



## Council Agenda Report

**From:** Dick McKinley, Public Works Director

**Subject:** Amending the Existing Agreement with Water Consultancy to Update the Water and Sewer Connection Fees

**Date:** May 16, 2017

---

### Facts

1. It is important for new development to pay a fair share of the costs of growth, including the costs of infrastructure needed to serve that growth. (Note: this report concerns connection fees paid by new development, and is not about water and sewer rates for existing customers. The City is not considering changing water and sewer rates beyond what has already been adopted.)
2. The current connection fees use different methodologies and assumptions, resulting in confusion for the development community and concerns about equity. It is important that the fees be set correctly so that new development pays its fair share to buy in to the infrastructure that had been built and paid for already by current ratepayers. It is also important that the fees properly project the costs of building new infrastructure serving new development, based on the demand from that new development.
3. Water connection fees were last updated in 2009. Sewer connection fees were last updated in 2011.
4. On November 18, 2014 the City entered into a professional services agreement with Kennedy/Jenks Consultants to study water & sewer rates and water facility charges.
5. On April 24, 2015 the City amended that agreement to assign the work to the firm Water Consultancy to complete the rate study work.
6. On March 29, 2017 the Housing Constraints and Opportunities Committed recommended that the City update the water and sewer connection fees, starting with an update of the prior work, and appointed a sub-committee to work with City staff on this effort.
7. This connection fee update is designed to put both water and sewer fees on the same basis and using the same policy decisions and assumptions. The new connection fees will properly take into account all infrastructure that has been recently built (like the new/upgraded water and wastewater treatment plants), as well as infrastructure that will be built over the next decade (such as the replacement water storage tank on 21<sup>st</sup> Street, the tertiary treatment plant, etc.). Having these fees set correctly can encourage proper housing development and help the local economy.
8. Water Consultancy is still under contract with the City for rate study work, and has provided a scope of work to complete this update/rewrite of the water and sewer connection fees.

### Options

1. Do nothing – leave water and sewer connection fees at the current rates;
2. Amend the existing agreement with Water Consultancy to update water and sewer connection fees;

3. Direct staff to do an RFP process to select a different firm to do the update of water and sewer connection fees.

### **Analysis and Conclusions**

Option 1 represents the status quo, meaning that the existing rate structures and fee systems remain in place. The water connection fees and sewer connection fees will continue to use different systems and different assumptions.

Option 2 is the recommendation of the Housing Constraints and Opportunities Committee and amends the existing agreement with Water Consultancy, a highly qualified firm. This would be an update/rewrite of the connection fees including putting them both on the same system, with the same basic policy decisions and the same set of assumptions. The study will update the capital projects included in the fees, and would be more understandable to both staff and the development community.

Option 3 is the same as Option 2 except that the City would not amend the existing agreement. The City would do a Request for Proposal (RFP) process to select a different firm to do the work described in Option 2 above.

### **Fiscal Impact**

Having water and sewer connection fees properly established is crucial to charging and collecting the funds needed to repay the current ratepayers for their investment in growth-related capacity in infrastructure, as well as providing a funding source for future growth-related capacity increasing infrastructure paid for by new development. The fees were last reviewed and updated in 2009 for Water and 2011 for Sewer. The connection fees were established using different methodologies and different assumptions. The fees that result from the update/rewrite process may be higher or lower than the current fees.

The Water and Wastewater Funds have sufficient budgeted funds to complete this study. Connection fees are an important funding source for water and sewer infrastructure, and for the fairness of the system for existing ratepayers and for new growth.

### **Recommendation**

1. Authorize the City Manager to execute the Amendment to the existing Agreement to have Water Consultancy update the water and sewer connection fees for an amount not to exceed \$47,000 (paid equally from the Professional Services budgets of the Water Fund and the Wastewater Fund).
2. Authorize the City Manager and City Attorney to make minor modifications to the agreement, as needed, fully consistent with overall Council direction.

### **Attachments**

1. Proposed Contract Amendment with Attachments

## Exhibit A

### CITY OF EL PASO DE ROBLES PROFESSIONAL SERVICES AGREEMENT AMENDMENT

This Amendment is made and entered into as of June 6, 2017 by and between the City of El Paso de Robles, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at 1000 Spring Street, Paso Robles, CA 93446 ("City"), and Water Consultancy, a corporation with its principal place of business at 3585 Maple Street, Suite 250, Ventura, CA 93003 (hereinafter referred to as "Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Agreement.

#### RECITALS

A. City is a public agency of the State of California and is in need of professional services for the following project:

Water and Sewer Connection Fees Update (hereinafter referred to as "the Project").

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Amendment to the original Agreements, attached hereto as Attachment 2, to establish the terms for City to retain Consultant to provide the services described herein.

#### AGREEMENT

##### NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Services.

Consultant shall provide the City with the services described in the Scope of Services attached hereto as Attachment 1.

2. Compensation.

a. Subject to paragraph 2(b) below, the City shall pay for such services in accordance with the Schedule of Charges set forth in Attachment 3.

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$47,000. This amount is to cover all printing and related costs, and the City will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the City, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the City by Consultant with a

statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the City and executed by both Parties before performance of such services, or the City will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by City.

5. Time of Performance.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the City to proceed ("Notice to Proceed"). Consultant shall complete the services required hereunder within 90 days, plus 14 days for the final work product after comments. The Notice to Proceed shall set forth the date of commencement of work.

6. Delays in Performance.

a. Neither City nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the City, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the City, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Consultant

Consultant is retained as an independent contractor and is not an employee of City. No employee or agent of Consultant shall become an employee of City. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from City as herein provided.

11. Insurance. Consultant shall not commence work for the City until it has provided evidence satisfactory to the City it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the City.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Contract
- (8) Broad Form Property Damage
- (9) Independent Consultants Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the City, and provided that such deductibles shall not apply to the City as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the City.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give City, its officials, officers, employees, agents and City designated volunteers additional insured status.

(iv) Subject to written approval by the City, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the City as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)

At all times during the performance of the work under this Agreement the Consultant shall

maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the City and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage
Employer's Liability	\$1,000,000 per occurrence
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the City evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the City at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Consultant shall deliver renewal certificate(s) including the General



Liability Additional Insured Endorsement to the City at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the City and shall not preclude the City from taking such other actions available to the City under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the City, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the City, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is



canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

(iii) The City may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the City nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the City that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the City as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, City may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

## 12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel reasonably approved by the City), indemnify and hold the City, its officials, officers, employees, agents and volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Consultant's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

b. Additional Indemnity Obligations. Consultant shall defend, with counsel of City's choosing and at Consultant's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against the City, its officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the City, its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Consultant shall also reimburse City for the cost of any settlement paid by the City, its officials, officers, employees, agents or volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for the City's attorney's fees and costs, including expert witness fees. Consultant shall reimburse the City, its officials, officers, employees, agents and volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein

provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents and volunteers.

13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws, if applicable. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such Services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. This Project may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Luis Obispo, State of California.

16. Termination or Abandonment

a. City has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, City shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. City shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of

such services, based on an amount mutually agreed to by City and Consultant of the portion of such task completed but not paid prior to said termination. City shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to City only in the event of substantial failure by City to perform in accordance with the terms of this Agreement through no fault of Consultant.

17. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the City.

18. Organization

Consultant shall assign Lynn Takaichi as Project Manager. The Project Manager shall not be removed from the Project or reassigned without the prior written consent of the City.

19. Limitation of Agreement.

This Amendment to the agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

CITY:

City of El Paso de Robles

1000 Spring Street

Paso Robles, CA 93446

Attn: Dick McKinley, Public Works Director

CONSULTANT:

Lynn Takaichi

3585 Maple Street, Suite 250

Ventura, CA 93003

and shall be effective upon receipt thereof.

21. Third Party Rights

Nothing in this Amendment shall be construed to give any rights or benefits to anyone other than the City and the Consultant.

22. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color,

national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

23. Entire Agreement

This Amendment, with its exhibits, represents the entire understanding of City and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

24. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the provisions unenforceable, invalid or illegal.

25. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of City. Any attempted assignment without such consent shall be invalid and void.

26. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

27. Time of Essence

Time is of the essence for each and every provision of this Agreement.

28. City's Right to Employ Other Consultants

City reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

29. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of City, during the term of his or her service with City, shall

have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN THE CITY OF EL PASO DE ROBLES  
AND WATER CONSULTANCY**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

CITY OF EL PASO DE ROBLES

WATER CONSULTANCY

By: \_\_\_\_\_  
Thomas Frutchey  
City Manager

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Printed Name: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Kristen L. Buxkemper  
Deputy, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

REVIEWED:

By: \_\_\_\_\_  
City Project Manager

Attachment 1  
Scope of Services



Attachment 2

Prior Agreement with Prior Amendments

### Attachment 3

#### Schedule of Charges/Payments

Consultant will invoice City on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform City regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract.

27 April 2017

Mr. Dick McKinley  
Director of Public Works  
City of Paso Robles  
1000 Spring Street  
Paso Robles, CA 93446

Subject: Revised Proposal for Consulting Services  
Updated Evaluation of Water and Wastewater Capital Facility Charges

Dear Mr. McKinley:

In response to your request, Water Consultancy (WC) is pleased to submit this proposal to the City of Paso Robles (City) to prepare an updated evaluation of the City's water and wastewater Capital Facility Charges (CFCs). We understand the water utility CFC was last evaluated in 2009 and the wastewater utility was last evaluated in 2011. Because the previous evaluations were not prepared at the same time, differing assumptions and approaches were utilized. In addition, the capital improvement programs of the utilities have been modified. This updated evaluation will utilize comparable assumptions and methodologies. Because WC, in association with HDR, recently updated the City's water and wastewater rates, we believe that our firm can efficiently provide the requested evaluation. Mr. Roger Null of HDR will support our evaluation.

## Scope of Services

Based on extensive experience in performing similar CFC evaluations for other utilities and our recent discussion, WC proposes the following scope of services to prepare the updated evaluation.

### **Task 1: Collect and Review Available Background Information**

WC will review the available data associated with the bases for the current charges. We will collect and review other water and wastewater utility asset information as appropriate for the development of a new charge based on the capacity buy-in and incremental approach methodologies. It is assumed that the City will provide a digital listing of the line item water pipeline information that is comparable to the asset data included in Appendix A of the 2011 Wastewater Facility Charge Study.

Mr. Dick McKinley  
City of Paso Robles  
27 April 2017  
Page 2

## **Task 2: Identify and Evaluate Key Assumptions and Policy Issues Related to the Establishment of Equitable Charges**

In this task, we will prepare a list of key assumptions and policy issues that will form the basis for the updated evaluation. A discussion of the assumptions and policy issues will be included. The list will be submitted to the City for consideration by the Housing Constraints & Opportunities Committee.

## **Task 3: Water Utility CFC Evaluation**

Based on discussion with the City, it is assumed that this update will continue with an approach that includes both capacity buy-in and incremental cost components. The updated evaluation of the water utility CFC will include the following subtasks to incorporate both of these cost elements.

