer and the City of Berkeley.

#### Fees and Billing Rates

Applicable to either Time and Expenses or Time and Expenses with Not-to- Exceed Amount contracts

Staff Title	Hourly Rate
Principal	\$160
Project Manager	\$145
Sr. Consultant	\$125
Consultant	\$105
Analyst / Admin	\$65