



**MEETING DATE:** January 24, 2024

**FROM:** Jon Kennedy

**RE:** Finance Officer Contract Renewal

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**BACKGROUND:**

Susan Scarlett has been the City of Portola's Finance Officer since 1998. Her contract has been on a three year renewal and is up for renewal this month. She has not asked for an increase in the contract since 2012 in order to help keep costs down for the City. At this time an increase is being requested.

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**RECOMMENDATION:**

Approve the extension of the contract with amendment to compensation.

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**FISCAL IMPACT:**

A 10% increase would affect the following funds annually:

General Fund increase \$1440.00, Street Fund \$360.50, Snow removal \$540.50, Fund 215 (CDBG) \$300.00, Water \$1,559.00 Sewer \$1,320.00 and Solid Waste \$480.00. The amounts could change between funds depending on how the Finance Officers compensation is allocated during budget.

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**ATTACHMENTS:**

- A. SCARLETT CONTRACT

## **INDEPENDENT CONTRACTOR AGREEMENT**

This Independent Contractor Agreement (“Agreement”) is made and executed in Portola, California this 24th day of January 2024, by and between the City of Portola (hereinafter referred to as “the CITY”), and Susan Scarlett (hereinafter referred to as “CONTRACTOR”). The CITY desires to contract with CONTRACTOR, a qualified business or person, to provide the services listed on Exhibit “A” attached hereto and incorporated herein (hereinafter referred to as “SERVICES”).

In consideration of the promises and the mutual covenants herein contained, and for other good and valuable consideration, it is agreed:

**1. Independent Contractor.** It is understood and agreed, that CONTRACTOR is an independent contractor, and not the employee, agent, joint venture, or partner of the CITY, for any purpose whatsoever. The CITY, shall have no right to, and shall not control the manner or prescribe the method by which the SERVICES are performed by CONTRACTOR hereunder. CONTRACTOR shall be entirely and solely responsible for its acts and acts of its agents, employees, and subcontractors while engaged in the performance of SERVICES hereunder.

**2. Compensation.** Subject to adjustments as provided in section 2.5 CONTRACTOR will be compensated at the rate of \$5,000 per month and for out of County travel and other expenses as agreed upon between the parties for an average of 20 work hours per week. The CITY shall make payment to CONTRACTOR by the 30<sup>th</sup> day of each month for work performed in that month.

**2.5 Adjustments to Compensation.** In the event that CONTRACTOR’s duties are substantially increased the CITY and CONTRACTOR shall negotiate in good faith concerning an adjustment in compensation to reflect CONTRACTOR’s additional duties.

**3. Equipment and Office.** The CONTRACTOR shall provide and maintain all customary and necessary equipment, supplies, maintenance and utilities required for the SERVICES.

**4. Quality Assurance.** CONTRACTOR shall provide the SERVICES in accordance with the professional standards applicable to the financial and/or accounting services provided and in a manner that is acceptable to the CITY. CONTRACTOR shall meet with the City Manager as requested to review quality assurance procedures, quality standards or quality concerns. CONTRACTOR shall immediately address any quality of performance issues and timely report to the City Manager the status of such issues. Any completed SERVICE will not be accepted until approved by the City Manager.

**5. Term and Termination.** The term of this Agreement shall be for three years beginning on the date this Agreement is approved by the City Council. This Agreement may be terminated by either party, with or without cause, by giving 90 days written notice as provided in Paragraph 19 of this Agreement; provided that the City may only terminate this Agreement upon

the vote of at least three City Council members and the written recommendation of the City Manager.

**6. Taxes.** CONTRACTOR agrees and understands that as an independent contractor, CONTRACTOR is responsible for the payment of all self-employment taxes, and other taxes which may arise as a result of it performing SERVICES as an independent contractor. It is further understood that the CITY shall have no responsibility in withholding any taxes payable to the federal or state government, and that it is CONTRACTOR's sole responsibility to meet its tax obligations.

**7. Insurance.** CONTRACTOR shall be responsible for furnishing and maintaining, at CONTRACTOR's own expense, Professional Errors and Omissions, Automobile and Worker's Compensation insurance for CONTRACTOR and CONTRACTOR's employees while engaged in the performance of SERVICES hereunder.

**8. Rules, Regulations and Laws.** CONTRACTOR agrees and understands that it shall comply with all of the CITY's rules and regulations and all applicable federal, state, local, and professional laws, ordinances and regulations while engaged in the performance of SERVICES hereunder.

**9. Licenses and Permits.** CONTRACTOR agrees that as a condition of this Agreement it shall have and maintain all required professional or other licenses and business permits, when applicable, when engaged in the performance of SERVICES hereunder.