### **Subtask 3.1 Evaluation of Incremental Cost Elements**

Using the City's most recent information on the water system's current, phased, and build-out demands and planned capital improvement program (CIP) costs, WC will evaluate a potential update to the current charge for the appropriate inclusion of these assets on an incremental basis. Additionally, current assets that may be partially or incrementally included in the asset valuation will be reviewed for consistency with the updated policies and cost recovery program derived herein.

### **Subtask 3.2 Evaluation of Capacity Buy-In Cost Elements**

Using the City's updated asset inventory, WC will prepare a potential update to the current charge using the capacity buy-in cost basis. The update of these cost elements will be derived by performing the following tasks.

- Prepare System Asset Inventory and Valuation: Work with City staff to develop a current water system fixed asset inventory. Utilize this digital information to assist in estimating the value of the existing facilities. Alternative valuations will be derived based on the original asset costs or an estimated reproduction cost new value, and the original and replacement cost new values less depreciation. It is assumed GIS will be used as the basis for most underground facilities and the City's fixed asset register will be used for above ground assets.

Review and discuss the inclusion/deletion of contributed capital assets, land value, cash reserves, and the implications of incorporating existing debt service obligations. Contrast the City's capital improvement program assets with the asset data base to identify assets to be retired and segregated from the system valuation as appropriate. Integrate the costs of additional capacity associated with the City's capital improvement program with the existing system asset inventory to derive a future system asset inventory cost.

Mr. Dick McKinley  
City of Paso Robles  
27 April 2017  
Page 3

- Derive the Unit Cost of Capacity and New Water Facility Charges: Establish the unit cost of capacity by dividing the system value and capital program by the ultimate water demand, as derived from the City's planning documents. Develop a potential CFC element by integrating the unit cost of capacity findings with the desired rate structure for cost recovery. Document the findings in an excel file format for review by the City.

### **Subtask 3.3 Survey of CFCs of Comparable Utilities**

In this subtask, WC will perform a survey of the CFCs of other comparable utilities. The survey will be performed by an internet search and/or telephone contacts for up to six utilities for comparison. The list of comparison utilities to be surveyed will be provided by the City.

### **Subtask 3.4 Draft and Final Reports**

In this subtask, WC will compile the results of the facility charge analysis and survey results in an excel file format and submit the findings to the City for review. We will meet with City staff to discuss the assumptions, policy issues, methodology, and comparison of CFCs of comparable utilities. Based on these discussions and direction, we will prepare a draft report of the evaluation and submit the draft report to the City for review. We will incorporate the City's comments, and submit ten (10) copies and one electronic file of the final report to the City.

## **Task 4. Wastewater Utility CFC Evaluation**

Based on discussion with the City, it is assumed that this update will continue with an approach that includes both capacity buy-in and incremental cost components. The updated evaluation of the wastewater utility CFC will include the following subtasks to incorporate both of these cost elements.

### **Subtask 4.1 Evaluation of Incremental Cost Elements**

Using the results from the previous tasks and City provided estimated costs of future capital improvements, WC will evaluate a potential update to the current charge for the appropriate inclusion of these assets on an incremental basis. Additionally, current assets that may be partially or incrementally included in the asset valuation will be reviewed for consistency with the updated policies and cost recovery program derived herein. Since the current Wastewater CFC is based on wastewater flows of domestic strength, additional evaluations will be required to support strength based loadings and shown in the following subtasks.

- Derive Current Wastewater Flows and Loads: Based on information regarding the City's current wastewater flows/loads provided by the City, utilize typical water return to sewer ratios (and sewage strength) by land use type to contrast with actual wastewater flows/loads at the wastewater treatment Plant (WWTP). Validate and/or adjust these ratios to attain a mass balance of current WWTP flows/loads.

Mr. Dick McKinley  
City of Paso Robles  
27 April 2017  
Page 4

- Derive Projected Wastewater Flows and Loads: Based on information regarding the City's projected wastewater flows/loads provided by the City, derive build-out wastewater flows/loads by using available Wastewater Master Plan data. These future flows/loads will also incorporate land use specific changes from conservation or other factors as required to update the sewage flow guide.
- Derive Incremental System Costs: Perform a review of each planned CIP project to establish the portion of each project's contribution to support new growth. Discuss the use of project allocation factors into a flow, BOD and SS cost parameter. Apply the resulting cost allocation percentages to each project to derive the total cost of the projected CIP by parameter that could/should be funded by growth.
- Derive Incremental System Demands: Use the change in current and projected wastewater flow and strength discharges to establish the incremental increase in flows and loads that was induced from new growth.
- Derive the Unit Cost of Capacity and New Sewer Capacity Charges: Develop a unit cost of capacity by dividing the incremental system costs for each parameter by the corresponding incremental increase in future loads. Develop a potential CFC element by integrating the unit cost of capacity findings with the updated sewage flow guide for a cost per Equivalent Dwelling Unit (EDU) and/or cost per unit of flow, BOD, and SS. The updated flow guide will be utilized to project changes in unit flow rates from conservation and other factors as reflected in the flow/load projections. Document the findings in an excel file format for review by the City.

## **Subtask 4.2 Evaluation of the Capacity Buy-In Cost Elements**

Using the City's updated asset inventory, WC will prepare a potential update to the current charge using the capacity buy-in basis. The update of these cost elements will be derived by performing the following subtasks.

- Prepare System Asset Inventory and Valuation: Work with City staff to develop a current fixed asset inventory. Utilize this digital information to assist in estimating the value of the existing facilities. Alternative valuations will be derived based on the original asset costs or an estimated reproduction cost new value, and the original and replacement cost new values less depreciation. It is assumed GIS will be used as the basis for most underground facilities and the City's fixed asset register will be used for above ground assets.

Review and discuss the inclusion/deletion of contributed capital assets, land value, cash reserves, and the implications of incorporating existing debt service obligations. Contrast the City's capital improvement program assets with the asset data base to identify assets to be retired and segregated from the system valuation as appropriate. Integrate the costs of additional capacity associated with the City's capital improvement

Mr. Dick McKinley  
City of Paso Robles  
27 April 2017  
Page 5

program with the existing system asset inventory to derive a future system asset inventory cost.

- Derive the Unit Cost of Capacity and New Sewer Capacity Charges: Develop a unit cost of capacity by dividing the total system value and CIP for each parameter by the ultimate build-out loads, as derived from the City planning documents. Develop a potential CFC element by integrating the unit cost of capacity findings with the updated sewage flow guide for a cost per Equivalent Dwelling Unit (EDU) and/or cost per unit of flow, BOD, and SS. Document the findings in an excel file format for review by the Department.

#### **Subtask 4.4 Survey of CFCs of Comparable Utilities**

In this subtask, WC will perform a survey of the CFCs of other comparable utilities. The survey will be performed by an internet search and/or telephone contacts for up to six utilities for comparison. The list of comparison utilities to be surveyed will be provided by the City.

#### **Subtask 4.5 Draft and Final Reports**

In this subtask, WC will compile the results of the facility charge analysis and survey results in an excel file format and submit the findings to the City for review. We will meet with City staff to discuss the assumptions, policy issues, methodology, and comparison of CFCs of comparable utilities. Based on these discussions and direction, we will prepare a draft report of the evaluation and submit the draft report to the City for review. We will incorporate the City's comments, and submit ten (10) copies and one electronic file of the final report to the City.

#### **Task 5 Project Management and Meetings.**

Project execution will include the use of management control tools and emphasize client communication. Prior to the implementation of this facility charge update project, an initial project management and control plan will be developed. This plan will include: project instructions, work plan, goals, schedule, task assignments and communication protocol, project quality control requirements; and a project cost control plan.

Our proposal assumes participation in the following meetings with the City:

- One kickoff meeting
- Up to three meetings with the Housing Constraints and Opportunities Committee
- One presentation to City Council
- Up to three working meetings with City staff



Mr. Dick McKinley  
City of Paso Robles  
27 April 2017  
Page 6

### Project Deliverables

One (1) electronic copy of the draft and final reports will be submitted to the City as the project deliverables for distribution as appropriate.

### Schedule

WC proposes to prepare the draft evaluations within 90 calendar days of the notice to proceed and prepare the final evaluations within 14 days of receipt of all comments.

### Proposed Compensation

We propose that compensation for our services be on a time and expense reimbursement basis in accordance with our Schedule of Charges dated 1 July 2016, attached. Based on our estimate of services required, we propose a budget of \$47,000. A breakdown of this budget is presented on the attached spreadsheet. We also understand that our current agreement has a remaining budget of \$9,763.33.

### Terms and Conditions

For the purpose of this proposal, WC assumes that the City will issue a purchase order or issue an amendment to our current agreement which was assigned by Kennedy/Jenks Consultants with approval from the City.

We appreciate the opportunity to provide these consulting services to the City and look forward to working together on this assignment. Please contact me if you have any questions or need additional information.

Very truly yours,

WATER CONSULTANCY, INC.



Lynn M. Takaichi  
Principal

**ASSIGNMENT AND ASSUMPTION OF  
AGREEMENT FOR PROFESSIONAL SERVICES  
AND CONSENT OF AND RELEASE BY CITY**

**This Assignment and Assumption of Agreement for Professional Services and Consent of and Release by City (“Assignment”)** is entered into as of April 24, 2015 (the “Effective Date”), by and between Kennedy/Jenks Consultants, Inc., a California corporation (the “Assignor”), and Water Consultancy, Inc., a California corporation (the “Assignee”).

**RECITALS**

A. The City of El Paso de Robles, a municipal corporation and California general law city (“City”) and Assignor entered into an Agreement for Professional Services, dated November 18, 2014 (the “Agreement”), a copy of which is attached hereto as Exhibit A and incorporated herein by reference, for the preparation of an update of the City’s Water and Sewer Rates and Water and Water Facility Charges.

B. The Agreement designates Roger Null as the individual to serve as the Project Lead primarily responsible for providing the Services under the Agreement. Mr. Null has left Kennedy/Jenks Consultants and has joined Water Consultancy Inc.

C. Assignor and Assignee agree that because of the work performed under the Agreement to date, Mr. Null’s familiarity with the City and the desire to complete the work in an expeditious manner, it is most appropriate to assign the Agreement to Assignee.

**AGREEMENT**

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor and Assignee agree that all of the above Recitals are true and correct and are incorporated in this Assignment and Assumption Agreement.

2. Assignor hereby assigns to Assignee all of Assignor’s right, title and interest in, to and obligations under the Agreement, subject to the terms, covenants, conditions and provisions thereof.

3. Assignee accepts the foregoing assignment and assumes and shall perform and discharge, as and when due, all of the obligations of Assignor under the Agreement accruing from and after the Effective Date and agrees to perform and be bound by any and all of the terms, conditions and obligations under the Agreement to be observed, kept or performed by Assignor, from and after the Effective Date.

4. By its consent hereto, City releases Assignor from any obligation or liability under the Agreement arising from and after the Effective Date; provided, however, that the

Assignor is not released from any obligation or liability in connection with any default or violation under the Agreement which occurred prior to the Effective Date.

5. The provisions of this Assignment shall be binding upon, and shall inure to the benefit of, Assignor, Assignee, City, and their respective successors and assigns.

6. Except as expressly modified by this Assignment, the Agreement shall continue in full force and effect according to its respective terms. This Assignment shall not be construed as (i) conferring upon Assignor or Assignee any greater rights than those contained in the Agreement, (ii) diminishing any rights under the Agreement, (iii) assigning any provisions of the Agreement other than as set forth herein, or (iv) modifying the Agreement in any respect except as expressly set forth in this Assignment.

