Resolution No. 04-0651

STOCKTON CITY COUNCIL

RESOLUTION APPROVING FINDINGS AND AWARDING A CONTRACT FOR BUILDING INSPECTION AND PLAN CHECK SERVICES WITH 4LEAF, INC.

WHEREAS, CITY desires to hire 4Leaf, Inc. to provide inspection and plan check services on an as needed basis; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. The City Council makes the following findings to justify an exception to the competitive bidding requirements pursuant to Stockton Municipal Code section 3-105(d), cooperative purchasing agreements through other governmental agencies:

   a. The City of Tracy awarded a contract through the Request for Proposal process to 4Leaf, Inc., and has extended the use of this agreement in a cooperative effort pursuant to a request for proposal process.

   b. The City of Stockton Building Division is currently responding to approximately 1,200 inspection requests a day and contract inspectors are necessary to meet the needs of the community and respond to inspection requests in a timely manner.

   c. Staff does not have time to go through the Request for Proposal process.

   d. The use of contract inspectors is temporary, as the City is currently recruiting for and anticipates the hiring of permanent full-time inspectors.

   e. The request for proposal scope of work used by the City of Tracy has been reviewed and considered compatible with City of Stockton standards.

City Atty:
Review
Date September 2004
2. Based on the above findings, the City Manager is hereby authorized and directed to execute said Professional Services Contract on behalf of the City of Stockton, attached hereto as Exhibit A and incorporated by this reference.

PASSED, APPROVED AND ADOPTED ______________ SEP 14 :004 ______________

GARY A. PODESTO
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
PROFESSIONAL SERVICES CONTRACT FOR
BUILDING AND PLAN CHECK SERVICES

THIS CONTRACT is entered into on ________________________,
by and between the CITY OF STOCKTON, a municipal corporation, hereinafter referred to
as "CITY," and 4LEAF, INC., hereinafter referred to as "FIRM."

WITNESSETH:

WHEREAS, FIRM submitted a proposal, is licensed in the State of California to
perform such services, and is capable of providing such services;

NOW, THEREFORE, CITY and FIRM, for the consideration and upon the terms and
conditions hereinafter specified, agree as follows:

Section 1
SCOPE OF SERVICES

FIRM, for the benefit of and at the direction of CITY, shall provide construction
inspection services for both public and private construction projects within the City of
Stockton, as well as provide plan check services on an as needed basis (hereinafter the
"Project") as more particularly set forth in Exhibit A, which is attached to this Contract and
incorporated by this reference. FIRM acknowledges that the services performed pursuant
to this Contract either by FIRM or at its direction shall be rendered in accordance with the
accepted practices and standards of FIRM's profession.

Section 2
COMPENSATION

FIRM shall be compensated for said services in the amounts set forth in Exhibit "B,"
based upon the estimated time to complete each task.

Section 3
TERM

The term of this Contract shall be from the date of execution until September 1,
2006.

Section 4
RIGHTS AND DUTIES OF CITY

CITY shall make available to FIRM all data and information in the possession of
CITY which both parties deem necessary to complete the Project, and CITY shall actively
aid and assist FIRM in obtaining such information as may be deemed necessary from other
agencies and individuals.

The Director of Community Development (hereinafter referred to as "Director") may
authorize a staff person, as a representative, to confer with FIRM relative to FIRM's
services hereunder. The Project hereunder shall be reviewed from time to time by CITY at
the discretion of CITY or upon the request of FIRM. If the services are satisfactory, they
will be approved. If the services are not satisfactory, CITY will inform FIRM in writing of the changes or revisions necessary to secure approval.

Director, on behalf of CITY, reserves the right to approve any change in the project manager assigned by FIRM (including all the Subcontractors) to said Project, and any discretion or right to approve exercised by or on behalf of CITY shall be exercised in a reasonable manner.

Upon payment for the services performed, or portion thereof, all original plans, drawings, specifications, reports, environmental support documentation, or other instruments of service are and shall remain the property of CITY whether the entire project for which they are made is finished or not. FIRM shall be permitted to retain copies for purposes of marketing professional services, publications in professional journals, and presentations.

Section 5
RIGHTS AND DUTIES OF FIRM

FIRM represents and acknowledges that it has or will have at the time this Contract is executed, all licenses (including a City of Stockton Business License), permits, qualifications, insurance, and approvals of whatsoever nature are legally required for the FIRM to practice its profession, and that FIRM shall, at its own cost and expense, keep in effect during the life of this Contract all such licenses, permits, qualifications, insurance, and approvals.

FIRM shall meet with the Director of Community Development or other personnel of CITY or third parties as necessary on all matters connected with the carrying out of FIRM's services. Such meetings shall be held at the request of either party hereto.

