

NEWBERRY COMMUNITY SERVICES DISTRICT

Established 1958

Board Minutes

July 23, 2019

Call the meeting to order. 6:05 p.m.

Pledge of Allegiance

President Springer asked all present to rise, face the flag and recite the Pledge of Allegiance.

Roll Call.

Present:

President Springer
Vice President Deel
Director Paulsen
Director Unger

Absent:

Director Clark

Also Present : General Manager Jodi Howard, District Treasurer Kerri Zurcher, Fire Chief Lanier, Asst. Fire Chief Rogers and members of the public.

1. Approval of the Agenda

Motion Director Unger Approve agenda moving 4 (c) to 2 (c), Seconded
Director Deel.
Vote: **Unanimous**
Motion Passed

2. Public Comments:

- a. **General Public-** Ted Stimpfel requested CSD Board do a forensic audit on the Kiewit Funds.
- b. **Community Reports-**
County Supervisor- Ron Frame is back to represent Supervisor Lovingood
Sheriff- *Report newberrycsd.net*
- c. **Approval of Legal Services with Devaney Pate Morris & Cameron.**
Motion Director Springer to approve general and specific agreement with Devaney Pate Morris & Cameron. Seconded Director Paulsen
Vote: **Unanimous**
Motion Passed

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3. Reports

- a. General Manager-** * July 3rd went great.
 - * New LED lighting installed in community center.
 - * Got Bid from Zapp Electric to put timers on the outside ballfield lights.
- b. Staff**
- c. Strategic Planning Committee “Civic Hub”-** Report on newberrycsd.net website.

4. Agenda Items-

- a. Approval of Minutes for June 25, 2019.**

Motion Director Deel to accept minutes as presented. Seconded Director Paulsen.
Vote: **Unanimous**
Motion Passed
- b. Approve Bills Paid and Presented.**

Motion Director Deel to approve bills paid and presented. Seconded Director Paulsen.
Vote: **Unanimous**
Motion Passed

5. Old and New Business- Closed Session with Legal Counsel.

6. Directors Comment- Director Deel had flyers for upcoming events will be on Newberrycsd.net website.

7. Adjournment: 7:10 p.m.

Board Secretary

Board President



PROPOSAL AND AGREEMENT

To: Jodi Howard, General Manager
 30884 Newberry Road
 Newberry Springs, CA 92365

Original **Revision #:**

Date: August 22, 2019

Project #:

Contract #: OPP190628

Project: Newberry Springs Park

NUVIS proposes to perform the following professional landscape architectural services:

SCOPE DESCRIPTOR	FIXED/HOURLY	FEE
Task 1 a. Attendance of initial kick-off meeting and site reconnaissance- perform a pre-design tour to document any potential effect on the design solution.	Fixed	\$ 900
Task 2 a. Development of Park Masterplan with photo imagery- Prepare concept plan outlining spatial definition, site amenities, hard and softscapes that depict design opportunities. NUVIS will meet with the Client for input.	Fixed	\$ 6,200
Task 3 a. Government coordination- coordination and interface with Client and applicable parties. NUVIS has allowed 8 hours for DTGC.	Hourly	\$ 1,400
Task 4 a. Attendance at Board of Director's meeting for presentation, and in order to obtain approval and permission to proceed with working drawings. NUVIS has allowed for one (1) presentation meeting.	Hourly	\$ 900

Optional items:

Statement of probable construction cost document- \$1400.

Exclusions:

Community meetings, design development plans, construction plans, specifications, engineer's estimate, survey, boundary survey, electrical, earthwork/grading, bid phase or construction support services.

Direct Project Expense Allowance

\$ 500

Total Professional Services Fee: \$ 9,900

Professional services not itemized above are excluded from this contract. All other items and conditions of said Agreement are provided on the back for reference and are made a part of this Agreement. Execution of this Agreement represents the entire Agreement between Client and NUVIS relative to the project and the stated Scope of Services. This Agreement supersedes all prior negotiations, either written or oral. **Please execute concurrence and return a copy for our files.**