7. Assignor agrees that it has been paid a total of \$18,577.50 under the Agreement and that no further amount is due to it by City. Within two (2) business days of the date of this Assignment, Assignor shall provide to Assignee and City all Project Documents, as defined in Section 12.1 of the Agreement.

8. Modifications to Agreement:

a. Section 15.9 of the Agreement is hereby revised to provide the following contact information for Consultant:

Water Consultancy, Inc  
3585 Maple Street, Suite 250  
Ventura, CA 93003  
Attn: Lynn Takaichi

Email: LynnTakaichi@Water-Consult.com

b. Exhibit E of the Agreement is hereby modified to provide the following positions and hourly rates:

Principal - \$250  
Senior Associate - \$240  
Associate - \$175  
Research Assistant - \$140  
Administrative Assistant - \$85

All other positions listed in Exhibit E shall be deleted.

c. Table 3 of Exhibit E is hereby deleted.

9. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The signature and acknowledgment pages of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) and acknowledgment(s) thereon.

provided such signature and acknowledgment pages are attached to any other counterpart identical thereto except having additional signature and acknowledgment pages executed and acknowledged by other parties to this Assignment attached thereto.

IN WITNESS WHEREOF, the Assignor and the Assignee have duly executed this Assignment as of the date first written above.

**ASSIGNOR:**

**KENNEDY/JENKS CONSULTANTS, INC.,**  
a California corporation

By:   
Edward C. Yang

Its: Vice President

By:   
Sridhar Sadasivan

Its: Southern California Operations Manager

**ASSIGNEE:**

**WATER CONSULTANCY, INC.,**  
a California corporation

By: \_\_\_\_\_

Name: Lynn Takaichi

Its: President

provided such signature and acknowledgment pages are attached to any other counterpart identical thereto except having additional signature and acknowledgment pages executed and acknowledged by other parties to this Assignment attached thereto.

IN WITNESS WHEREOF, the Assignor and the Assignee have duly executed this Assignment as of the date first written above.

**ASSIGNOR:**

**KENNEDY/JENKS CONSULTANTS, INC.,**  
a California corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ASSIGNEE:**

**WATER CONSULTANCY, INC.,**  
a California corporation

By:  \_\_\_\_\_

Name: Lynn Takachi

Its: President

**CONSENT OF AND RELEASE BY CITY:**

The undersigned, the City Manager of the City of El Paso de Robles (the "City"), hereby confirms that by City Council Resolution No. 15-045, the City has approved and consented to this Assignment of the Agreement to the Assignee, including without limitation the release of liability under Section 4, above, as of the Effective Date .

By:



**James L. App  
City Manager**

**EXHIBIT A**  
**AGREEMENT FOR PROFESSIONAL SERVICES**  
**[to be inserted]**



## AGREEMENT FOR PROFESSIONAL SERVICES

### STUDY OF CITY'S UTILITY RATES AND CONNECTION FEES

This Agreement for Professional Services made and entered into this 18th day of NOVEMBER, 2014, by and between the City of El Paso de Robles, a municipal corporation existing under the laws of the State of California, hereinafter referred to as "City", and Kennedy/Jenks Consultants a California corporation, hereinafter referred to as "Consultant." City and Consultant are sometimes individually referred to as a "Party" and collectively as "Parties" in this Agreement.

#### Recitals

A. City is a municipal corporation duly organized and existing under the laws of the State of California, with the power to contract for the services to be provided under this Agreement.

B. City requires certain professional consultant services (the "Services") in connection with the update of the City's Water and Sewer Rates and Water Facility Charges, more fully described in Exhibit "A" (the "Project").

C. Consultant has agreed to provide these services by reason of its qualifications and experience on the terms and in the manner set forth herein.

D. Consultant represents that it is fully licensed and qualified, with all professional skills necessary to perform the services described in this Agreement and has special expertise in studies and analyses similar in size, scope and complexity to the Project.

Accordingly, the Parties agree as follows:

#### **1. Consultant's Representations and Responsibilities.**

1.1 Consultant acknowledges that in entering into this agreement the City is relying solely upon Consultant's special skills and experience to do and perform the Services in accordance with best standards of professional practice in the study and analyses of the size, scope and complexity similar to the Project. Consultant agrees to perform the Services in accordance with these standards ("Standards of Care"). The acceptance of Consultant's Services by City does not operate as a release of Consultant from these obligations.

1.2 Consultant accepts the relationship of trust and confidence established between it and City by this Agreement. Consultant shall comply with the Standards of Care to perform the Services and to further the interests of City in accordance with City's requirements and procedures, each in accordance with professional standards that apply to Consultant. Consultant shall be responsible for the professional quality, technical accuracy and coordination of all Services. Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its Services.

City of El Paso de Robles  
Agreement for Professional Architectural/Engineering Services

82477.0600704619R3.2

1.3 Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant represents that all of its employees, engineers, experts and other consultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees, engineers, experts and other consultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services assigned to or rendered by them, and that such licenses and approvals shall be maintained throughout the term of this Agreement.

1.4 Any employee or consultant who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee or consultant who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

1.5 Consultant's services are unique and personal. Consultant shall not assign or transfer any of its interest or obligation under this Agreement without the City's written consent. Consultant shall not subcontract its duties under this Agreement without the City's written consent. No subconsultant will be recognized by City as such; rather, all sub-consultants are independent contractors of Consultant, and Consultant agrees to be responsible for their performance. Consultant is specifically authorized to subcontract with the sub-consulting firms listed in Exhibit "B" to assist in providing the Services.

## 2. Scope of Services.

2.1 Consultant shall furnish to City all personnel, materials, tools, equipment necessary to perform the professional services for the Project in accordance with the provisions of this Agreement, including all incidental and customary services (hereinafter referred to as the "Services"). The Services are more particularly described throughout this Agreement, including Exhibit "B." All Services shall be subject to, and performed in accordance with, this Agreement, any exhibits attached hereto and incorporated herein by reference, and in accordance with the Standards of Care in the interpretation and application of all applicable local, state and federal states, laws, ordinances, rules and regulations ("Applicable Laws"). All Services performed by Consultant shall be subject to the approval of the City.

2.2 Design Personnel will be responsible for employing or engaging all persons necessary to perform the Services at its sole expense.

2.3 Consultant's Basic Services include, an update to the City's water and sewer rates and water facility charges.

2.4 City may direct Consultant to perform services not otherwise included in this Agreement, not included within the Basic Services listed in Exhibit "B" attached hereto, and/or not customarily furnished in accordance with generally accepted architectural or engineering practice. As used herein, "Additional Services" include: (1) any work which is determined by City to be necessary for the proper completion of the Project, but which the parties did not reasonably anticipate would be necessary at the execution of this Agreement; or (2) any work

listed as Additional Services in Exhibit "B" attached hereto. Any changes in the Scope of Services must be approved in advance, in writing, by the City Manager or his designee.

2.5 Consultant shall not perform, or be compensated for, Additional Services without prior written authorization from City and without a written agreement between the City and Consultant as to the compensation to be paid for such services. City shall pay Consultant for any approved Additional Services, pursuant to the compensation provisions; provided however, that any redesign or revisions to drawings, specifications or other documents when such revisions are necessary to bring such documents into compliance with Applicable Laws of which Consultant was aware or should have been aware are not Additional Services.

2.6 Consultant shall coordinate with City's staff, contractors and consultants in the performance of the Services, and shall be available to City's staff, contractors and consultants at all reasonable times.

3. **Independent Contractor.** City retains Consultant as an independent contractor as defined in Labor Code 3353, under the control of the City as to the result of the work but not the means by which the result is accomplished. Consultant is not an employee of City. Consultant is not an employee for state tax, federal tax or any other purpose, and is not entitled to the rights or benefits afforded to City's employees. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City, and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

4. **Key Personnel.**

4.1 **Project Lead.** Consultant shall name a specific individual to act as Project Lead, subject to the approval of City. Consultant hereby designates Roger Null, Vice President/Engineer 9 of Kennedy/Jenks Consultants to act as the Project Lead for the Project. The Project Lead shall: (1) maintain oversight of the Consultant's activities and performance pertaining to the Project at all times; (2) have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement; (3) supervise and direct the Services using his or her reasonable skill and attention; (4) be responsible for the means, methods, techniques, sequences and procedures used for the Services; (5) coordinate all portions of the Services; and (6) act as principal contact with City and all contractors, consultants, engineers and inspectors on the Project. Any change in the Project Lead shall be subject to the City's prior written approval, which approval shall not be unreasonably withheld. The new Project Lead shall be of at least equal competence to the prior Project Lead. If City and Consultant cannot agree on a new Project Lead, City shall be entitled to terminate this Agreement for cause.

4.2 **Key Personnel.** In addition to the Project Lead, Consultant has represented to the City that certain additional key personnel, engineers and consultants will perform the Services under this Agreement. Should one or more of such personnel, engineers or consultants become

unavailable, Consultant may substitute others of at least equal competence upon written approval of the City, which shall not be unreasonably withheld. In the event that City and Consultant cannot agree as to the substitution of key personnel, engineers or consultants, City shall be entitled to terminate this Agreement for cause. The additional key personnel, engineers and consultants for performance of this Agreement are as set forth in Exhibit B.

**5. Hiring of Consultants and Personnel.**

**5.1 Right to Hire or Employ.** Consultant shall have the option, unless City objects in writing after notice, to employ at its expense engineers, experts or other consultants qualified and licensed to render services in connection with the Project. Consultant shall be responsible for the coordination and cooperation of Consultant's engineers, experts or other consultants. All consultants, including changes in consultants, shall be subject to approval by City in its discretion. Consultant shall notify City of the identity of all consultants at least fourteen (14) days prior to their commencement of work in order to allow City time to review their qualifications and approve their participation on the Project in its sole and reasonable discretion.

**5.2 Qualification and License.** All engineers, experts and other consultants retained by Consultant in performance of this Agreement shall be qualified to perform the Services assigned to them, and shall be licensed to practice in their respective professions, where required by law.

**5.3 Standards and Insurance.** All engineers, experts and other consultants hired by Consultant shall be required to meet all of the same standards and insurance requirements set forth in this Agreement, unless other standards or requirements are approved by the City in writing. Unless changes are approved in writing by the City, Consultant's agreements with its consultants shall contain a provision making them subject to all provisions stipulated in this Agreement.

**6. Laws and Regulations.**

**6.1 Knowledge and Compliance.** Consultant shall keep itself reasonably informed and shall comply with the Standards of Care in the interpretation and application of all Applicable Laws affecting the performance of the Services or the Project, and shall give all notices required of the Consultant by law. Consultant shall be liable for all violations of such laws and regulations related to the performance of its Services. If the Consultant performs any work knowing it to be contrary to any Applicable Law and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom.

**6.2 Labor Laws.**

**6.1 Prevailing Wages.** Consultant acknowledges the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. To the extent required by the California Labor Code, Consultant shall

fully comply with and to require its consultants to fully comply with such Prevailing Wage Laws.

**6.2 Labor Certification.** By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

**6.3 Injury and Illness Prevention Program.** Consultant certifies that it is aware of and has complied with the provisions of California Labor Code Section 6401.7, which requires every employer to adopt a written injury and illness prevention program.