Section 6
TERMINATION OF CONTRACT

Either party shall have the right to terminate this Contract at any time upon giving the other party written notice of its intention to terminate thirty (30) days prior to the effective date of said termination. Upon termination, FIRM shall turn over to CITY all documents, records, plans, and instruments of service produced by FIRM in connection with its performance of services pursuant to this Contract. CITY shall pay FIRM for all services satisfactorily performed pursuant to this Contract up to the date of termination.

Section 7
NOTICES

Any notice, tender, delivery, or requests for payment to be given to any party herein in connection with this Contract may be effected by personal delivery, in writing or by mail, and shall be deemed communicated as of the date of actual receipt. Mailed notices shall be addressed as set forth below:
Section 8
INDEPENDENT CONTRACTOR

Nothing in this Contract shall be interpreted so as to cause FIRM to be considered an employee of CITY. FIRM is employed solely as an independent contractor to render a professional service and is responsible for all obligations consistent with that status.

Subcontractors shall not be recognized as having any direct or contractual relationship with the CITY. The persons engaged in the services, including employees of Subcontractors and suppliers, will be considered employees of the FIRM. FIRM shall be responsible for the services of Subcontractors, which shall be subject to the provisions of this Contract. FIRM is responsible to the CITY for the acts and omissions of its Subcontractors and persons directly or indirectly employed by them.

Section 9
WORKERS’ COMPENSATION

In accordance with the provisions of Section 3700 of the California Labor Code, FIRM shall secure at its own expense and maintain during the life of this Contract, workers' compensation coverage for its employees as necessary to protect FIRM and its employees under the Workers' Compensation Insurance and Safety Act, including coverage under United States Longshore and Harbor Workers’ Act, when applicable. Such insurance shall be in a standard form and shall relieve CITY of all responsibility for such claims and/or liability. FIRM shall, prior to undertaking the work contemplated herein, supply CITY with a certificate of insurance evidencing that said coverages are in full effect.

Section 10
INSURANCE

FIRM shall at all times maintain at FIRM's expense professional liability insurance coverage in the amount of $1 million. FIRM shall provide thirty (30) days written notice to CITY prior to canceling or changing the terms of such coverage.

In addition to Workers’ Compensation Insurance and Professional Liability Insurance, FIRM shall comply with the insurance requirements set forth in Exhibit D, which is attached to this Contract and incorporated by this reference.
Section 11
INDEMNIFICATION

FIRM shall indemnify, defend, and hold harmless CITY, its officers, agents, and employees, from any claim, expense, liability, or payment for any injury or damage to any person or property to the extent caused by FIRM's willful misconduct or negligent performance of its duties pursuant to this Contract.

Section 12
ATTORNEY'S FEES

Any claims, disputes or controversies arising out of, or in relation to, the interpretation, application or enforcement of this Contract may be submitted to non-binding mediation through the auspices of the American Arbitration Association prior to the initiation of any suit or other litigation. The cost of said mediation shall be split equally between the parties.

In the event that legal action is brought by either party against the other, the prevailing party shall be reimbursed by the other for the prevailing party's legal costs, in addition to whatever other judgments or settlement sums, if any, may be due. Such legal costs shall include, but not be limited to, reasonable attorney's fees, court costs, expert witness fees and other documented expenses.

Section 13
NON-DISCRIMINATION

In performing services under this Contract, FIRM shall not discriminate in the employment of its employees or in the engagement of any Subcontractors on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, age, or any other criteria prohibited by law.

Section 14
ASSIGNMENT

FIRM shall neither assign nor delegate its rights and/or duties under this Contract without first obtaining CITY’s written consent to the assignment and/or delegation. Any such assignment or delegation made by FIRM without prior written consent of CITY will render this Contract voidable at sole discretion of CITY.

Section 15
AUDITS

CITY reserves the right to periodically audit all charges made by FIRM to CITY for services under the Contract. Upon request, FIRM agrees to furnish CITY, or a designated representative, with necessary information and assistance.

FIRM agrees that CITY or its delegate shall have the right to review, obtain, and copy all records pertaining to performance of the Contract. FIRM agrees to provide CITY
or its delegate with any relevant information requested and shall permit CITY or its
delegate access to its premises, upon reasonable notice, during normal business hours for
the purpose of interviewing employees and inspecting and copying such books, records,
accounts, and other material that may be relevant to a matter under investigation for the
purposes of determining compliance with this Contract. FIRM further agrees to maintain
such records for a period of three (3) years after final payment under this Contract.

Section 16
APPLICABLE LAW

The provisions of this Contract and any and all disputes arising therefrom shall be
governed by the laws of the State of California.

Section 17
CAPTIONS

The captions of the sections of this Contract are for convenience only and shall not
be deemed to be relevant in resolving any questions of interpretation or intent.

