

AGREEMENT TO PERFORM ENGINEERING SERVICES FOR THE DESIGN OF A CONVEYANCE SYSTEM TO BRING MILL CREEK WATER TO THE HINCKLEY SURFACE WATER TREATMENT PLANT

This agreement for the provision of engineering services for the City of Redlands ("Agreement") is made and entered into this 31st day of August, 2010 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and Ludwig Engineering, Inc. ("Consultant"). City and Consultant are sometimes individually referred to herein as a "Party" and, together, as the "Parties." In consideration of the mutual promises contained herein, City and Consultant agree as follows:

ARTICLE 1 - ENGAGEMENT OF CONSULTANT

- 1.1 City hereby engages Consultant for the preparation of a preliminary engineering design of a conveyance system capable of delivering Mill Creek water to the Hinckley surface water treatment plant (the "Services").
- 1.2 The Services shall be performed by Consultant in a professional manner, and Consultant represents that it has the skill and the professional expertise necessary to provide the Services to City at a level of competency presently maintained by other practicing professional consultants in the industry providing like and similar types of Services.

ARTICLE 2 - SERVICES OF CONSULTANT

- 2.1 The Services that Consultant shall perform are more particularly described in Exhibit "A," entitled "Scope of Services," which is attached hereto and incorporated herein by reference.
- 2.2 Consultant shall comply with applicable federal, state and local laws and regulations in the performance of this Agreement including, but not limited to, the Americans with Disabilities Act, the Fair Employment and Housing Act and prevailing wage laws.

ARTICLE 3 - RESPONSIBILITIES OF CITY

- 3.1 City shall make available to Consultant information in its possession that may assist Consultant in performing the Services.
- 3.2 City designates Mr. Chris Diggs as City's representative with respect to performance of the Services, and such person shall have the authority to transmit instructions, receive information, interpret and define City's policies and decisions with respect to performance of the Services.

ARTICLE 4 - PERFORMANCE OF SERVICES

- 4.1 Consultant shall perform the Services in a prompt and diligent manner and in accordance with the schedule set forth in Exhibit "B," entitled "Project Schedule."

- 4.2 During the term of this Agreement, City may request that Consultant perform Extra Services. As used herein, "Extra Services" means any work that is determined necessary by City for the proper completion of the project or work for which the Services are being performed, but which the Parties did not reasonably anticipate would be necessary at the time of execution of this Agreement. Provided the Extra Services do not exceed twenty percent (20%) of the compensation to be paid by City to Consultant for the Services, such Extra Services may be agreed to by the Parties by written amendment to this Agreement, executed by a duly authorized City official in accordance with Chapter 2.16 of the Redlands Municipal Code. Consultant shall not perform, nor be compensated for, Extra Services without such written authorization from City.

ARTICLE 5 - PAYMENTS TO CONSULTANT

- 5.1 The total compensation for Consultant's performance of the Services shall not exceed the amount of Twelve Thousand Seven Hundred Thirty Dollars (\$12,730.00). City shall pay Consultant on a time and materials basis up to the not to exceed amount, in accordance with Exhibit "C" entitled "Project Costs," and based upon the hourly rates shown in Exhibit "D," entitled "Rate Schedule." Both Exhibits "C" and "D" are attached hereto and incorporated herein by this reference.
- 5.2 Consultant shall submit monthly invoices to City describing the work performed during the preceding month. Consultant's invoices shall include a brief description of the Services performed, the dates the Services were performed, the number of hours spent and by whom, and a description of reimbursable expenses related to the project. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice.
- 5.3 All notices shall be given in writing by personal delivery or by mail. Notices sent by mail should be addressed as follows:

City
Chris Diggs
Municipal Utilities and Engineering Dept.
City of Redlands
35 Cajon Street, Suite 15A
PO Box 3005 (mailing)
Redlands, CA 92373

Consultant
Mr. Jim Fry, P.E.
Vice President
Ludwig Engineering, Inc.
109 East 3rd Street
San Bernardino, CA 92410

When so addressed, such notices shall be deemed given upon deposit in the United States Mail. Changes may be made in the names and addresses of the person to whom notices and payments are to be given by giving notice pursuant to this section 5.3.