**7. Term, Progress and Completion.**

**7.1 Term.** The term of this Agreement shall begin on the date the City approves this Agreement and shall expire upon completion of the Services or when terminated as provided below.

**7.2 Timely Performance.** Consultant shall perform all Services hereunder diligently and as expeditiously as is consistent with professional skill and care, as well as the orderly progress of the Project work so as not to be the cause, in whole or in part, of delays in the completion of the Project or in the achievement of any Project milestones, as provided herein. Specifically, Consultant shall perform its Services so as to allow for the completion of the Project within the time required by the City and within any completion schedules adopted by mutual agreement of Consultant and City for the Project.

**7.3 Notice to Proceed.** Consultant shall not commence performance of any Services under this Agreement unless and until the City provides a written Notice to Proceed.

**7.4 Performance Schedule.**

**7.4.1** Consultant shall perform the services in strict accordance with the schedule attached hereto as Exhibit "C" (the "Schedule") and any updates to the Schedule approved by City and Consultant. Consultant shall work such overtime or engage such personnel and equipment as necessary to maintain the Schedule without additional compensation unless the delay is caused by circumstances entirely outside of Consultant's control. The schedule for performance of Services will be adjusted as may be agreed between City and Consultant to conform to the City's Project schedule.

**7.4.2** Consultant shall not exceed or modify the approved schedule without the prior written approval of City. If Consultant does not perform the Services in accordance with the approved schedule, or any milestones established therein, the City and Consultant acknowledge that the City may suffer damages for which the Consultant may be responsible.



**8. City Responsibilities. City's responsibilities shall include the following:**

**8.1 Data and Information.** City shall make available to Consultant all available data and information concerning the purpose and requirements of the Project, including scheduling and budget limitations, objectives, constraints and other criteria. As part of the budget information, the City shall provide the Consultant with a preliminary construction budget ("City's Preliminary Construction Budget").

**8.2 [Intentionally Omitted.]**

**8.3 Fees of Reviewing or Licensing Agencies.** Directly pay or reimburse the payment of all fees required by any reviewing or licensing agency, or other agency having jurisdiction over the Project.

**8.4 City's Representative.** Designate a person to act as its representative in connection with the performance of this Agreement ("City's Representative"). The City's Representative shall be authorized to act as liaison between Consultant and City in the administration of this Agreement and the Construction Documents, and shall have the power to act on behalf of the City for all purposes under this Agreement. Such person will be the principal contact between Consultant and the City. City may designate new and/or different individuals to act as City's Representative from time to time. The City's Representative shall render decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of the Services, as provided in the excusable delay provisions of this Agreement.

**8.5 Review and Approve Documents.** Review all documents submitted by Consultant, including change orders and other matters requiring approval by the City Council or other officials. City shall advise Consultant of decisions pertaining to such documents within a reasonable time after submission, so as not to cause unreasonable delay as provided in the excusable delay provisions of this Agreement.

**9. Compensation.**

**9.1 Consultant's Compensation for Basic Services.**

**9.1.1** City shall pay Consultant an amount not to exceed One Hundred Forty Nine Thousand Eight Hundred and Eight dollars (\$149,808) for the performance of all Basic Services ("Not-to-Exceed Amount"). The Not-to-Exceed Amount shall constitute full compensation for the Basic Services and may be adjusted only accordance with the terms of this Agreement.

**9.1.2** This Not-to-Exceed Amount shall include the fees of the consultants listed in Exhibit B.

**9.1.3** The Not-to-Exceed Amount includes Six Thousand Seven Hundred Eighty Three Dollars (\$6,783) for all Reimbursable Expenses required for the performance of Basic Services.

9.1.4 The City will make monthly payments for completed Services. The amount that will be approved and paid for each portion of the Services shall not exceed the percent complete of the tasks or Services to be performed. Payments for various phases of the tasks or Services may be modified with approval of City within the Not-to-Exceed Amount.

9.2 **Payment for Additional Services.** The City may authorize Additional Services pursuant to the applicable provisions of this Agreement. If authorized, such Additional Services will be compensated at the rates and in the manner set forth in Exhibit "E," unless a flat rate or some other form of compensation is mutually agreed upon by the parties. Consultant shall be paid for Additional Services, as defined by this Agreement, only if the City approved the Additional Services in writing, in advance.

9.3 **Reimbursable Expenses.**

9.3.1 Reimbursable expenses are in addition to compensation for the Services and Additional Services. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, which approval may be evidenced by inclusion in Exhibit "E" attached hereto. Such reimbursable expenses shall include only those expenses which are reasonably and necessarily incurred by Consultant in the interest of the Project and include only (1) Reproduction and handling of documents prepared in connection with the Project; (2) Fees paid for securing government approval for the Project; and (3) such other expenses as City may approve in writing in advance.

9.3.2 Consultant shall be required to acquire prior written consent in order to obtain reimbursement for the following expenses: (1) extraordinary transportation expenses incurred in connection with the Project; (2) out-of-town travel expenses incurred in connection with the Project; (3) fees paid for securing approval of authorities having jurisdiction over the Project; (4) document duplication costs in excess of \$750; and (5) other costs, fees and expenses in excess of \$1,000.

9.4 **Payment to Consultant.**

9.4.1 Consultant shall submit written applications for progress payments in a form satisfactory to City on or before the first day of each month on account of the Basic Services, Additional Services and Reimbursable Expenses completed during the preceding month. The City will make payment for Basic Services for each phase of Services set forth above. Payment applications for Additional Services shall identify each person performing services, the time each person spends on each task (in units not to exceed one quarter hour) and shall be based on the rates in Exhibit "E". Payment Applications for Reimbursable Expenses shall be supported by invoices or such other documents as City may reasonably request.

9.4.2 Within forty-five (45) days after receipt of each application for progress payment, City shall verify the accuracy of the progress payment application, correct the charges where appropriate, and make payment to Consultant in an amount equal to the amount of such application, as verified or corrected by City and accepted by Consultant. No payment made hereunder prior to completion and acceptance of the Project shall be construed as evidence of acceptance of any part of the Services. If City disagrees with any portion of a billing, the City



shall promptly notify Consultant of the disagreement, and the City and the Consultant shall attempt to resolve the disagreement. City's payment of any amounts shall not constitute a waiver of any disagreement and City shall promptly pay all amounts not in dispute.

9.4.3 The City may withhold payment, in whole or in part, for only those portions of the Services not performed satisfactorily. Failure by City to deduct any sums from a progress payment shall not constitute a waiver of the City's right to assert a claim against Consultant or to withhold payment at a future time. Payments to the Consultant shall not be contingent on the construction, completion or ultimate success of the Project.

## **10. Records and Audit.**

10.1 Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. Consultant's accounting system shall conform to the accounting practices of reputable firms providing professional services similar to the Services. The records shall include a breakdown of total costs charged under this Agreement, including properly executed payrolls, time records, invoices and payments made. All such records shall be clearly identifiable.

10.2 Consultant shall permit City and its authorized representatives to inspect, examine and make copies of Consultant's books, records, accounts, and any and all data relevant to this Agreement at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Consultant pursuant to this Agreement and shall provide such assistance as may be reasonably required in the course of such inspection. City further reserves the right to examine and re-examine said books, records, accounts, and data during the three (3)-year period following final payment; and Consultant shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for three (3) years after final payment.

10.3 Pursuant to California Government Code Section 8546.7, the parties to this Agreement shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering this Agreement.

## **11. Termination, Suspension and Abandonment.**

### **11.1 Suspension.**

11.1.1 The City may suspend this Agreement and Consultant's performance of the Services, wholly or in part, for such period as it reasonably deems necessary due to unfavorable conditions or to the failure on the part of the Consultant to perform any provision of this Agreement. Consultant will be paid for satisfactory services performed through the date of suspension. In the event that Consultant's services hereunder are delayed for a period in excess of six (6) months due to causes beyond Consultant's reasonable control, Consultant's compensation shall be subject to renegotiation, provided that the suspension was not solely attributable to deficiencies in Consultant's performance.

11.1.2 If City suspends Consultant's Services, City may require Consultant to resume such Services on a mutually acceptable schedule within fifteen (15) days after written notice from City.

**11.2 Termination for Default.**

11.2.1 If Consultant at any time refuses or neglects to prosecute the Services in a timely fashion or in accordance with the Project schedule, or is adjudicated a bankrupt, or commits any act of insolvency, or makes an assignment for the benefit of creditors without City's consent, or fails to make prompt payment to persons furnishing labor, equipment, materials or services, or fails in any respect to properly and diligently prosecute its services, or otherwise fails to perform fully any and all of the agreements herein contained, Consultant shall be in default.

11.2.2 If Consultant fails to cure the default within seven (7) days after written notice thereof, City may, at its sole option, terminate this Agreement, take possession of any Project Documents (as defined, below) or other materials (in paper and electronic form) prepared or used by Consultant exclusively for the Project provided that City has paid Consultant all amounts not in dispute, and provide any such work, labor, materials or services as may be necessary to overcome the default.

11.2.3 In the event City elects to terminate pursuant to paragraph 11.2.2 above, , City shall have the right to immediate possession of all Project Documents and work in progress, whether located at the Project, at Consultant's place of business, or at the offices of a subconsultant, and may employ any other person or persons to finish the Services and provide the materials therefor.

**11.3 Termination for Convenience.** In addition to the foregoing right to terminate for default, City reserves the absolute right to terminate this Agreement without cause, upon 72-hours' written notice to Consultant. In the event of termination without cause, Consultant shall be entitled to payment in an amount not to exceed the Not-to-Exceed Amount which shall be calculated as follows: (1) Payment for Basic Services then satisfactorily completed and accepted by City, plus (2) Payment for authorized Additional Services satisfactorily completed and accepted by City, plus (3) Reimbursable Expenses actually incurred by Consultant, as approved by City. The amount of any payment made to Consultant prior to the date of termination of this Agreement shall be deducted from the amounts described in (1), (2) and (3) above. Consultant shall not be entitled to any claim or lien against City or the Project for any additional compensation, lost profits or other damages of any kind in the event of such termination and payment. In addition, the City's right to withhold funds shall be applicable in the event of a termination for convenience.

**11.4 Wind-Up Services.** Upon the City's request and authorization, Consultant shall perform any and all additional Services necessary to wind up the work performed to the date of suspension, abandonment or termination.

**11.5 Documents and Other Data.** Within seven (7) calendar days following suspension, abandonment or termination of this Agreement, Consultant shall provide to City all studies, sketches, working drawings, notes, specifications, computations, and all other Project

Documents, as defined below, in paper and electronic form, to which City would have been entitled at the completion of Consultant's Services under this Agreement. City shall have the rights, as provided in this Agreement hereinafter, to use such Project Documents prepared by or on behalf of Consultant under this Agreement. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Project Documents to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. Consultant shall make such documents available to City without additional compensation other than as may be approved as a Reimbursable Expense.

**11.6 Employment of Other Consultants.** In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services in connection with the Project similar to those terminated.

**11.7 Savings Clause.** If this Agreement is terminated by City for default and it is later determined that the default termination was wrongful, such termination automatically shall be converted to and treated as a termination for convenience under this Section 11 and Consultant shall be entitled to receive only the amounts payable hereunder in the event of a termination for convenience.