Section 18
INTEGRATION AND MODIFICATION

The response by FIRM to the Request for Proposals and the Request for Proposals
on file with the City Clerk are hereby incorporated herein by reference to the extent that
such documents do not differ from the provisions and terms of this Contract, and if a
difference does exist the provisions and terms of this Contract shall supersede such
response or Request for Proposals.

This Contract represents the entire integrated agreement between FIRM and CITY,
supersedes all prior negotiations, representations, or agreements, either written or oral,
between the parties, and may be amended only by written instrument signed by FIRM and
CITY.

All exhibits and this Contract are intended to be construed as a single document.
Should any inconsistency occur between the specific terms of this Contract and the
attached exhibits, the terms of this Contract shall prevail.

Section 19
SEVERABILITY

The provisions of this Contract are severable to the extent that should any of its
provisions or terms be declared void in whole or in part by operation of law or agreement of
the parties, the remainder of the provisions or terms not expressly declared void shall
remain enforceable and in full effect.
Section 20
THIRD PARTY RIGHTS

Nothing in this Contract shall be construed to give any rights or benefits to anyone other than CITY and FIRM.

Section 21
AUTHORITY

The undersigned hereby represent and warrant that they are authorized by the parties to execute this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract the day and year first hereinabove written.

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

CITY OF STOCKTON, a municipal corporation
BY: __________________________
City Manager

“FIRM”

RICHARD E. NOSKY, JR.
CITY ATTORNEY

4LEAF, INC.

GUY D. PETZOLD
Deputy City Attorney

BY: __________________________
Title: __________________________
EXHIBIT "A"

SCOPE OF SERVICES

CONSULTANT shall provide construction inspection services for both public and private construction projects within the City of Stockton, based on the following objectives and CONSULTANT responsibilities. CONSULTANT shall also provide plan check services to the CITY on an as needed basis as determined by CITY.

A. Project Objectives.

The CITY's primary objective for this Agreement is to obtain professional assistance in the timely performance of construction inspection and plan checking services, when deemed necessary by the CITY on an as needed basis, for the time period between September 1, 2004 and September 1, 2006.

B. Responsibilities.

CONSULTANT will provide temporary construction inspection and plan check services to the CITY on an as needed basis, between September 1, 2004 and September 1, 2006. CONSULTANT shall provide these temporary construction inspection and plan check services to the CITY with qualified employees of CONSULTANT. Upon receipt of a request from the CITY, CONSULTANT shall review the qualifications of its employees, and select qualified inspectors and/or plan checkers. CONSULTANT shall ensure that the qualified inspectors and/or plan checkers have the experience and training necessary to perform the services required by this Agreement. CONSULTANT shall provide to the CITY a concise resume of each individual employee's qualifications, a proposed hourly rate for each employee based on the attached fee schedule (Exhibit B), and CONSULTANT shall schedule interviews of the qualified candidates with the CITY's Building Official. Depending upon the needs of the CITY, the CITY may select one or more of the candidates provided by CONSULTANT for inspection and/or plan check services.

CONSULTANT shall, through its qualified Inspectors and/or plan checkers, perform construction inspection and plan check services for the CITY's Building Division. Generally, the duties include inspecting various private work including subdivision inspection, Public Works infrastructure, buildings, parks, including landscaping and irrigation for conformance with all relevant Standards, plans, specifications, contract documents, laws, codes, ordinances, resolutions, and regulations. Responsibilities of the inspectors/plan checkers include but are not limited to the following:

1. The Inspector and plan checker shall review and be thoroughly familiar with all laws, regulations, standards, and codes relevant to construction, including, but not limited to the plans and specifications applicable to each permit.
2. For each assigned project, the plan checker shall review and perform plan checking of improvement drawings under direction of Supervising Plan Checker as required.

3. The inspector should perform inspections based on the assignments made by the Deputy Building Official and/or Supervising Inspector.

4. In the event that the inspector observes, or otherwise learns of, an issue at the construction site which involves a risk of imminent harm to person or property, the Inspector shall immediately notify the authorized representative of the Contractor, and the Deputy Building Official, and shall take such action which, under the circumstances and the professional opinion of the Inspector, will lead to a timely resolution of the risk of harm.

5. The Inspector and/or plan checker shall not order, tell, or suggest to the Contractor any method of performance of the work. The method of performance is within the discretion of the Contractor.
Exhibit B

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<thead>
<tr>
<th>Hourly rates:</th>
<th>Rate</th>
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<tr>
<td>Building Inspector/Plan Review (onsite)</td>
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<tr>
<td>Senior Plan Reviewer (onsite)</td>
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<tr>
<td>Structural Plan Review (onsite)</td>
<td>$95 per hour</td>
</tr>
<tr>
<td>Offsite Plan Review Services</td>
<td>$85 per hour</td>
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