CITY ADVISOR
AND
OWNER'S REPRESENTATIVE
FOR THE NEW
WASTEWATER TREATMENT PLANT

APPENDIX B

PROFESSIONAL SERVICES AGREEMENT

CITY OF RIDGECREST

CONSULTANT SERVICES AGREEMENT

CITY ADVISOR and OWNER'S REPRESENTATIVE FOR THE NEW WASTEWATER TREATMENT PLANT (WWTP) PROJECT CITY OF RIDGECREST, CALIFORNIA

As of _____, the CITY OF RIDGECREST, hereinafter "CITY", and ……, hereinafter "CONSULTANT" agrees as follows:

1. PURPOSE

This agreement sets forth the terms under which the CONSULTANT will provide services to the CITY.

2. SERVICES TO BE PROVIDED BY CONSULTANT

A. CONSULTANT shall, as part of the basic professional service, employ at its own expense, qualified professionals, technicians, and engineers properly skilled in the various aspects of the Project. If sub consultants are engaged, CONSULTANT shall advise CITY in writing of their selection for purposes of approval prior to their performance of work. CONSULTANT shall pay to each sub consultant the amount due each sub consultant not later than fifteen (15) days after receipt of each progress payment or final retention payment.

3. ITEMS AND SERVICES TO BE PROVIDED BY CITY

The CITY shall provide access to the site and all records and files associated with the project.

4. COMPENSATION

A. CONSULTANT agrees to accept for the performance of the professional services required by this Agreement and CITY agrees to pay CONSULTANT for such services the fixed fee provided hereinafter. In no event shall CITY 's obligations pursuant to this Agreement exceed a total sum of XXXX($XXX.00)

B. Failure by the CONSULTANT to complete the tasks of this Agreement to the satisfaction of the CITY within the time agreed will reduce the value of the work or delay implementation of the proposed work. CITY shall incur no obligation to compensate, reimburse or pay CONSULTANT for work reasonably deemed unsatisfactory by CITY and if the work is not completed on time the contract price will be reduced by One Hundred Dollars ($100.00) for every calendar day of delay, unless the time limits are extended by CITY in writing.

C. Payment of the fixed fee by CITY to CONSULTANT shall be in accordance with the CONSULTANT'S Proposal of XXXXX. CONSULTANT may submit a billing 60% of said proposal upon submission of the plans and specifications for review by the CITY. The CONSULTANT may submit a final billing to the CITY only after the plans and specifications have been reviewed by the CITY, all revisions to the plans and specifications requested by the CITY have been made by the CONSULTANT and the plans and specifications have accepted by the CITY.

D. CONSULTANT shall submit a verified written billing to the CITY. Additionally, CONSULTANT agrees to maintain records of time and attendance and other items which will result in costs to CITY and which are in support of services specified

herein. CONSULTANT shall submit a written record of those items which are relevant to each billing period with its corresponding invoice. Upon receipt and approval by CITY of such billing, CITY shall cause payment to be made to CONSULTANT in the amount specified. CITY agrees to make payment pursuant to approved invoices to annuitant within thirty (30) days of receipt of the invoice except as provided in Civil Code section 3320.

E. If the CITY disputes in good faith any portion of any amount due the consultant, CITY may withhold payment in an amount not to exceed one hundred fifty percent (150%) of the disputed amount. The fact CITY makes payment under this Agreement shall not be interpreted to imply the CITY has approved of the quality of the services rendered by the CONSULTANT or CONSULTANT'S agents or employees.

5. TERMINATION OF AGREEMENT

This Agreement may be terminated by CITY upon giving ten (10) days written notice to ENGINEER. If the agreement is terminated CITY shall pay to ENGINEER, as full payment for all services actually and satisfactorily rendered hereunder up to the notice of termination. Consideration shall also be given to both satisfactorily completed work and work in process of completion and to complete and incomplete drawings and other documents whether delivered to the CITY or in possession of the CONSULTANT. Upon acceptance of said payment by CONSULTANT, the above referenced documents shall be delivered to and become the property of CITY

6. INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, his agents, representatives, or employees.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 0001).
2. Insurance Services Office Form Number CA 001 (Ed. 1/87) covering Automobile Liability, Code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Errors and Omissions liability insurance appropriate to the CONSULTANTS profession. Consultant's coverage is to be endorsed to include contractual liability.

B. Minimum Limits of Insurance

CONSULTANT shall maintain limits no less than:

1. General Liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: $1,000,000 per accident for bodily injury and property damage.

