

**CITY OF FOLSOM
UTILITIES DEPARTMENT
AGREEMENT FOR CONSULTING SERVICES WITH**

This Agreement, for reference dated _____, is made by and between the City of Folsom, a Municipal Corporation, hereinafter referred to as "City" and _____, a (California Corporation, Sole Proprietorship, Limited Liability Company, Partnership hereinafter referred to as "Consultant."

WITNESSETH:

WHEREAS, City desires to _____; and,

WHEREAS, Consultant, by reason of its qualifications, experience, and facilities for performing the type of services contemplated herein, has proposed to provide the requested services;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, City and Consultant agree as follows:

I. Scope of Service

The scope of service covered by this Agreement includes all consulting services described and contained in Exhibit A, attached hereto and by this reference incorporated into this Agreement.

II. Term of Agreement

This Agreement shall be effective as of the date executed by all parties and approved as to form by the City Attorney and shall continue until all services provided for in this Agreement have been performed unless otherwise terminated as set forth in Paragraph XVII of this Agreement.

III. Schedule for Performance

City and Consultant agree that time is of the essence in the performance of this work, and Consultant agrees to produce documents and perform services in the times stated in the Proposal. Deviations from time schedule stated in the Proposal may be made with the approval of the Utilities Director.

IV. Compensation

Compensation for all of the services described and contained in Exhibit A shall be paid on a time-and-materials, not-to-exceed basis. The maximum compensation for all of the services specified in Exhibit A, including any and all costs or expenses, is \$_____. In the event the cost for services exceeds \$_____, Consultant agrees to complete all services enumerated in Exhibit A at no additional expense to City.

The City shall have the right to review all books and records kept by the Consultant and any subcontractors in connection with the operation and services performed under this Agreement. The City shall withhold payment for any expenditures not substantiated by Consultant's or subcontractor's books and records. In the event the City has made payment for expenditures that are not allowed, as determined by the City's audit, the Consultant shall reimburse the City for the amount of the unallowed expenditures. City shall make no payment for any services not specified in Exhibit A of this Agreement unless such additional services and the price thereof are agreed to in writing and approved by the City prior to the time that such additional services are rendered.

V. Invoicing, Payment, Notices

Consultant shall submit periodic invoices, not more frequently than monthly, for the services rendered during the preceding period. Invoices shall describe the services performed and costs incurred, the person(s) rendering performed services, the amount of time spent by such person(s), and the applicable hourly rate.

Consultant shall transmit invoices and any notices required by this Agreement, to City as follows:

Utilities Department
City of Folsom
50 Natoma Street
Folsom, California 95630

City shall transmit payments on invoiced amounts, and any notices required by this Agreement to Consultant as follows:

VI. Professional Services

Consultant is a _____ (type of firm), licensed by the State of California. Consultant agrees that services shall be performed and completed in the manner and according to the professional standards observed by a competent practitioner of the profession in which Consultant and its subcontractors or agents are engaged. Consultant shall not, either during or after the term of this Agreement, make public any reports or articles, or disclose to any third party any confidential information relative to the

work of City or the operations or procedures of the City without the prior written consent of City.

Consultant further agrees that it shall not, during the term of this Agreement, take any action that would affect the appearance of impartiality or professionalism.

VII. Independent Contractor

It is understood and agreed that Consultant (including Consultant's employees) is an independent contractor and that no relationship of employer-employee exists between the parties hereto.

Consultant's assigned personnel shall not be entitled to any benefits payable to employees of City. City is not required to make any deductions or withholdings from the compensation payable to Consultant under the provisions of the Agreement, and is not required to issue W-2 Forms for income and employment tax purposes for any of Consultant's assigned personnel.

Consultant, in the performance of its obligation hereunder, is only subject to the control or direction of City as to the designation of tasks to be performed and the results to be accomplished. Any third persons employed by Consultant shall be entirely and exclusively under the direction, supervision, and control of Consultant.

Consultant hereby indemnifies and holds City harmless from any and all claims that may be made against City based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement.

VIII. Authority of Consultant

Consultant shall possess no authority with respect to any City decision and no right to act on behalf of City in any capacity whatsoever as agent, or to bind City to any obligations whatsoever.

IX. Conflict of Interest

Consultant certifies that it has disclosed to City any actual, apparent, or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement. Consultant agrees to advise City of any actual, apparent or potential conflicts of interest that may develop subsequent to the date of execution of this Agreement. Consultant further agrees to complete any statements of economic interest required by either City ordinance or State law.

X. Assignment and Subcontracting

Except as expressly authorized herein, Consultant's obligations under this Agreement are not assignable or transferable, and Consultant shall not subcontract any work, without the prior written approval of the Utilities Director.

This Agreement shall constitute written approval for Consultant to subcontract with

_____ to perform the work specified in Exhibit A to this Agreement.

City does not assume any liability, duty or obligation to Consultant's subcontractors, subconsultants, or agents, including but not limited to _____ by execution or performance of this Agreement, and no subcontractors, subconsultants, agents or other parties, are third party beneficiaries of this Agreement.

XI. Ownership of Work Product

All technical data, evaluations, reports, plans and other work products of Consultant provided hereunder shall become the property of City and shall be delivered to City upon completion of the services authorized hereunder. Consultant may retain copies thereof for its files and internal use. City representatives shall have access to work products for the purpose of inspecting same and determining that the services are being performed in accordance with the terms of the Agreement. Publication of the information derived from work performed or data obtained in connection with services rendered under this Agreement must be approved in writing by City.