## **12. Ownership and Use of Documents; Confidentiality.**

**12.1 Ownership.** All original or reproducible materials, information, computations, estimates and any other documents or information prepared exclusively for the Project pursuant to this Agreement, including, but not limited to, any other works of authorship fixed in any tangible medium of expression such as writings, physical drawings and data recorded magnetically or electronically (hereinafter referred to as the "Project Documents") shall be and remain the property of City. Although the official copyright in all Project Documents shall remain with the Consultant or other applicable subcontractors or consultant, the Project Documents shall be the property of City whether or not the work for which they were made is executed or completed. Within thirty (30) calendar days following completion of the Project, or at any time on seven (7) days' written notice from City, Consultant shall provide to City copies of all Project Documents required by City, provided the City has paid Consultant all undisputed compensation. In addition, Consultant shall retain copies of all Project Documents on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of reasonable duplication costs. Before destroying the Project Documents following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

**12.2 Right to Use.** Consultant hereby grants to City the right to use and reuse all or part of the Project Documents, at City's sole discretion and with no additional compensation to Consultant, for the following purposes:

**12.2.1** The construction of all or part of the improvements that were considered or analyzed as part of this Project; or

**12.2.2** The increase or adjustment to water or sewer user rates, water connection fees, and water capacity or facility charges or other related fees or charges at any time.

**12.3** City is not bound by this Agreement to employ the services of Consultant in the event such documents are used or reused for these purposes. City shall be able to use or reuse the Project Documents only without modification for these purposes without risk of liability to the Consultant or third parties with respect to the condition of the Project Documents, and the use or reuse of the Project Documents for these purposes shall not be construed or interpreted to waive or limit City's right to recover for latent defects or for errors or omissions of the Consultant.

**12.4** Any use or reuse by City of the Project Documents on any project other than this Project without employing the services of Consultant shall be at City's own risk with respect to third parties. If City uses or reuses the Project Documents on any project other than this Project, it shall remove the Consultant's seal from the Project Documents and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Project Documents on such other project.

**12.5** Consultant shall not be responsible or liable for any revisions to the Project Documents made by any party other than the Consultant, a party for which the Consultant is legally responsible or liable, or anyone approved by the Consultant.

**12.6 License.**

**12.6.1** Consultant hereby grants (and if any subsequent grant is necessary, agrees to grant) a limited non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up license for City to use the Project Documents as specified in paragraph 12.2 above, Consultant shall require any and all subcontractors and consultants to agree in writing that City is granted the license described above for the work of such subcontractors or consultants performed pursuant to this Agreement.

**12.7 Confidentiality.** All Project Documents, either created by or provided to Consultant in connection with the performance of this Agreement, shall be held confidential by Consultant. All Project Documents shall not, without the written consent of City, be used or reproduced by Consultant for any purposes other than the performance of the Services. Except as required by law, Consultant shall not disclose, cause or facilitate the disclosure of the Project Documents to any person or entity not connected with the performance of the Services or the Project. Consultant shall not use City's name or insignia, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the written consent of City.

**13. Indemnification.**

**13.1** Consultant shall defend (with legal counsel reasonably acceptable to the City) indemnify and hold harmless City and its officers, agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of Consultant or its



subconsultants) to the extent caused by the negligence or willful misconduct of Consultant, any subconsultant, anyone directly or indirectly employed by them or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of such Indemnitee.

13.2 Neither termination of this Agreement nor completion of the Services shall release Consultant from its obligations under this Section 13, as long as the event giving rise to the claim, loss, cost, damage, injury, expense or liability occurred prior to the effective date of any such termination or completion.

13.3 Consultant agrees to attempt to obtain executed indemnity agreements with provisions identical to those set forth in this section from each and every subconsultant or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement and will notify the City should this indemnification not be obtainable, in which event the City may issue waiver on a case by case basis or promptly notify Consultant that a waiver is unacceptable. If Consultant fails to obtain such indemnity obligations from others as required, Consultant shall be fully responsible for all obligations under this Section. City's failure to monitor compliance with this requirement imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. The obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

13.4 Consultant's compliance with the insurance requirements does not relieve Consultant from the obligations described in this Section 13, which shall apply whether or not such insurance policies are applicable to a claim or damages.

14. **Insurance.** Consultant shall, at all times it is performing services under this Agreement, provide and maintain insurance in the types and with limits set forth in Exhibit D to this Agreement, and meet all other requirements set forth in Ex. D. Consultant shall not commence Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In the event Consultant fails to provide or maintain all required insurance, City may, in its sole discretion, obtain such insurance and deduct the amount therefor from the Not-to-Exceed Amount.

15. **Miscellaneous.**

15.1 **Disabled Veteran Business Enterprise Certification.** If required for this Project, Consultant shall provide proof of DVBE compliance, in accordance with any applicable policies of the City, within thirty (30) days of its execution of this Agreement. If Consultant fails to comply with this requirement, the Agreement may be canceled.

15.2 **No Third Party Rights.** This Agreement shall not create any rights in, or inure to the benefits of, any third party except as expressly provided herein.

**15.3 Governing Law.** This Agreement shall be construed in accordance with, and governed by, the laws of the State of California. Venue shall be in the County in which City is situated.

**15.4 Entire Agreement.** This Agreement, with its exhibits, contains the entire, integrated agreement of the parties hereto, and supersedes any and all other prior or contemporaneous negotiations, understandings and oral or written agreements between the parties hereto. Each party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. Furthermore, any modification of this Agreement shall only be effective if in writing signed by all parties hereto.

**15.5 Exhibits and Recitals.** All exhibits and recitals contained herein and attached hereto are material parts of this Agreement and are incorporated as if fully set forth. The Exhibits are as follows:

- Exhibit A: Project Description
- Exhibit B: Scope of Services, Approved Consultants, Key Personnel
- Exhibit C: Initial Project Schedule
- Exhibit D: Insurance
- Exhibit E: Hourly Rates and Reimbursable Expenses

**15.6 Severability.** Should any provision in the Agreement be held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall continue in full force and effect.

**15.7 Non-Waiver.** None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is expressly specified in writing.

**15.8 Safety.** Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of its employees, consultant and subcontractors appropriate to the nature of the work and the conditions under which the work is to be performed.

**15.9 Delivery of Notices.** All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

**CITY:**

City of El Paso de Robles  
1000 Spring Street  
Paso Robles, CA 93446

Email: [CAalake1@prcity.com](mailto:CAalake1@prcity.com)

Attn: Christopher Alakel, Water Resources Manager

**CONSULTANT:**

Kennedy/Jenks Consultants  
3210 El Camino Real, Suite 150  
Irvine, CA 92602

Email: [RogerNull@kennedyjenks.com](mailto:RogerNull@kennedyjenks.com)

Attn.: Roger Null, Vice President

The parties may designate, in writing, other individuals to whom notice is to be given. Notices shall be deemed to be received upon personal delivery to the addresses above; if sent by email, upon delivery; if sent by overnight delivery, upon delivery as shown by delivery service records; if sent by facsimile, upon receipt as confirmed by the sending facsimile equipment; if by United States Postal Service, five days after deposit in the mail.

**15.10 Attorney's Fees.** Each party will be responsible for all of its own attorney's fees in connection with the preparation, negotiation, and execution of this Agreement. In the event of legal action arising out of or relating to this Agreement, the court shall have the discretion to determine whether one of the parties is a prevailing party for purposes of recovering its reasonable attorney's fees and other reasonable costs of such action.

**15.11 Non-Discrimination.** Consultant warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither Consultant nor any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

**15.12 Mediation.** Should any dispute arise out of this Agreement, either party may request that it be submitted to mediation. The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first requesting mediation and making a good faith attempt to reach a mediated settlement. Upon the written request of either party, the parties shall exchange documents reasonably necessary to a resolution of the dispute prior to the mediation. The mediation process, once commenced by a meeting with the mediator shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

**15.13 Litigation.** Consultant shall testify at City's reasonable request if litigation is brought against City in connection with Consultant's Services under this agreement. Unless the action is brought by Consultant, or is based upon Consultant's actual or alleged negligence or other wrongdoing, City shall compensate Consultant for time spent in preparation for testimony, testimony, and travel as Additional Services at the rates set forth in Exhibit E.

**15.14 Time of Essence.** Time is of the essence for each and every provision of this Agreement.

**15.15 City's Right to Employ Other Consultants.** City reserves right to employ other consultants, including Consultants, in connection with this Project or other projects.

**16. Prohibited Interests.**

**16.1 Solicitation.** Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability.

**16.2 Conflict of Interest.**

**16.2.1** Consultant understands that its professional responsibility is solely to City. Consultant warrants that it presently has no interest, and will not acquire any direct or indirect interest, that would conflict with its performance of this Agreement. Consultant shall not knowingly, and shall take reasonable steps to ensure that, it does not employ a person having such an interest in the performance of this Agreement. If after employment of a person, Consultant discovers that it has employed a person with a direct or indirect interest that would conflict with its performance of this Agreement, Consultant shall promptly disclose the relationship to the City and take such action as the City may reasonably direct to remedy the conflict.

**16.2.2** Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's Services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any Services under this Agreement.

**16.2.3** Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

(a) Will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official other than normal contract monitoring; and

(b) Possesses no authority with respect to any City decision beyond the rendition of information, advice, recommendation or counsel (FPPC Reg. 18700(a)(2)).




16.3 **Subcontracting.** As specified in this Agreement, Consultant shall not subcontract any portion of the Services required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to each and every provision of this Agreement.

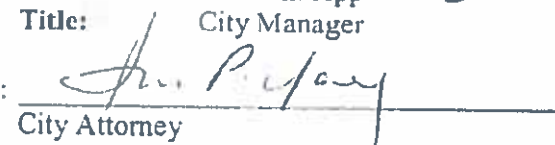
16.4 **Supplemental Conditions.** Any supplemental conditions shall be attached as an exhibit to this Agreement, and that exhibit shall be incorporated herein by reference.

16.5 **Drug/Tobacco Free Facilities.** All City facilities are drug and tobacco-free facilities. Any drug and/or tobacco use (smoked or smokeless) is prohibited at all times on all areas of City facilities.


16.6 **Authority to Execute.** The persons executing this Agreement on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

**CITY OF EL PASO DE ROBLES**


By:  Date: 20 JAN 2015  
Name: James L. App  
Title: City Manager

Attest:   
City Attorney

**KENNEDY/JENKS CONSULTANTS**

By:  Date: 12/30/2014  
Name: Roger Null  
Title: Vice President

Fed. Tax I.D. # 94-214-7007

Attest:   
[INSERT TITLE] Principal Geologist

## EXHIBIT A: PROJECT DESCRIPTION

---

The City of Paso Robles (City) seeks to reconsider both water and sewer user rates and water connection fees. The City's Water Fund is a \$12.3 million enterprise fund<sup>1</sup> for which user rates are set to increase from the current uniform rate of \$3.70 per hundred cubic feet (HCF) increasing to \$4.40/HCF<sup>2</sup> beginning January 1, 2016. Water capacity charges are now \$23,500 per equivalent meter unit.