3. Employer's Liability: $1,000,000 per accident for bodily injury or disease.
4. Errors and Omissions Liability: $1,000,000 per occurrence.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees, and volunteers; or the CONSULTANT shall provide a financial guarantee satisfactory to the CITY guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; or automobiles owned, leased, hired or borrowed by the CONSULTANT.

2. For any claims related to this project, the CONSULTANT'S insurance coverage shall be primary insurance as respects the City, it's officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the CONSULTANT'S insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice be certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

F. Verification of Coverage

CONSULTANT shall furnish the CITY with original certificates and amendatory endorsement effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the city's forms provided those endorsements conform to the City requirements. All certificates and endorsements are to be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

G. Maintaining Coverage

If CONSULTANT, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. CITY, at its sole option, may terminate this Agreement and obtain damages from CONSULTANT resulting from said breach. Alternatively, CITY may purchase such required insurance coverage and, without further notice to CONSULTANT, may deduct from sums due to CONSULTANT any premiums and associated costs

advanced for such insurance. If the balance of monies obligated to CONSULTANT pursuant to this Agreement are insufficient to reimburse CITY for the premiums and any associated costs, CONSULTANT agrees to reimburse CITY for the premium and pay for all cost associated with the purchase of said insurance.

7. INDEMNIFICATION

CONSULTANT shall indemnify, defend (upon request of CITY) and hold harmless CITY, and CITY'S officers, agents and employees and each of them, from any and all actions, claims, demands, liabilities, losses, damages, and expenses (including but not limited to attorney's fees) of any kind or nature proximately caused by: (a) the negligence of CONSULTANT, its officers, agents, employees or independent contractors; or (b) the failure of CONSULTANT, its officers, agents, employees or independent contractors to exercise that degree of skill and care customarily exercised by similar professionals when providing similar services.

8. HAZARDOUS MATERIALS

It is understood and agreed that CONSULTANT'S services herein do not include the treatment or handling, or potential or existing hazardous materials, pollutants, or asbestos. If the CITY or CONSULTANT is aware of, or becomes aware of, elements of any of the above in the Project for which CONSULTANT is to provide services, CITY or CONSULTANT shall immediately notify the other party in order for the CITY and CONSULTANT to renegotiate necessary services according to Section V of this Agreement.

9. CONSULTANT'S RESPONSIBILITY

A. CONSULTANT shall be an independent contractor, and is not an agent or employee of CITY. CONSULTANT has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons assisting CONSULTANT in performance of these engineering services

B. CONSULTANT shall be solely responsible for all matters relating to the payment of CONSULTANT'S employees including compliance with Social Security, Federal Minimum Wage Rates, withholding and all other regulations governing employee wages or salary.

C. CONSULTANT shall provide services under this Agreement with the skill and care customarily exercised by similar professionals in the State of California when providing similar services.

10. CONSTRUED ACCORDING TO CALIFORNIA LAW

The provisions of this Agreement will be construed in accordance with the laws of the State of California.

11. NON WAIVER

No covenant or condition of this Agreement to be performed by CONSULTANT can be waived except by the written consent of CITY. Forbearance or indulgences by CITY in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the CONSULTANT. CITY shall be entitled to invoke any remedy available to CITY under this Agreement or by law or in equity despite said forbearance or indulgence.

12. INCORPORATION OF PRIOR AGREEMENTS AND AMENDMENTS

The Request for Proposal, including all addenda, is hereby incorporated by reference, except to the extent that the Request for Proposal, or addenda, conflict with the terms of this Agreement. This Agreement may be modified only by a duly executed written amendment. Any oral agreement or unwritten understanding pertaining to this Agreement shall not be effective.

13. PROCEDURE TO MODIFY AGREEMENT

Except as otherwise provided herein, the terms of this Agreement may only be modified by the written consent of the parties hereto.

14. NOTICES

Notices shall be sufficiently given hereunder if personally served upon the City Clerk's Office of the CITY or the CONSULTANT, or if sent by United States mail, postage prepaid, as follows:

To CITY:

Public Works Administration
City of Ridgecrest
100 West California Ave.
Ridgecrest, CA 93555

To CONSULTANT:

The address to which the notices shall be mailed to either party may be changed by written notice given by such party to the other, as provided above but nothing herein contained shall preclude the giving of any such notice by personal service.

15. NO AUTHORITY TO BIND

CONSULTANT has no authority to bind CITY to any agreements or undertakings.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective officers and agents thereunto duly authorized as of the day and year first above written

CITY OF RIDGECREST

By_____
Steven P. Morgan, Mayor
City of Ridgecrest

By_____
(Signature)

APPROVED AS TO FORM

(Typed Name)

City Attorney

By_____
Attorney

_____
(Title)