NUVIS

Robert W. Stone, ASLA
 Executive Vice President

Authorized signature to bind agreement

Name: _____
Title: _____
Date: _____

- I. STATEMENT OF PROBABLE CONSTRUCTION COST:** NUVIS shall prepare a statement of probable construction cost to submit to the CLIENT to monitor the effect on the construction budget. NUVIS prepares such statement(s) on the basis of the materials specified on the drawings and our best professional judgment and experience with the construction industry. The statement represents assumptions and options of the construction market and contractors' methods of determining actual construction costs over which NUVIS has no control.
- II. SUBCONSULTANTS:** If during the course of services, NUVIS or the CLIENT finds that subconsultants are necessary, fees for such will be negotiated with a Change Order.
- III. GEOTECHNICAL INVESTIGATION:** Our firm's professional liability insurance coverage requests that agreements for geotechnical investigation be handled separately between the CLIENT and geotechnical consultant. It is agreed that NUVIS has no responsibility for any geotechnical investigation.
- IV. DESIGN TEAM AND GOVERNMENT AGENCY COORDINATION:** This task includes coordination/interface and progressive meetings with CLIENT representatives and project consultants. Meetings will provide a continuum to receive and clarify information, inform CLIENT of progress and direction, and allow the CLIENT the opportunity to review and comment. Government agency permit processing and filing or plan check fees are not included but if requested by CLIENT, fees for such will be negotiated with a Change Order.
- V. BID PHASE & CONSTRUCTION/FIELD OBSERVATION:** Although the CLIENT administers the bid process, NUVIS will be available for interpretation of plans & specifications; submitting information for addenda, and reviewing bid proposals. Construction/field observation duties are performed in relation to general conformance with the design concept & general compliance with the information given in the construction documents. Fees for performing irrigation water audits in compliance with AB 325, if requested by CLIENT, will be negotiated with a Change Order. As requested by CLIENT, NUVIS will visit the site at intervals appropriate to the stage of construction to review the progress & quality of the work and to determine in general if the work is being performed in a manner indicating that the work, when completed, will be in substantial conformance with the construction documents. However, NUVIS will not make exhaustive or continuous on-site inspection to check quality of the work. Performance of construction/field observation establishes standards of acceptability. Services may include but not be limited to:
1. attendance at pre-job conference;
 2. review of shop drawings, samples and other submissions;
 3. participation in walk-through and subsequent reports;
 4. periodic site visits as mutually agreed with CLIENT;
 5. field selection of plant material;
 6. preparation of an agency-requested site review document.
- VI. DIRECT PROJECT EXPENSES:** Direct Project Expenses (DPE) shall be billed to the CLIENT in addition to fees for professional scope of services at the multiplier of 1.15% of actual cost. They include, but may not be limited to, production "materials" or expenditures on behalf of the project, including: computer related expenses (ie: plotting and digital transfer items); domestic courier delivery service and postage/ shipping/ overnight delivery; facsimile (outgoing); photography and related supplies; applicable travel expenses (including mileage at the current IRS rate); in-house printing/ reproduction; special insurance coverage; and subconsultants not retained by the CLIENT.
- VII. HOURLY RATES:** Services performed on an hourly basis will be billed at the following personnel rates. Portal to portal travel time is included to a maximum of eight (8) hours per day.
- | | | |
|--|----------------------------------|---|
| Corporate Principal at \$200.00 per hour | Associate at \$140.00 per hour | CADD Technician II at \$120.00 per hour |
| Principal at \$170.00 per hour | CADD Tech I at \$130.00 per hour | Administration I at \$85.00 per hour |
| Senior Associate at \$155.00 per hour | | |
- VIII. PAYMENT PROCEDURE:** Payment for professional services performed is unconditional and not contingent upon CLIENT'S ability to secure funding or financing. If this Agreement has not been executed within ninety (90) calendar days of the date hereon, schedule of fees, hourly rates and multipliers may be subject to re-negotiation. Invoices for the proportionate amount of professional services either based on the ratio of services performed during the month to the total for lump sum billings or actually rendered during the month for hourly billings and direct project expenses shall be presented monthly and are due upon receipt. Amounts outstanding after thirty (30) calendar days from the date of the original invoice shall be subject to a late fee of 1-1/2% per month. NUVIS reserves the right to temporarily suspend services or terminate this Agreement until payments are current. In the event of suspension of services, NUVIS shall have no liability to the CLIENT for delay or damage caused the CLIENT because of such suspension. In the event that NUVIS should require the services of an attorney for the collection of any sums due under this Agreement, the CLIENT agrees to pay said reasonable attorney's fees together with any costs incurred in said collection. Personnel hourly rates may be subject to an annual adjustment (based on the calendar year) over the course of the project. Agreements signed within six months of an annual adjustment will not be affected until the subsequent adjustment. A notification letter will be sent thirty (30) calendar days prior to any adjustments.
- IX. CHANGE ORDERS:** Upon the CLIENT'S request for additional professional services and/or materials, NUVIS shall prepare and submit a Change Order to the CLIENT confirming the verbal agreement, including additional services previously accomplished by NUVIS at the request of the CLIENT due to time constraints. Change Orders shall be negotiated for, but not be limited to:
1. additionally requested professional services not stated in this Agreement,
 2. government agency permit processing and filing or plan check fees,
 3. direct project expenses, when CLIENT requests a stated allowance figure,
 4. revisions to documents resulting from code or law requirements not in effect at time of preparation,
 5. subconsultants (i.e.: architect; civil, electrical, structural engineer; economic; horticulturist; or environmentalist),
