

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT made this ___ day of _____, 20 __, by and between the CITY OF TEHACHAPI, a municipal corporation (the "City"), and _____ (the "Engineer").

W I T N E S S E T H :

WHEREAS, City wishes to contract with Engineer to provide certain professional services pursuant to the Proposal provided by the Engineer on _____ that may be required by the City from time to time under that terms and conditions described hereinafter and Engineer is agreeable thereto.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth hereinafter, the parties agree as follows:

1. City hereby contracts with Engineer to perform the Services under the terms and conditions described hereinafter.

2. City shall pay Engineer on a "time and materials" basis but not to exceed ___ (the "Fee"). As used herein, "time and materials" shall mean the number of hours devoted by Engineer to the Services charged at the rate set forth in the Engineer's rate schedule attached hereto as Exhibit "B" and by this reference made a part hereof and including all reasonable costs incurred by Engineer. Engineer shall submit invoices no more often than monthly which shall describe the Services that were performed and such other information as may be required by the City Manager or his designated representative. The City Manager or his representative shall have the right of reasonable review of each invoice and, at the conclusion of the review, the City Manager shall place the matter on the agenda for the next available City Council meeting for consideration by the City Council. Upon approval of each such invoice by the City Council, same shall be paid in the regular cycle of payments made by City for other bills and claims.

3. Engineer shall complete the Services within 100 days from the date of this Agreement. During the term of this Agreement, Engineer shall not provide engineering services within the City to any entity or individual other than City without the prior written consent of the City. Engineer shall not assign its interest herein or any part thereof and any attempted assignment shall be void.

4. Engineer hereby agrees to indemnify, defend, and hold harmless City, its officers, Councilmembers, employees, and agents from any and all claims, liabilities, expenses, and damages, including attorneys' fees, for injury to or death of any person, and for damage to any property including without limitation, City's property, arising out of or in any way connected with Engineer's performance of the Services or by any act or omission by Engineer whether directly or indirectly related to performance of the Services.

5. Without limiting Engineer's obligations under Paragraph 5 of this Agreement, Engineer shall obtain and maintain during the life of this Agreement:

- (a) Comprehensive general liability insurance coverage, including premises – operations, products/completed operations, broad form property damage and blanket contractual liability, in an amount not less than \$1 million per occurrence and automobile liability for owned, hired, and non-owned vehicles;
- (b) Professional/negligent acts, errors, and omissions insurance satisfactory to the City's Attorney in an amount not less than \$1 million; and
- (c) Such worker's compensation insurance as required by statute.

Engineer shall provide City with appropriate certificates of insurance and endorsements for all of the foregoing. For the general liability insurance, Engineer shall name City, its officers, Councilpersons, Commissioners, employees, and agents as additional insureds and specifically designate such insurance as "primary" and provide further that same shall not be terminated nor coverage reduced without ten days prior notice to City.

6. Information, data, plans and specifications, engineer's estimates, and all other project documents drafted or created by Engineer or on behalf of Engineer for City shall belong to City and Engineer hereby assigns all of its copyright interests therein to City, irrevocably and forever and agrees that City shall be the owner of all such copyrights. All of the foregoing documents hereafter prepared by Engineer for City or on behalf of Engineer for City shall be retained and maintained for City by Engineer in its offices at no additional cost to City. Engineer shall release all such files and documents as instructed by City from time to time, and all such files and documents shall belong to City. Engineer shall not be liable for use of any such files or documents for purposes other than their original intended purpose.

7. City may terminate this Agreement at any time by giving Engineer ten (10) days prior written notice, provided that in such event Engineer shall be entitled to payment for those Services rendered through the date of termination, provided satisfactory to City. Notwithstanding the foregoing, City may terminate this Agreement at any time for cause without notice and in that event Engineer shall not be entitled to any payment for unpaid Services.

8. All notices required to be given under this Agreement or by law shall be in writing and shall be deemed served if personally delivered or if sent by confirmed facsimile or electronic mail ("Email") or by United States mail, certified, return receipt requested, with date of signing the return receipt (or refusal to sign) as the date of service as follows: if to City - City Manager, 117 South Robinson Street, Tehachapi, California 93561, Fax - (661) 822-8559, Email – jschlosser@tehachapicityhall.com, or if to Engineer, _____, _____, California _____ Fax — (____) _____, Email — _____. Any party may change any of the foregoing as it relates to the party by giving written notice to the other party of the change in the manner set forth herein

9. Time is of the essence with regard to each covenant, condition and provision of this Agreement.

10. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

11. This Agreement constitutes the entire agreement between the parties with regard to the subject matter herein and supersedes all prior oral and written agreements and understandings between the parties with respect thereto.

12. This Agreement may not be altered, amended, or modified except by a writing executed by duly authorized representatives of all parties. This Agreement or any amendment to same may be executed in counterparts.

13. In the event any action or proceeding is instituted arising out of or relating to this Agreement, the prevailing party shall be entitled to its reasonable attorney's fees and actual costs.

14. Waiver by a party of any provision of this Agreement shall not be considered a continuing waiver or a waiver of any other provision, including the time for performance of any such provision.

16. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors, and assigns. Notwithstanding the foregoing, Engineer shall not, under any conditions, assign this Agreement or any part thereof to any other entity or individual.

17. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and not be affected, impaired, or invalidated thereby.

18. City and Engineer acknowledge that each party and their respective legal counsel have reviewed this Agreement and agree that this Agreement is the product of negotiations between the parties. This Agreement shall be interpreted without reference to the rule of interpretation of documents that uncertainties or ambiguities therein shall be determined against the party so drafting the Agreement.

19. The remedies for either party described herein shall be cumulative and in addition to any other remedies available to the parties at law or in equity.

20. Engineer is an independent Engineer under this Agreement and is not an agent or employee of City. As such, Engineer is not entitled to participate in any plans, arrangements, or distributions that City may now or hereafter have, including, without limitation, retirement plans, health care or similar benefits for regular employees.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first hereinabove written.

Susan Wiggins, Mayor Pro-Tem, City of
Tehachapi, California

Engineer