ARTICLE 6 - INSURANCE AND INDEMNIFICATION

- 6.1 Insurance. Insurance required by this Agreement shall be maintained by Consultant for the duration of its performance of the Services. Consultant shall not perform any Services unless and until required insurance listed below is obtained by Consultant. Consultant shall provide City with certificates of insurance and endorsements evidencing such insurance prior to commencement of the Services. Insurance policies shall include a provision prohibiting cancellation or modification of the policy except upon thirty (30) days' prior written notice to City; provided, however, the policies shall allow for ten (10) days notice for cancellation to City due to non-payment of premium.
- 6.2 Workers' Compensation and Employer's Liability. Consultant shall secure and maintain Workers' Compensation and Employer's Liability insurance throughout the duration of its performance of the Services in accordance with the laws of the State of California, with an insurance carrier acceptable to City as described in Exhibit "E," entitled "Workers' Compensation Insurance Certification," which is attached hereto and incorporated herein by this reference.
- 6.3 Hold Harmless and Indemnification. Consultant shall defend, indemnify and hold harmless City and its elected officials, employees and agents from and against any and all claims, losses or liability, including attorneys' fees, arising from injury or death to persons or damage to property occasioned by and negligent act, omission or failure to act by Consultant, its officers, employees and agents in performing the Services.
- 6.4 Comprehensive General Liability Insurance. Consultant shall secure and maintain in force throughout the term of this Agreement comprehensive general liability insurance with carriers acceptable to City. Minimum coverage of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for public liability, property damage and personal injury is required. City shall be named as an additional insured and the insurance policy shall include a provision prohibiting modification of coverage limits or cancellation of the policy except upon thirty (30) days prior written notice to City. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City. Certificates of insurance shall be delivered to City prior to commencement of the Services.
- 6.5 Professional Liability Insurance. Consultant shall secure and maintain professional liability insurance throughout the term of this Agreement in the amount of One Million Dollars (\$1,000,000) per claim made. Certificates of insurance shall be delivered to City prior to commencement of the Services.
- 6.6 Business Auto Liability Insurance. Consultant shall have business auto liability coverage, with minimum limits of One Million Dollars (\$1,000,000) per occurrence, combined single limit for bodily injury liability and property damage liability. This coverage shall include all Consultant owned vehicles used in connection with Consultant's provision of the Services, hired and non-owned vehicles, and employee non-ownership vehicles. City

shall be named as an additional insured and a certificate of insurance and endorsement shall be delivered to City prior to commencement of the services. Such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City.

ARTICLE 7 - CONFLICTS OF INTEREST

- 7.1 Consultant covenants and represents that it does not have any investment or interest in any real property that may be the subject of this Agreement or any other source of income, interest in real property or investment that would be affected in any manner or degree by the performance of Consultant's Services. 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.
- 7.2 Consultant agrees it is not a designated employee within the meaning of the Political Reform Act because Consultant:
- A. Does not make or participate in:
- (i) the making or any City governmental decisions regarding approval of a rate, rule or regulation, or the adoption or enforcement of laws;
 - (ii) the issuance, denial, suspension or revocation of City permits, licenses, applications, certifications, approvals, orders or similar authorizations or entitlements;
 - (iii) authorizing City to enter into, modify or renew a contract;
 - (iv) granting City approval to a contract that requires City approval and to which City is a party, or to the specifications for such a contract;
 - (v) granting City approval to a plan, design, report, study or similar item;
 - (vi) adopting, or granting City approval of, policies, standards or guidelines for City or for any subdivision thereof.
- B. Does not serve in a staff capacity with City and in that capacity, participate in making a governmental decision or otherwise perform the same or substantially the same duties for City that would otherwise be performed by an individual holding a position specified in City's Conflict of Interest Code under Government Code section 87302.
- 7.3 In the event City officially determines that Consultant must disclose its financial interests by completing and filing a Fair Political Practices Commission Form 700, Statement of Economic Interests. Consultant shall file the subject Form 700 with the City Clerk's office pursuant to the written instructions provided by the Office of the City Clerk.

ARTICLE 8 - GENERAL CONSIDERATIONS

- 8.1 Attorneys' Fees. In the event any action is commenced to enforce or interpret any of the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to the recovery of its reasonable attorneys' fees, including fees for the use of in-house counsel by a Party.
- 8.2 Prohibition Against Assignment. Consultant shall not assign any of the Services, except with the prior written approval of City and in strict compliance with the terms, and conditions of this Agreement.
- 8.3 Documents and Records. Project related documents, records, drawings, designs, cost estimates, electronic data files, databases and any other documents developed by Consultant in connection with its performance of the Services, and any copyright interest in such documents, shall become the property of City and shall be delivered to City upon completion of the Services, or upon the request of City. Any reuse of such documents, and any use of incomplete documents, shall be at City's sole risk.
- 8.4 Independent Contractor Status. Consultant is for all purposes under this Agreement an independent contractor and shall perform the Services as an independent contractor. Neither City nor of its agents shall have control over the conduct of Consultant or Consultant's employees, except as herein set forth. Consultant shall supply necessary tools and instrumentalities required to perform the Services. Assigned personnel employed by Consultant are for its account only, and in no event shall Consultant or personnel retained by it be deemed to have been employed by City or engaged by City for the account of, or on behalf of City. Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent, nor shall Consultant have any authority, express or implied, to bind City to any obligation.
- 8.5 Termination.
- A. Unless earlier terminated as provided for below, this Agreement shall terminate upon completion and acceptance of the Services by City.
- B. This Agreement may be terminated by City, in its sole discretion, by providing thirty (30) days' prior written notice to Consultant (delivered by certified mail, return receipt requested) of City's intent to terminate.
- C. If this Agreement is terminated by City, an adjustment to Consultant's compensation shall be made, but (1) no amount shall be allowed for anticipated profit or unperformed Services, and (2) any payment due Consultant at the time of termination may be adjusted to the extent of any additional costs to City occasioned by any default by Consultant.
- D. Upon receipt of a termination notice, Consultant shall immediately discontinue its provision of the Services and, within five (5) days of the date of the termination notice,