One significant water project that is now underway is the construction of a 2.4 MGD surface water treatment plant to treat supply from the Nacimiento Water Project. Future expansion of that plant is planned to make full year-round use of Nacimiento deliveries into the potable system. Also, an older reservoir is in need of replacement. These and other capital projects will represent upcoming expenditures, at the same time that customers are making noteworthy strides in conserving water.

The City's Wastewater Fund is a \$9.6 million enterprise fund<sup>2</sup> with uniform "Winter Water Use" based rates currently at \$6.30/HCF increasing to \$7.80/HCF as of July 1, 2016. Wastewater facility charges are now \$10,900 per equivalent dwelling unit and no change to that charge is proposed.

A significant wastewater project now underway is a \$47 million upgrade to the community wastewater treatment plant, financed with a State Revolving Fund loan. The upgrade project will be complete in Fall 2015 and SRF debt payments will begin in 2016.

On a related effort, the City completed its Recycled Water Master Plan earlier this year which envisions a \$46 million system, phased as customers come on-line, with the potential to be constructed under a regional partnership. The City wishes to look ahead to the financial impact of bringing a recycled water system into operation.

The general goals of the Utility Rate and Connection Fee Study (i.e. "Project") are to:

- Establish utility rates that meet the short and long term financial obligations of both the water and wastewater enterprise funds;
- Establish water facility charges, aka "connection fees", for new users that recovers the cost of new development's impact on the water system;
- Comply with provisions of "Prop 218" (i.e. California Constitution Articles XIIC and XIID and all other relevant statutes.

---

<sup>1</sup> Projected revenue for FY 14/15 as stated in the City's 2013-2017 Financial Forecast dated Winter 2013.

<sup>2</sup> Same reference as for Water Fund, but excluding revenue from SRF Loan disbursement.

To that end, the Project is to address:

1. Pace of Growth – Capital improvement programs for City utilities support the adopted General Plan population threshold of 44,000 as compared to 30,450 current population. The time horizon for the City to reach its build out population of 44,000 has been extended to 2045 by a recent General Plan amendment. Accordingly, the Consultant is to evaluate the financial impact of varying assumptions regarding pace of growth.
2. Recycled Water Fund – One aspect of the City's water supply plan is the delivery of recycled water to offset demands from the potable water distribution system and as an in lieu supply to properties currently irrigated from private wells. The Consultant is to consider the financial impact of putting a recycled system into operation.

With regard to recycled water, declines in groundwater elevations in the Paso Robles Groundwater Basin cause the City to expect demand for recycled water to increase in the future. The City would like to be in a position to supply recycled water by 2019, if needed to meet this demand. In order to produce recycled water, a filtration process and a new or expanded disinfection process must be added to the wastewater treatment plant. The City's design engineer previously estimated these facilities may cost approximately \$13 million and a preliminary design of recycled water production facilities is underway. The result is that project costs will be better defined and the City will be in a competitive position for any grants or zero-interest loans that may result from pending state water bond legislation. This preliminary design effort will be completed by March 2015.

**EXHIBIT B**  
**SCOPE OF SERVICES, APPROVED CONSULTANTS, AND**  
**KEY PERSONNEL**

---

**Scope of Services**

The task descriptions that follow are based on discussions with City staff, the Consultant's understanding of the City's project goals and objectives, and experience on similar projects. These tasks constitute the Basic Services to be provided by the Consultant. The City is to provide the Consultant with a time-based Capital Improvement Program (CIP), an Operation and Maintenance (O&M) plan, a water supply plan, and other digital billing/financial information.

**Wastewater User Rates**

The wastewater rate study will be a phased approach and in the first phase, the Consultant will assess if additional debt financing by the City for recycled water facilities can be absorbed without increasing wastewater rates. In the next phase, if the latter is found to be feasible, the Consultant will support the City in acquiring State Revolving Fund funding for these improvements. Since future phases of wastewater work may therefore not be necessary, these services are presented as optional services for City consideration.

***Task WW-1 - Project Management, Communication, and QA/QC***

Use management control tools and emphasize client communication. Develop a project management plan that will clearly identify the Consultant's work plan, QA/QC plan, scope, schedule, budget, and staffing plan. Communications between the Consultant and the City will be maintained by the proposed Project Manager or otherwise at his designation.

Use proven QA/QC program to make sure the appropriate levels of independent and peer review has been performed. Use an internal Concept and Criteria Review (C&CR) meeting, to be held at about 10% project completion, to confirm that the Consultant's planned effort alignment with the City's overall goals, objectives, and schedule. The findings of this early QA/QC effort will provide additional focus on project quality and client satisfaction.

***Task WW-2 - Data Collection and Review***

Collect and review the relevant data necessary for the successful completion of this project. A preliminary list of data required will be provided upon notification to proceed. It should be noted, however, that a digital billing data set from the Harris billing system may be a critical path item because of the inherent challenges in extracting consistent data from customized user-defined reports. As such, the Consultant is prepared to issue that digital file request for both water and wastewater information upon notice of selection.

**Task WW-3 - Conduct Kickoff Meeting  
(Combined with Task W-3 – Water Kickoff Meeting)**

Meet with City staff for an orientation meeting to validate project goals, objectives, concerns, and desires, discuss the data review findings, schedule, and establish departmental contacts. To streamline the overall project, the kickoff meetings for both the wastewater and water rate studies will be combined into a single meeting. If appropriate, we will include the continuation of service to Templeton Community Services District discussion topic in this kickoff meeting agenda.

**Task WW-4 - Assess Revenue Requirements**

Perform a financial projection of the wastewater utility based on the use of historical financial statements and the projection of future utility revenue and funding requirements. For this phase of work, the revenue plan assumes no changes in the user rates or rate structure is required. This task will be completed by performing the following subtasks:

- **Historical Financial Statements and Budgets.** In concert with audited financial statements and other documents provided by the City, review the performance of the Wastewater Fund over the last several years. Using the Fiscal Year (FY) 2013-14 estimated actuals and FY 2014-15 budget, evaluate the financial performance of the utility under the currently adopted rates and fees, with the goal and purpose of providing a letter report of findings to support the City's submittal of an State Revolving Fund loan application to the State Water Resources Control Board. The financial projection will be populated with the findings of the following subtasks. This approach will contrast the City's financial position during the last few years with the projection for the next five to ten years.
- **Annualized Growth Projections.** In close coordination with City staff, project customer account growth and wastewater discharges. Develop this task element in concert with the water Task W-4.3, as water and wastewater growth must be considered simultaneously. Incorporate long-term demand/discharge values, annualized pace of growth estimates, and projected interior/exterior water conservation programs that will affect water sales and wastewater discharges. Finally, reflect the impact of future flows, costs, and revenues related to Templeton CSD in the City's demand projections.
- **Operation and Maintenance Expenses.** Project utility O&M expenses based on the projected level of utility services, changes in wastewater utility operations, and increased unit costs. Include in the projection the operational labor, chemicals/supplies, power, billings, and general administration costs. Additional cost associated with the startup of recycled water facilities will also be incorporated, if applicable.
- **Non-Operating Revenues and Expenses.** Project the utility non-operating revenues and expenses including any interfund transfers, sources of other revenues, such as

connection fees, Templeton CSD charges/revenues, and other income/funds presently in use by the City, including the projected utility reserve funds availability and probable interest earnings.

- **Capital Improvements Program.** Review the City's current Wastewater CIP and integrate the proposed improvements on the revenue requirements of the Wastewater Fund. Review the existing debt service coverage requirements associated with the recent State Revolving Fund loan for the wastewater treatment plant upgrade. Incorporate the new CIP and debt associated with a potential recycled water upgrade to the wastewater treatment plant. Last, review and update the current and projected level of depreciation that could/should be funded through the Wastewater Fund.
- **Review and Develop Future Debt Service Requirements.** Meet with City staff to discuss the funding plan for the recycled water upgrades. Incorporate grant and/or State Revolving Fund loan (potentially zero-interest) sources and assess the impact of the resulting debt service burden on utility rate and revenue requirements. Calculate the annual rate-based revenues required for annual debt coverage ratio covenants, and derive the associated impact on utility rates.
- **Projected Financial Plan.** Based on the results of the preceding subtasks, prepare an updated financial projection of the Wastewater Fund including the anticipated debt associated with the new recycled water production facilities.

Develop and conduct up to five (5) "what if" scenario alternative analyses to model such variables as the pace of growth, varying levels of conservation, CIP timing, alternative financing strategies, etc.

The financial projection will provide the basis for developing a time-phased plan for the City in which the amounts and timing of user charge revenue adjustments are defined. The plan will also utilize other sources of funds and financing to be employed to supplement user charge revenues and discuss the funding needs for the City's wastewater system.

#### ***Task WW-5 - Draft and Final Letter Report of Findings***

Prepare and submit reports as described in the following subtasks:

- Prepare a draft report letter report of findings and submit it to the City in an Adobe file format for distribution and review as appropriate. Discuss the findings with the City for inclusion in the Final Report.
- Incorporate the City's review comments and prepare a Final Report of Findings and submit it to the City in an Adobe file format for final distribution.



**Task WW-6 – Project Meetings  
(Combined with Task W-9 - Water Meetings)**

In addition to the kickoff meeting described in Task WW-3, a number of additional meetings are anticipated to facilitate internal City discussions and decision-making and the meetings are listed below, noting which meetings may be handled by way of conference call and/or web-based format. The Consultant is familiar with the needs, benefits, and efforts associated with this task and will combine the wastewater and water meetings whenever possible.

<b>Coordination of Meetings to Streamline the Schedule and Maximize Efficiency</b>		
	<b>Wastewater/Recycled Water Study</b>	<b>Water Rate/Fee Study</b>
Meetings with City Staff (4)	✓ In-Person (2) Teleconference/Web (2) In-person meetings will be combined with the Water Study meetings	✓ In-Person (2) Teleconference/Web (2) In-person meetings will be combined with the Wastewater Study meetings
Briefings with City Council Subcommittee (2)	✓ (Combined with Water Study)	✓ (Combined with Wastewater Study)
Meeting with HBA (1)	n/a	✓ (Held independently)
Public Workshops (2)	n/a	✓ (Held independently)
Presentations to City Council (2)	✓ (Held independently)	✓ (Held independently)

✓ = Will be held in Paso Robles and coordinate with other meetings to maximize schedule efficiency.

**Water User Rates**

**Task W-1 - Project Management, Communication, and QA/QC**

Use management control tools and emphasize client communication. Develop a project management plan that will clearly identify the Consultant's work plan, QA/QC plan, scope, schedule, budget, and staffing plan. Communications between the Consultant and the City will be maintained by the proposed Project Manager or otherwise at his designation.

Use proven QA/QC program to make sure the appropriate levels of independent and peer review has been performed. The Consultant's QA/QC plan includes the use of an internal Concept and Criteria Review (C&CR) meeting, to be held at about 10% project completion, to confirm that planned efforts align with the project's overall goals, objectives, and schedule. The findings of this early QA/QC effort will provide additional focus on project quality and client satisfaction.

**Task W-2 - Data Collection and Review**

Collect and review the relevant data necessary for the successful completion of this project. Provide a preliminary list of data required upon notification to proceed. An early request for information will be prepared to begin the process on potentially time-consuming data requests.