**10. Proprietary Rights.** CONTRACTOR agrees that all PROPRIETARY INFORMATION, which shall include all contacts, telephone numbers, e-mail addresses, web pages, forms, agreements, designs, plans, reports, specifications, drawings, inventions, processes, confidential information, logos, names, client lists, trade-secrets, know-how, and other information or items produced by CONTRACTOR while performing SERVICES under this Agreement, shall be assigned automatically to the CITY as the sole and exclusive property of the CITY and the CITY's assigns, nominees, and successors, as will any copyrights, patents, or trademarks obtained by CONTRACTOR while performing services under this agreement. CONTRACTOR shall treat all PROPRIETARY INFORMATION as confidential and refrain from improper disclosure of such information. On request and at the CITY's expense, CONTRACTOR agrees to help the CITY obtain patents, trademarks and copyrights for any new developments or intellectual property. This includes providing specimens, data, plans, specifications, descriptions, documentation, and other information, as well as assisting the CITY in completing any required application or registration. Immediately upon termination or expiration of this Agreement or upon a request by the CITY, CONTRACTOR shall provide all PROPRIETARY INFORMATION to the CITY at the location designated by the CITY. CONTRACTOR shall not be entitled to final payment under this Agreement until all PROPRIETARY INFORMATION is in the possession of the CITY.

**11. Records.** CONTRACTOR shall keep complete and accurate records related to the performance of the SERVICES. The CITY shall have the right to review and inspect such records during normal business hours upon reasonable notice to CONTRACTOR.

CONTRACTOR shall provide all such records, including all PROPRIETARY INFORMATION, to CITY upon the termination or expiration of this Agreement. CONTRACTOR shall provide direction and authority to appropriate persons to provide the CITY with all records related to the performance of the SERVICES, including all PROPRIETARY INFORMATION, in CONTRACTOR'S absence or inability to respond.

**12. Hold-Harmless Agreement.** CONTRACTOR is solely liable for all claims, liabilities, damages, and debts of any type whatsoever that may arise on account of CONTRACTOR's activities, or those of CONTRACTOR's employees, agents or subcontractors in the performance of this Agreement. CONTRACTOR shall exonerate, indemnify, defend, and hold harmless the CITY, and any director or employee of the CITY for any loss, damage, liability, or claim paid or incurred by the CITY, director, or employee by reason of liability resulting from CONTRACTOR's performance of the SERVICES hereunder, or from the acts or omissions of CONTRACTOR or CONTRACTOR's employees, agents or subcontractors including without limitations, all consequential damages, attorney's fees and costs.

**13. Mediation and Arbitration Clause.** In the event of disagreement or dispute between the parties arising out of or connected with this Agreement which cannot be adjusted by and between the parties involved, the disputed matter shall be resolved as follows:

*A. Mediation.* The parties agree to mediate any dispute or claim arising between them out of this contract or any resulting transaction before resorting to arbitration or court action. Mediation fees, if any, shall be divided equally among the parties involved. If any party commences an arbitration or court action based on a dispute or claim to which this paragraph applies without first attempting to resolve the matter through mediation, then that party shall not be entitled to recover attorney's fees, even if they would otherwise be available to that party in any such arbitration or court action.

*B. Arbitration.* The Parties agree that any dispute or claim in law or equity arising between them out of this Agreement or any resulting transaction, which is not settled through mediation, shall be decided by neutral, binding arbitration and not by court action. The arbitration shall be conducted by a retired judge or justice, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California law. In all other respects, the arbitration shall be conducted by a retired judge or justice, unless the parties mutually agree to a different arbitrator, who shall render an award in accordance with substantive California law. In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The parties shall have the right to discovery in accordance with Code of Civil Procedure §1283.05.

**14. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**15. Forum.** Any mediation, arbitration or litigation to enforce or interpret the provisions of this Agreement or the parties' rights and liabilities arising out of this Agreement or the performance hereunder shall be maintained only in the County of Plumas, California.

**16. Attorney's Fees.** In the event of any arbitration or litigation to enforce or interpret the provisions of this Agreement or the parties' rights and liabilities arising out of this Agreement or the performance hereunder, the prevailing party in such arbitration or litigation shall be entitled to reasonable attorney's fees and costs as fixed by the court.

**17. Severability.** If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

**18. Integration.** This Agreement terminates and supersedes the Independent Contractor Agreement between the parties dated February 14<sup>th</sup>, 2018, and contains the entire agreement among the parties and supersedes all prior and contemporaneous oral and written agreements, understandings, and representations among the parties. No amendments to this Agreement shall be binding unless executed in writing by all of the parties.

**19. Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute a waiver of any other provision, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

**20. Notices.** Any notice required by this Agreement shall be effective only if sent by certified or registered mail, postage prepaid, as follows:

If to the CITY:

City Manager, City of Portola, P.O. Box 1225, Portola, CA 96122-1225

If to CONTRACTOR:

Susan Scarlett, P.O. Box 1906, Quincy, CA 95971

For the purposes of determining compliance with any time limit in this Agreement, a notice shall be deemed to have been duly given on the second business day after mailing, if mailed to the party to whom notice is to be given in the manner provided in this Section. Either party may, at any time, change its address designated above by giving to the other party thirty-(30) days' written notice of the new address to be used for the purposes of this Section.

**21. Assignability.** Neither this Agreement nor any duties or obligations hereunder shall be assignable by any party hereto without the prior written consent of the other parties.

**Contractor:**

\_\_\_\_\_  
*Susan Scarlett*

DATE: \_\_\_\_\_

**City of Portola:**

\_\_\_\_\_  
*Jon Kennedy, Interim City Manager*

DATE: \_\_\_\_\_