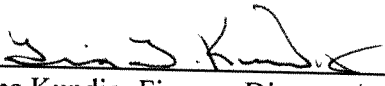
deliver or otherwise make available to City, copies (in both hard copy and electronic form, where applicable) of project related data, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by Consultant in performing the Services. Consultant shall be compensated on a pro-rata basis for Services completed up to the date of termination.

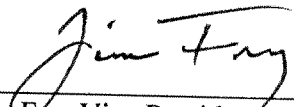
- 8.6 Books and Records. Consultant shall maintain books, ledgers, invoices, accounts and other records and documents evidencing costs and expenses related to the Services for a period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement. Such books shall be available at reasonable times for examination by City at the office of Consultant.
- 8.7 Entire Agreement/Amendment. This Agreement, including the Exhibits incorporated herein by reference, represents the entire agreement and understanding between the Parties as to the matters contained herein, and any prior negotiations, written proposals or verbal agreements relating to such matters are superseded by this Agreement. Except as otherwise provided for herein, an amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.
- 8.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 8.9 Severability. If one or more of the sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate the remaining sentences, clauses, paragraphs or sections contained herein, unless to do so would deprive a Party of a material benefit of its bargain under this Agreement.

IN WITNESS WHEREOF, duly authorized representatives of the City and Consultant have signed in confirmation of this Agreement.

CITY OF REDLANDS

LUDWIG ENGINEERING, INC.

By: 
Tina Kundig, Finance Director/City Treasurer

By: 
Jim Fry, Vice President

Attest:


City Clerk

EXHIBIT "A"

SCOPE OF SERVICES

City is looking for a conceptual analysis of the proposed project.

Task 1: Evaluation of Options. Consultant will evaluate and present alternatives and options for the City to capture stream flows from Mill Creek and utilize it at the City's Hinckley surface water treatment plant. Options are to include at a minimum, anticipated costs for construction, environmental concerns, access to creek flows, feasibility, and other items necessary to make an informed selection. City anticipates the level of effort necessary for each of these items to be minimal.

Task 2: Design. Consultant will evaluate the selected option in more detail and perform a conceptual design. The design will include type of intake structures, pipeline locations, metering devices, pipeline material, termination points and type of structure.

Task 3: Provide Engineering Estimate. Consultant will perform a cost analysis associated with the chosen design. Estimates provided are intended to be used for planning and budgetary needs.

EXHIBIT 'B'
PROJECT SCHEDULE

The duration for the Services is 90 calendar days.

EXHIBIT "C"
PROJECT COSTS

Costs associated with the Services will be based on the Exhibit "D" and are not to exceed \$12,730.00.

EXHIBIT "D"
RATE SCHEDULE

Classification	Billing Rate
Engineering Aide I	\$48.00/hr.
Engineering Aide II	\$54.00/hr.
Engineering Aide III	\$59.00/hr.
Engineering Aide IV	\$68.00/hr.
Engineering Aide V	\$75.00/hr.
Designer/CADD Operator I	\$78.00/hr.
Designer/CADD Operator II	\$83.00/hr.
Designer/CADD Operator III	\$88.00/hr.
Designer/CADD Operator IV	\$95.00/hr.
Designer/CADD Operator V	\$104.00/hr.
Project Engineer I	\$107.00/hr.
Project Engineer II	\$112.00/hr.
Project Engineer III	\$124.00/hr.
Senior Planner	\$130.00/hr.
Architect III	\$124.00/hr.
Project Manager I	\$117.00/hr.
Project Manager II	\$124.00/hr.
Project Manager III	\$130.00/hr.
Field Senior Professional Engineer	\$146.00/hr.
Field Crew Supervisor I	\$107.00/hr.
Field Crew Supervisor II	\$130.00/hr.
Professional Land Surveyor	\$136.00/hr.
1-Man Survey Crew w/RMD(3)	\$146.00/hr.
1-Man Survey Crew w/GPS(2)	\$199.00/hr.
2-Man Survey Crew w/EMD(1)	\$199.00/hr.
2-Man Survey Crew w/RMD(3)	\$221.00/hr.
2-Man Survey Crew w/GPS(2)	\$243.00/hr.
3-Man Survey Crew w/EMD(1)	\$243.00/hr.
3-Man Survey Crew w/GPS(2)	\$278.00/hr.
Mileage	\$.50/mi.
Computer Charge CADD	\$.25/min.
Materials and Outside Contract Work Cost Plus 20%	