**Task W-3 - Conduct Kickoff Meeting  
(Combined with Task WW-3 – Wastewater Kickoff Meeting)**

Meet with City staff for an orientation meeting to validate project goals, objectives, concerns, and desires, discuss the data review findings, schedule, and establish departmental contacts.

**Task W-4 - Assess Revenue Requirements**

Perform an updated financial projection of the water utility based on the use of historical financial statements and the projection of future utility revenue and funding requirements, through the conduct of the following subtasks.

- **Historical Financial Statements and Budgets.** In concert with audited financial statements and other documents provided by the City, review the performance of the Water Fund over the last several years. Using the Fiscal Year (FY) 2013-14 estimated actuals and FY 2014-15 budget, evaluate the financial performance of the utility under the currently adopted rates and fees, with the goal and purpose of preparing an updated water rate and revenue plan for the City. The financial projection will be populated with the findings of the following elements.
- **Annualized Growth Projections.** In close coordination with City staff, project customer account growth and wastewater discharges in concert with the wastewater Task WW-4.2, as water and wastewater growth must be considered simultaneously. Moreover, incorporate long-term demand/discharge values, annualized pace of growth estimates, and projected interior/exterior water conservation programs that will affect water sales and wastewater discharges.
- **Operation and Maintenance Expenses.** Project the utility O&M expenses based on the projected level of utility services, any changes in water utility operations, and increased unit costs. Include in the projection the operational labor, chemicals/supplies, power, billings, and general administration costs, as well as incremental new costs associated with treatment of Nacimiento water. The City is to provide a water supply plan with average costs/AF so that these O&M costs can be readily correlated with the demand projections derived in the previous subtask.
- **Non-Operating Revenues and Expenses.** Project the utility non-operating revenues and expenses, including any inter-fund transfers, sources of other revenues (such as connection fees), and other income/funds presently in use by the City, including the projected utility reserve funds availability and probable interest earnings.
- **Capital Improvements Program.** Review the City's current Water CIP and integrate the proposed capital improvements on the revenue requirements of the Water Fund. Review and update the current and projected level of depreciation that could/should be funded through the Water Fund.
- **Review and Develop Future Debt Service Requirements.** Meet with City staff to discuss the development of an overall financial planning strategy for the water enterprise. Perform and evaluate alternative financial scenarios to develop an optimum mix of pay-as-you-go cash-based and pay-as-you-use financed capital improvements, and assess the impact of the resulting debt service burden on utility rate and revenue



requirements. Calculate the annual rate-based revenues required for annual debt coverage ratio covenants (including existing Nacimiento bond coverages), and derive the associated impact on utility rates. The financing alternatives will focus on the various levels of debt financing required based on the prioritization, sequencing requirements, and magnitude of the developed capital improvement program, and will be contrasted with the impact on utility rates. Then review, discuss, and recommend an appropriate capital-financing alternative for the City.

- **Projected Financial Plan.** Based on the results of the preceding subtasks, prepare an updated financial projection that reflects annualized revenue sources and uses for the five-year projection period.

Develop and conduct up to ten (10) "what if" scenario alternative analyses to model such variables as the pace of growth, varying levels of conservation, CIP timing, alternative financing strategies, etc.

The updated financial projection will provide the basis for developing a time-phased plan for the City in which the amounts and timing of user charge revenue adjustments are defined. The plan will also utilize other sources of funds and financing to be employed to supplement user charge revenues and discuss the funding needs for the City's water system.

#### ***Task W-5 – Alternate Water Rates and Rate Structure***

Evaluate alternative rate-making concepts for the City's consideration of incorporating into the recommended water rate structure. Based on discussions with City staff, focus this alternative rate-making task on the performance of a fixed/variable cost of service analysis and the development of alternative fixed service charge rates/rate structures to accompany the existing uniform rate structure which is currently in place. The conduct of a comprehensive account-level analysis to support the development of any new tiered rate structures is not included in this base scope of services and would be an optional task. Evaluate the following elements:

- **Fixed/Variable Cost of Service Analysis.** Quantify costs of service and ascertain the financial vulnerability to demand reductions associated with various rate structures:
  - Review the City's water budget and cost data to develop an allocation of costs to fixed and variable components
  - Evaluate the short-term revenue instability levels
  - Incorporate demand elasticity/conservation on revenues/costs
  - Assess an appropriate level of variable revenue risk for the City.

Discuss the different approaches to revenue stabilization (including re-establishing the fixed service charge as an element of the water rates and the use of a rate stabilization fund approach) with City staff and make recommendations for fixed/variable revenue revisions or reserve requirements. The findings of this analysis will be used in the development of the reserve plan and in the development of the fixed/variable rate elements of the water study.

- **Develop Uniform Water Rate and Fixed Rate Alternatives.** Utilize the fixed/variable cost analysis, vulnerability findings, and discussions with staff to develop appropriate changes in water rates to enhance Water Fund financial performance. To recognize the impact that a new fixed charge has on small users, the concept of a water allowance per meter size will also be considered. Up to three (3) different combinations of uniform variable rates and fixed service charge rates will be provided to assist the City in establishing the appropriate rates and rate structure for the five-year rate-adoption period.

***Task W-6 - Develop Proposed Water Rates***

Use the results from the preceding tasks to develop proposed water rates that can be adopted by the City. Subtasks to be performed include:

- **Describe Current Rate Schedule.** Summarize the current rate and fee schedules.
- **Perform Rate Survey.** Utilize a web-based community survey list prepared by the City to contact/research the current rates and fees for these agencies, and compile the associated rate and fee information for City review.
- **Develop Proposed Rates.** Prepare the proposed schedule of charges so that the existing user charge rate structure is utilized and the prior task findings are incrementally applied to the current user charges.

***Task W-7- Capital Facility Charge Analysis***

Review the City's current water capital facility charge fees and the associated rate structure. Work with City staff to develop a current water fixed asset inventory. Using this digital information, assist in estimating the value of the existing facilities based on the original asset costs, develop an estimated replacement cost new value, and develop original and replacement cost new values less depreciation. Review and discuss the inclusion/deletion of other cost elements included in the City's Wastewater Capital Facility Charge Study and the supplemental Independent Evaluation of the Wastewater Capital Facility Charge Study that followed. Lastly, prepare a summary of alternative elements for the City to review, and discuss the appropriateness of including various cost components and valuation methods.

Upon concurrence on a desired approach, develop new water system capital facility charges for the recovery of the unit costs of service associated with a new water connection's impact on system capacity. Prepare the associated tables and information to support its adoption, with this analysis prepared and submitted as a separate stand-alone report. As such, both a draft and final report will be submitted to the City.

***Task W-8 - Draft and Final Reports***

Prepare and submit reports as described in the following subtasks:

- Prepare a draft report of findings and submit it to the City in an Adobe file format for distribution and review as appropriate. Discuss the findings with the City for inclusion in the Final Report.

- Incorporate the City's review comments and prepare a Final Report of Findings and submit it to the City in an Adobe file format for final distribution.

**Task W-9 –Project Meetings  
(Combined with Task WW-6 - Wastewater Meetings)**

In addition to the kickoff meeting, a number of additional meetings are anticipated to facilitate internal city discussions, specific stakeholder groups (Homebuilders Association), and external meetings to facilitate public discussion and gather public comments. Meetings included herein along with support services for the preparation of meeting materials are tabulated below. Meetings will be organized to facilitate efficient discussion for both utilities while minimizing overall project costs. The anticipated meeting schedule and format is identified in the table below.

<b>Coordination of Meetings to Streamline the Schedule and Maximize Efficiency</b>		
	<b>Wastewater/Recycled Water Study</b>	<b>Water Rate/Fee Study</b>
Meetings with City Staff (4)	✓ In-Person (2) Teleconference/Web (2) In-person meetings will be combined with the Water Study meetings	✓ In-Person (2) Teleconference/Web (2) In-person meetings will be combined with the Wastewater Study meetings
Briefings with City Council Subcommittee (2)	✓ (Combined with Water Study)	✓ (Combined with Wastewater Study)
Meeting with HBA (1)	n/a	✓ (Held independently)
Public Workshops (2)	n/a	✓ (Held independently)
Presentations to City Council (2)	✓ (Held independently)	✓ (Held independently)

✓ = Will be held in Paso Robles and coordinate with other meetings to maximize schedule efficiency.

**Approved Consultants**

Kennedy/Jenks Consultants may be supported by one approved consultant and that is Lynn Takaichi, PE, of Water Consultancy. Use of subconsultants other than this named firm is subject to prior written approval of the City.

**Key Personnel**

Project Lead = Roger Null, VP/Engineer 9

Financial Planning Specialist = Sunny Huang, PE

SRF / Grant Funding – Meredith Clement

**EXHIBIT C**  
**INITIAL PROJECT SCHEDULE**

---

Based on discussions with City staff, it is anticipated that project completion will require approximately one year, and should begin in late December 2014 or early January 2015. Under that plan, the analytical elements of the project should essentially be completed within six to eight months, allowing another four to six months to complete various project documentation, public review, and Proposition 218 requirements so that new water rates can be in place by January 1, 2016. While this general schedule is consistent with the City's work flow processes, we understand the need to complete the wastewater plan at a quicker pace to facilitate SRF application submissions. As such, the general schedule for the key deliverables is as follows:

Notice to Proceed (NTP) – January 2015  
Kick Off Meeting - Within 7 Calendar Days of NTP

**Wastewater Rate and Revenue Plan**

WW Draft Excel Revenue Plan- Within 60 Calendar Days of Kick-Off Meeting  
City Review of Draft Material – 7 Calendar Days  
WW Final Excel Revenue Plan & Draft Rate Report - Within 21 Calendar Days of Receipt of Comments  
City Review of Draft Material – 14 Calendar Days  
WW Final Rate Report - Within 14 Calendar Days of Receipt of Comments  
Estimated Schedule Duration - Approximately 120 Calendar Days from NTP

**Water Rate and Revenue Plan**

W Draft Excel Revenue Plan- Within 90 Calendar Days of Kick-Off Meeting  
City Review of Draft Material – 14 Calendar Days  
W Final Excel Revenue Plan - Within 14 Calendar Days of Receipt of Comments  
W Preliminary Alternative Rates and Structures - Within 21 Days Following Revenue Plan Completion  
City Review of Draft Material – 14 Calendar Days  
W Draft Final Alternative Rates and Structures - Within 21 Days Following Receipt of Comments  
W Draft Rate Study Report - Within 21 Days Following Receipt of Comments  
City Review of Draft Material – 14 Calendar Days  
W Final Rate Report - Within 14 Calendar Days of Receipt of Comments  
Estimated Schedule Duration - Approximately 210 Calendar Days from NTP

**Water Facility Charge (WFC) Study**

Draft Excel Analysis - Within 90 Calendar Days of Kick-Off Meeting

City Review of Draft Material – 14 Calendar Days

Final WFC Excel Bases of Charges - Within 21 Calendar Days of Receipt of Comments

Draft WFC Report - Within 21 Days Following Receipt of Comments

City Review of Draft Material – 14 Calendar Days

Final Rate Report - Within 14 Calendar Days of Receipt of Comments

Estimated Schedule Duration - Approximately 180 Calendar Days from NTP

**EXHIBIT D**  
**INSURANCE**

---

Consultant shall, at all times it is performing services under this Agreement, provide and maintain insurance in the following types and with limits in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to Consultant in excess of the limits and coverage required in this agreement and that is applicable to a given loss will be available to City.