XII. Indemnification

Consultant agrees to hold harmless and indemnify City, its officers, officials, employees, agents, and volunteers from and against any and all losses, liability, or damages arising out of, in consequence of, or resulting from the negligent or willful acts and/or omissions of Consultant, its subcontractor, subconsultants, agents, and employees. Consultant assumes no responsibility to indemnify City for the negligent acts or omissions of City, its officers, officials, employees, agents, and volunteers.

XIII. Insurance

Consultant shall maintain insurance coverage as set forth in Exhibit B that is attached hereto and incorporated herein by reference.

XIV. Employment Practices

Consultant, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability or marital status in its employment practices. Consultant further agrees to comply with any additional requirements set forth in Exhibit C, which is attached hereto and incorporated herein by reference.

XV. Licenses, Permits, Etc.

Consultant represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatsoever nature that are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses,

permits, and approvals which are legally required for Consultant to practice its profession at the time the services are performed.

XVI. Records

Consultant shall maintain records, books, documents and other evidence directly pertinent to the performance of work under this Agreement in accordance with generally accepted accounting principles and practices.

For consulting services related to engineering design, Consultant agrees to comply with the terms of Exhibit C that is attached hereto and incorporated herein by reference.

XVII. Termination

City and Consultant may terminate this Agreement by providing thirty (30) days written notice prior to the effective termination date.

In the event of such termination, City shall pay Consultant for all services actually rendered up to and including the date of termination. Consultant shall deliver to City copies of all drawings, reports, analyses, and investigations whether completed or not, that were prepared or were being prepared under the provisions of this Agreement.

XVIII. Amendments

Any modification or amendment of any provision of this agreement shall be in writing and must be executed by all parties.

XIX. Entire Agreement

This instrument and any attachments hereto constitute the entire Agreement between the City and Consultant concerning the subject matter hereof.

END OF TEXT - SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

Date: _____ City of Folsom, A Municipal Corporation
("City")

Sam Spiegel, Interim City Manager

Date: _____
A California Corporation
("Consultant")

By: _____

Its: _____
(CEO, President, or Vice President)

By: _____

Its: _____
(Secretary or CFO)

Tax ID No.: _____

Approved As To Content:

Kenneth V. Payne, Utilities Director Date

Approved As To Form:

Bruce C. Cline, City Attorney Date

Attests: Funding Available:

Christa Schmidt, City Clerk Date Navdeep S. Gill, Chief Financial Officer Date

NOTICE: SIGNATURE(S) ON BEHALF OF CONSULTANT MUST BE NOTARIZED.

A certificate of acknowledgment in accordance with the provisions of civil code section 1189 must be attached for each person executing this agreement on behalf of consultant. California Civil Section provides, at part (b): "Any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the laws of the place where the acknowledgment is made."

EXHIBIT A

SCOPE OF WORK

See following pages.

EXHIBIT B

INSURANCE

During the term of this Agreement, Consultant shall maintain in full force and effect policies of insurance as set forth herein and acceptable insurance certificate(s) and endorsements must accompany the signed copy of this contract. Failure to meet the requirements described below could delay processing of this contract:

- A. General Liability. Comprehensive general liability insurance with coverage of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.
- B. Automobile Liability. Automobile liability insurance with coverage of not less than \$1,000,000 combined single limit per accident for bodily injury and property damage.
- C. Worker's Compensation. Worker's Compensation Insurance that complies with the terms of the law of California concerning Worker's Compensation.
- D. Errors and Omissions; Malpractice (for Design Work only). Errors and omissions or malpractice insurance with coverage of not less than \$1,000,000 combined single limit per occurrence.
- E. Other Insurance Provisions. The consultant's General and Automobile Liability shall contain the following provisions:
 - a. The City, its officers, officials, employees, agents, and volunteers shall be covered as additional insured as respects: liability arising out of activities performed by or on behalf of the consultant; products and completed operations of the consultant; premises owned, leased or used by the consultant; or automobiles owned, leased, hired or borrowed by the consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents, and volunteers.
 - b. The consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of consultant's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting or other provisions of the policies shall not

affect coverage provided to the City, its officers, officials, employees, agents, and volunteers.

- d. Coverage shall state that consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

F. All Coverage

- a. Acceptability of Insurers. Insurance is to be placed with insurers with a Bests' rating of no less than A:VII and through insurers admitted in California. This requirement may, however, be waived in individual cases for Errors and Omissions Coverage only, provided however, that in no event will a carrier with a rating below B:IX be acceptable.
- b. Verification of Coverage. Consultant shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this exhibit. Certificates of Insurance and endorsements shall be furnished prior to or contemporaneously with the execution of this Agreement by Consultant. The Certificates of Insurance shall provide that there will be no cancellation, reduction or modification of coverage without thirty (30) days prior written notice to City. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms acceptable to the City Attorney.

G. Subcontractors/Subconsultants

- a. Consultant shall include all subcontractors and subconsultants as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor and subconsultant.
- b. All coverage for subcontractors and subconsultants shall be subject to all of the requirements stated herein.