 6. requested design team, government agency coordination, or bid phase and construction/field observation (if not outlined herein under the scope of services),
 7. replenishment of allowances for those tasks billed based on personnel hourly rates when requested professional services exceed the initial projected allowance,
 8. changes in the project scope or site plan requested by the CLIENT,
 9. irrigation water audits in compliance with AB 1881,
 10. preparation of asbuilts for planting and/or irrigation
- X. STANDARD OF CARE:** NUVIS shall perform services as expeditiously as is consistent with generally accepted standards of practice, professional skill & care to meet requested submittal dates.
- XI. CLIENT'S RESPONSIBILITIES:** CLIENT shall designate a representative authorized to act in the CLIENT'S behalf with respect to the project and furnish NUVIS with the name, address, and telephone number of that contact. CLIENT shall furnish NUVIS with all applicable reference data, including, but not limited to, the following:
1. complete & accurate topography & boundary survey plans
 2. project specific and correct architectural plans
 3. existing & proposed infrastructure, service and utility plans
 4. design and construction schedules
 5. asbuilts for coordination with existing facilities
 6. accurate & current civil engineer's grading plans
 7. government agency conditions of approval
 8. funding limitations & phasing requirements
 9. written notification of engineering or related changes
 10. agricultural suitability soils report
 11. useable computer drafting (CAD) base data
 12. proposed and existing site limitations
 13. project requirements
 14. property plot plans
 15. geotechnical/structural soils report
- CLIENT shall be responsible for all government agency processing and filing, plan check, or construction permit fees. CLIENT shall review documents submitted and render approval and decisions pertaining thereto in a prompt manner, so as to avoid unreasonable delay in the orderly progress of services. CLIENT shall perform bid administration duties, including but not limited to, advertising for bid, preparing addenda, receiving and awarding the construction contract documents. CLIENT shall perform construction administration/management responsibilities, including but not limited to, the preparation, approval, and issuance of Certificates of Payment, Change Orders, and Final Notices.
- XII. CONSTRUCTION CONTRACT:** There is no warranty or guarantee either expressed or implied by NUVIS for the completion of work or the quality of performance by the construction contractor(s) or the product(s) installed. NUVIS is not responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, since these are solely the Contractor's responsibility. NUVIS is not responsible for the Contractor's failure to carry out the work in accordance with the construction contract documents, nor responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees, or of any other persons performing portions of the work.
- XIII. TERMINATION OF AGREEMENT OF ABANDONMENT OF PROJECT:** Should either party fail substantially to perform in accordance with the terms of this Agreement or should the CLIENT decide to abandon the project in whole or in part, this Agreement may be terminated by either party giving to the other seven (7) working days written notice. NUVIS shall be promptly compensated for professional services performed prior to termination or abandonment, together with direct project expenses incurred.
- XIV. OWNERSHIP OF DOCUMENTS:** All original documents, drawings, project and computer files, and specifications are instruments of service and shall remain the property of NUVIS whether or not the project for which they were completed is executed. The instruments produced/ prepared for this project shall not be reproduced or either directly or indirectly used for/in another project without the express written consent of NUVIS.
- XV. CHANGES IN DOCUMENTS:** In the event CLIENT consents to, allows, authorizes or approves of changes to any plans, specifications, or other construction documents, and these alterations are not approved in writing by NUVIS, CLIENT recognizes that such alteration and the results thereof are not the responsibility of NUVIS. In addition, CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold NUVIS harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) arising from such alterations.
- XVI. ARBITRATION:** If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration. If a dispute cannot be settled by mediation as described above, then any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- XVII. INDEMNIFICATION:** CLIENT shall indemnify and save harmless NUVIS, including its officers, agents, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, attorney's fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with NUVIS services to be performed under this Agreement for, but not limited to personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees, agents, subcontractors or subconsultants of CLIENT, and/or damage to property of anyone, including loss of use thereof, caused or alleged to be caused in whole or in part by any negligent act or omission of NUVIS or anyone directly or indirectly employed by NUVIS. This indemnification shall extend to claims occurring after this Agreement is terminated as well as while it is in force. Such indemnity provision applies regardless of any active and/or passive negligent act or omission of NUVIS. However, CLIENT shall not be obligated under this Agreement to indemnify NUVIS for claims arising from the sole negligence or willful misconduct of NUVIS or its agents, employees or subconsultants.
- XVIII. LIMIT OF LIABILITY:** CLIENT agrees to limit the liability of NUVIS and its design subconsultants on the Project for all claims arising from any alleged professional negligence, errors or omissions such that the total aggregate liability of NUVIS and its design subconsultants on the Project shall not exceed \$50,000 or the total of fees paid to NUVIS under this Agreement, whichever is less.
- XIX. ATTORNEY FEES:** In the event the parties become involved in litigation or arbitration with each other arising out of the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and expert fees and court costs.
- XX. CALIFORNIA STATE BOARD OF LANDSCAPE ARCHITECTS:** Licensed Landscape Architects are regulated by the State of California. Any questions concerning a Landscape Architect may be referred to the Landscape Architects Technical Committee at 400 "R" Street #4000, Sacramento, CA, 95814, 916-445-4954.

Legion Post 751

Magney Ln

Newberry
Community Services

Newberry Rd

Old National Trails Hwy

Earll Rd

Newberry
Springs Park

Earll Rd