1. Commercial General Liability Insurance, occurrence form, using Insurance Services Office ("ISO") "Commercial General Liability" policy form CG 00 01 or an approved equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review, but in no event shall be less than \$2,000,000 each occurrence;

2. Business Auto Coverage on ISO Business Automobile Coverage form CA 00 01 including symbol 1 (Any Auto) or an approved equivalent. Limits are subject to review, but in no event shall be less than \$1,000,000 each occurrence. If Consultant or its employees will use personal autos in any way in connection with performance of the Services, Consultant shall provide evidence of personal auto liability coverage for each such person.

3. Workers Compensation on a state-approved policy form providing statutory benefits as required by law with employers liability insurance, with minimum limits of \$1 million per occurrence.

4. Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements shall provide coverage at least as broad as specified for the underlying coverages. Any such coverage provided under an umbrella liability policy shall include a drop down provision providing primary coverage above a maximum self-insured retention for liability not covered by primary but covered by the umbrella. Coverage shall be provided on a "pay on behalf of" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by insured first. There shall be no cross-liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to City for injury to employees of Consultant, subconsultants or others involved in performance of the Services. The scope of coverage provided is subject to approval of City following receipt of proof of insurance as required herein. Limits are subject to review but in no event less than \$1,000,000 per occurrence.

5. Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Consultant and "Covered Professional Services" as designated in the policy must include the type of work performed under this Agreement. The policy limit shall be no less than \$1,000,000 per claim and in the aggregate.

6. Insurance procured pursuant to these requirements shall be written by insurers that are authorized to transact the relevant type of insurance business in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size VII.



7. General conditions pertaining to provision of insurance coverage by Consultant. Consultant and City agree to the following with respect to insurance provided by Consultant:

a. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992, or an equivalent. Consultant also agrees to require all contractors, and subcontractors to do likewise.

b. No liability insurance coverage provided to comply with this Agreement, except the Business Auto Coverage policy, shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right of subrogation prior to a loss. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

c. All insurance coverage and limits provided by Consultant and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operations limits the application of such insurance coverage.

d. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

e. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

f. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises, and City shall be responsible for the cost of any additional insurance required. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior written consent.

g. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City may terminate this agreement in accordance with Section 22 of the Agreement.

h. Certificate(s) are to reflect that the insurer will provide 30 days notice to City of any cancellation of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.

i. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, noncontributing basis in relation to any other insurance or self insurance available to City.

j. Consultant agrees to ensure that subconsultants, and any other party involved with the Services who is brought onto or involved in the Services by Consultant, provide the same minimum insurance coverage required of Consultant; provided, however that only subconsultants performing professional services will be required to provide professional liability insurance. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Services will be submitted to City for review.

k. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Consultant or other entity or person in any way involved in the performance of work on the Services contemplated by this agreement to self-insure its obligations to City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

l. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in additional cost to the Consultant, and the City requires Consultant to obtain the additional coverage, the City will pay Consultant the additional cost of the insurance.

m. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

n. Consultant acknowledges and agrees that any actual or alleged failure on the part of City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

o. Consultant will endeavor to renew the required coverages for a minimum of three years following completion of the Services or termination of this agreement and, if Consultant is unable to do so, Consultant will notify City at least thirty days prior to the cancellation or expiration of the policy or policies.

p. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five days of the expiration of the coverages.

q. The provisions of any workers' compensation or similar act will not limit the obligations of Consultant under this agreement. Consultant expressly agrees that any statutory immunity defenses under such laws do not apply with respect to City, its employees, officials and agents.

r. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally



provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

s. These insurance requirements are intended to be separate and distinct from any other provision in this agreement and are intended by the parties here to be interpreted as such.

t. The requirements in this Section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

u. Consultant agrees to be responsible for ensuring that no contract entered into by Consultant in connection with the Services authorizes, or purports to authorize, any third party to charge City an amount in excess of the fee set forth in the agreement on account of insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

v. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

**EXHIBIT E**

**HOURLY RATES AND REIMBURSABLE EXPENSES**

---

**1. Hourly Compensation Rates**

	<b>HOURLY RATES</b>
Principal/Engineer 9	\$245
Project Manager/Engineer 9	\$245
Senior Consultant/Engineer 8	\$240
Engineer 7	\$230
Engineer 6	\$205
Engineer 5	\$185
Engineer 4 Graphics	\$170
Engineer 3 Project Leader	\$155
Engineer 2 Computer Services	\$135
Project Administration	\$100
Admin Support	\$85

These are the current hourly rates effective January 1, 2015 through December 31, 2015. Increases in the above hourly rates shall be made only by an authorized amendment to this Agreement.

**2. Reimbursable Expenses**

The authorized reimbursable expenses for this Project are \$6,783, which will not be exceeded without written authorization by the City.

### 3. Fee Estimate Spreadsheet

January 1, 2013 Rates										
Classification	Eng-Sc1-B	Eng-Sc1-B	Eng-Sc1-B	Eng-Sc1-3/G1B	Project Admin.	Total	Total Labor	Total Bubs	Total Expenses	Total Labor + Bubs + Expenses
Hourly Rate	\$245	\$240	\$205	\$155	\$100	Hours				Fees
Task WW-1 PM and QAQC	8	12	0	0	0	20	\$5,440	\$0	\$625	\$6,065
Task WW-2 Data Collection and Review	2	3	4	0	3	14	\$2,550	\$0	\$0	\$2,550
Task WW-3 Kick Off Meeting & Prep	0	3	0	3	2	11	\$2,135	\$786	\$252	\$3,175
Task WW-4 Assess Revenue Requirements	14	0	0	35	0	50	\$9,010	\$0	\$0	\$9,010
Task WW-5 Draft & Final Reports	8	0	0	12	4	24	\$4,220	\$0	\$0	\$4,220
Task WW-6 Project Meetings	40	0	20	0	0	60	\$13,600	\$0	\$2,016	\$15,616
Task W-1 PM and QAQC	18	24	0	0	12	52	\$10,890	\$0	\$0	\$10,890
Task W-2 Data Collection and Review	4	0	16	15	0	30	\$6,740	\$0	\$0	\$6,740
Task W-3 Kick Off Meeting & Prep	0	0	0	3	2	11	\$2,135	\$786	\$252	\$3,175
Task W-4 Assess Revenue Requirements	14	0	0	32	0	54	\$10,030	\$0	\$0	\$10,030
Task W-5 Alternative Rates and Structures	16	0	0	15	0	32	\$6,400	\$0	\$0	\$6,400
Task W-6 Develop Proposed Rates	4	0	0	19	0	22	\$3,770	\$0	\$0	\$3,770
Task W-7 Capital Facility Charge Analysis	24	0	48	48	8	128	\$23,600	\$1,050	\$0	\$25,010
Task W-8 Draft & Final Reports	20	0	19	14	12	64	\$11,600	\$0	\$210	\$12,170
Task W-9 Project Meetings	70	0	34	0	0	104	\$24,120	\$3,150	\$3,528	\$30,798
<b>All Tasks - Totals</b>	<b>252</b>	<b>36</b>	<b>148</b>	<b>206</b>	<b>48</b>	<b>688</b>	<b>\$137,250</b>	<b>\$3,775</b>	<b>\$6,783</b>	<b>\$149,808</b>
<b>Wastewater Totals</b>	<b>79</b>	<b>12</b>	<b>24</b>	<b>57</b>	<b>12</b>	<b>185</b>	<b>\$37,255</b>	<b>\$786</b>	<b>\$2,793</b>	<b>\$40,836</b>
<b>Water Totals</b>	<b>174</b>	<b>24</b>	<b>124</b>	<b>147</b>	<b>34</b>	<b>503</b>	<b>\$99,995</b>	<b>\$4,989</b>	<b>\$3,990</b>	<b>\$108,973</b>

### 4. Additional Services

Additional Services shall be computed at the actual hourly rates described above.

### 5. Additional Consultants

If City requires Consultant to hire consultants to perform any Additional Services, Consultant shall be compensated therefore at the consultant's actual hourly rates. City shall have the authority to review and approve the rates of any such consultants.

**Client/Address:** City of Paso Robles  
1000 Spring Street  
Paso Robles CA 93446

**Contract/Proposal Date:** April 27, 2017

## Schedule of Charges

**Date:** July 1, 2016

### PERSONNEL COMPENSATION

Classification	Hourly Rate
Principal .....	\$280
Senior Associate .....	\$245
Associate .....	\$175
Research Assistant .....	\$140
Administrative Assistant .....	\$85

### Direct expenses

Reimbursement for direct expenses, as listed below, incurred in connection with the work, will be at cost plus ten percent for items such as:

- a. Maps, photographs, reproductions, printing, equipment rental, and special supplies related to the work.
- b. Consultants, soils engineers, surveyors, contractors, and other outside services.
- c. Rented vehicles, local public transportation and taxis, travel and subsistence.  
(Applies only to trips requested and authorized by the Agency)
- d. Project specific telecommunications and delivery charges.
- e. Special fees, insurance, permits, and licenses applicable to the work.
- f. Outside computer processing, computation, and proprietary programs purchased for the work.
- g. Temporary help.
- h. Project materials such as specific telecommunications, rented vehicles, rented trailer field offices and associated utility charges for a specific job site authorized by the Agency.

Reimbursement for use of computerized drafting systems (CAD), geographical information systems (GIS), and other specialized software and hardware will be at the rate of \$12 per hour.

Rates for professional staff for legal proceedings or as expert witnesses will be at rates one and one-half times the Hourly Rates specified above.

Excise and gross receipts taxes, if any, will be added as a direct expense.

### Proposal Fee Estimate

**Water Consultancy**

CLIENT Name: Paso Robles  
PROJECT Description: CFC Study  
Proposal Date: 27-Apr-17

July 1, 2016 Rates	Principal	Senior Associate	Associate	Research Assistant	Admin. Assist	Total	WC Labor	WC ODCs	WC ODCs Markup	Total Labor	Total Expenses	Total Labor + Expenses
Classification:	\$280	\$245	\$175	\$140	\$85	Hours	Fees	Fees	10%			Fees
Task 1-Collect/Review Background Information	16					16	\$4,480		\$0	\$4,480	\$0	\$4,480
Task 2-Identify/Evaluate Assumptions/Policy issues	8					8	\$2,240		\$0	\$2,240	\$0	\$2,240
Task 3-Water Utility CFC Evaluation	36			8	4	48	\$11,540	\$1,000	\$100	\$11,540	\$1,100	\$12,640
Task 4-Wastewater Utility CFC Evaluation	40			8	4	52	\$12,660	\$1,000	\$100	\$12,660	\$1,100	\$13,760
Task 5-Project Management and Meetings	48				2	50	\$13,610	\$245	\$25	\$13,610	\$270	\$13,880
<b>Total- Tasks 1 - 5</b>	<b>148</b>		<b>0</b>	<b>16</b>	<b>10</b>	<b>174</b>	<b>\$44,630</b>	<b>\$2,245</b>	<b>\$225</b>	<b>\$44,630</b>	<b>\$2,470</b>	<b>\$47,000</b>