SUBJECT: CONTRACTING WITH WILLIAM H. NUTTMAN FOR RIGHT OF WAY
AND RELOCATION SERVICES

SOURCE: Engineering and Building Department

COMMENT: Mr. William H. Nuttman provided the right of way acquisition services for
the Main Street Bridge. Mr. Nuttman is very familiar with the right of way
procedures required by Caltrans. It is very important that these
procedures be followed to the letter because failure to do so can result in
Porterville losing the grant money for the project involved.

Staff has worked on the acquisition of the right of way for the Plano Street
Bridge widening coming up soon and expects to have other State or
Federally funded projects requiring right of way services in the future.

Mr. Nuttman has an associate, Mr. Herman Hamm, who specializes in
relocation services for people in houses that the City must relocate or
demolish. It is anticipated that Porterville may need this service in the
future for projects like the Henderson Avenue Project from Newcomb
Street to Westwood Street. Mr. Hamm has previously worked for the City
of Porterville on major projects requiring experience and expertise in
relocation services.

Both of these gentlemen have provided satisfactory services in the past
and the staff would like to retain them for future projects on which their
services are needed. The service agreement calls for the City to pay $50
per hour plus travel, at the IRS approved mileage rate, not to exceed
$25,000, for their services.

RECOMMENDATION: That the City Council:

1. Approve entering into a service agreement with Mr. William H. Nuttman; and

2. Authorize the Mayor to sign the service agreement.

ATTACHMENT: Service Agreement
SERVICE AGREEMENT

DATE: September 17, 2002

PARTIES: City of Porterville, a California municipal corporation, hereinafter referred to as "CITY"; and William H. Nuttman, hereinafter referred to as "CONSULTANT".

RECITALS: CITY has undertaken projects on which it is seeking assistance from CONSULTANT. Said projects which will hereinafter be referred to as "projects" are described as follows:

Project Name: Any project that requires right of way acquisition and/or relocation services.

AGREEMENTS: IN CONSIDERATION OF MUTUAL COVENANTS AND AGREEMENTS HEREAFTER set forth the parties hereto do contract and agree as follows:

SECTION 1. CONTRACT SERVICES: CONSULTANT hereby agrees to provide the following services and materials, in a timely manner as described in the Scope of Services, in connection with work described above.

SECTION 2. PAYMENT: In consideration for said services and materials, CITY shall pay CONSULTANT $50.00 per hour plus mileage at the IRS approved rate, not to exceed Twenty-Five Thousand Dollars ($25,000), for services rendered.

TIME OF PAYMENT: Progress payment requests shall be submitted by the 25th of each month. CONSULTANT should receive payment within 30 days of the date the bill is received.

SECTION 3. COMPLETION DATE: The services to be performed by CONSULTANT will be commenced upon execution of this agreement and all "work directives" shall be completed in a reasonable time.

The parties agree that time is of the essence under this contract.
SECTION 4. FAMILIARITY WITH PROJECT: CONSULTANT agrees that it is fully familiar with all of the details of real estate acquisition and relocation policy of the Federal Highway Administration and the California Department of Transportation. CONSULTANT agrees it will not rely upon any opinions and representations of CITY unless CITY is the only available source of said information.

SECTION 5. INDEPENDENT CONTRACTOR: It is expressly understood that CONSULTANT is entering into this contract and will provide all services and materials required hereunder as an independent contractor and not as an employee of CITY. CONSULTANT specifically warrants that it will have in full force and effect, valid insurance covering:

(i) Bodily injury and property damage insurance in the amount not less than Five Hundred Thousand Dollars ($500,000) per occurrence; and

(ii) Automotive liability in the amount not less than Five Hundred Thousand Dollars ($500,000) per occurrence;

fully protecting CITY, its elected and appointed officers, employees, agents and assigns, against all claims arising from the negligence of CONSULTANT and any injuries to third parties, including employees of CITY and CONSULTANT. CONSULTANT agrees to indemnify, defend (at CITY’S election), and hold harmless the CITY against any claims, actions or demands against CITY, and against any damages, liabilities for personal injury or death or for loss or damage to property, or any of them arising out of negligence of CONSULTANT
or any of its employees or agents.

SECTION 6. PERSONNEL: All work, under this agreement, shall be performed by either William H. Nuttman or Herman Hamm as appropriate.

SECTION 7. ASSIGNMENT OF CONTRACT: It is acknowledged by the parties that CITY has entered into this contract with the express understanding that all work will be performed by CONSULTANT and his associate Herman Hamm. CONSULTANT shall not, without the written consent of CITY, assign, transfer or sublet any portion or part of this work, nor assign any payments to others.

SECTION 8. AFFIRMATIVE ACTION. CONSULTANT will not discriminate against any employee, or applicant for employment because of race, color, religion, gender, marital status, or national origin.

SECTION 9. CONFLICT OF INTEREST CODE: CONSULTANT agrees to comply with all applicable conflict of interest laws and regulations, and comply with the requirements of the Political Reform Act.

CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of service required hereunder. The term "conflict" shall include, as a minimum, the definition of a "conflict of interest" under the California Fair Political Practices Act and the City of Porterville Conflict of Interest Code, as that term is applied to consultants.

SECTION 10. TERMINATION: This contract may be terminated by either party for just cause by giving seven (7) days written notice to the other party.
Upon termination by CITY, CITY shall be relieved of any obligation to pay for work not completed including profit and overhead. CONSULTANT may be entitled to just and equitable compensation for satisfactory work completed, except CITY can withhold damages incurred as a result of the termination.

SECTION 11. ENTIRE CONTRACT: It is understood and agreed that this Service Agreement represents the entire Agreement between the parties. Should it be necessary to institute legal proceedings to enforce any and all of the covenants and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs.

SECTION 12. DISPUTES; VENUE: If either party initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that the venue thereof shall be the County of Tulare, State of California. CONSULTANT hereby waives any rights it might have to remove any such action pursuant to California Code of Civil Procedure Section 394.

IN WITNESS WHEREOF, the parties have executed this Service Agreement on the date and year first above written.

CITY OF PORTERVILLE

CONSULTANT

By__________________________                         By__________________________

Gordon T. Woods, Mayor

Date__________________________                         Date__________________________