- (1) EMD – Electronic Measuring Equipment (Total Station)
- (2) GPS – Real Time Global Positioning Survey Equipment
- (3) RMD – Robotic Measuring Device (Total Station)

EXHIBIT 'E'

WORKERS' COMPENSATION INSURANCE CERTIFICATION TO PERFORM ENGINEERING SERVICES FOR THE DESIGN OF A CONVEYANCE SYSTEM TO BRING MILL CREEK WATER TO THE HINCKLEY SURFACE WATER TREATMENT PLANT

Every employer except the State, shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurer duly authorized to write compensation insurance in this State.
- (b) By securing from the Director of Industrial Relations, a certificate of consent to self-insure, either as an individual employer or as one employer in a group of employers, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his or her employees.

I am aware of the provisions of Section 3700 of the 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 I will comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code §1861).

Ludwig Engineering, Inc.

By: Jim Fry
Jim Fry, Vice President

8-23-10
Date:

ACORD**CERTIFICATE OF LIABILITY INSURANCE**OP ID JC
LUDWI-1DATE (MM/DD/YYYY)
04/08/10

PRODUCER
Hamilton Brewart Insurance
California License No. 0D69219
P. O. Box 1949
Upland CA 91785-1949
Phone: 909-981-5210 Fax: 909-985-3448

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION
ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE
HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR
ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Ludwig Engineering Inc.
109 East Third Street
San Bernardino CA 92410

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: Hartford Casualty Ins. Co.
INSURER B: Peerless Insurance Company
INSURER C: CompWest Insurance Company
INSURER D: Landmark American Ins. Co.
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING
ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR
MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH
POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A X	GENERAL LIABILITY	72SBATV4539	11/01/09	11/01/10	EACH OCCURRENCE	\$ 1,000,000
	☒ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
	☐ CLAIMS MADE ☒ OCCUR				MED EXP (Any one person)	\$ 10,000
	☒ Blnkt Contractual				PERSONAL & ADV INJURY	\$ 1,000,000
	☐ per form SS0008				GENERAL AGGREGATE	\$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	\$ 2,000,000
	☒ POLICY ☐ PRO- JECT ☐ LOC					
	B X				AUTOMOBILE LIABILITY	BA8345365
☒ ANY AUTO		BODILY INJURY (Per person)	\$			
☐ ALL OWNED AUTOS		BODILY INJURY (Per accident)	\$			
☐ SCHEDULED AUTOS		PROPERTY DAMAGE (Per accident)	\$			
☐ HIRED AUTOS						
☐ NON-OWNED AUTOS						
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
	☐ ANY AUTO				OTHER THAN EA ACC AUTO ONLY: AGG	\$
A	EXCESS/UMBRELLA LIABILITY	72SBATV4539	11/01/09	11/01/10	EACH OCCURRENCE	\$ 4,000,000
	☒ OCCUR ☐ CLAIMS MADE				AGGREGATE	\$ 4,000,000
	☐ DEDUCTIBLE					\$
	☒ RETENTION \$10,000					\$
						\$
						\$
						\$
						\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	CA005004099-003 CA	04/01/10	04/01/11	☒ WC STATU- TORY LIMITS	OTH- ER
	E.L. EACH ACCIDENT				\$ 1,000,000	
	E.L. DISEASE - EA EMPLOYEE				\$ 1,000,000	
	E.L. DISEASE - POLICY LIMIT				\$ 1,000,000	
D	Professional Liability	LHR812836	11/13/09	11/13/10	Ea Claim	1,000,000
	Aggregate				2,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

10 Day Notice for Non-Payment of Premium. Certificate holder named as
Additional Insured as respects General and Auto Liability and Coverage is
Primary/Non-Contributory per the attached Company forms.

CERTIFICATE HOLDER

CITY OF R

City of Redlands
Municipal Utilities & Eng Dept
P O Box 3005
Redlands CA 92373

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION
DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN
NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL
IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR
REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Deek Brewart