

AGREEMENT TO PERFORM ENGINEERING SERVICES FOR THE CITY OF REDLANDS'
"OPERATION AND MAINTENANCE OF
REDLANDS ELECTRICITY COGENERATION FACILITY" PROJECT

This agreement for engineering services for the City of Redlands' "Operation and Maintenance of the Redlands Electricity Cogeneration Facility" project ("Agreement") is made and entered into this 18th day of November, 2008 ("Effective Date"), by and between the City of Redlands, a municipal corporation ("City") and SCS Energy ("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 to perform engineering services for City's "Operation and Maintenance of the Redlands Electricity Cogeneration Facility" project (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 which Consultant shall perform are more particularly described in Exhibit "A," entitled "Scope of Services," which is attached hereto and incorporated herein by this reference.
- 2.2 Consultant shall comply with all 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 commencing at Labor Code section 1770 *et seq.*

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 will make reasonable provision for Consultant to enter upon City-owned property, as required by Consultant, to perform the Services.

- 3.3 City designates Rudy Victorio 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 At any time during the term of this Agreement, City may request that Consultant perform Extra Services. As used herein, "Extra Services" means any work which 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 City's City Manager. 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 Four Hundred Thirty Five Thousand Six Hundred and Forty Dollars (\$435,640). 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, if any. City shall pay Consultant no later than thirty (30) days after receipt and approval by City of Consultant's invoice, provided (1) the Services reflected in the invoice were performed to the reasonable satisfaction of City in accordance with the terms of this Agreement, (2) that the number of hours of Services set forth in the invoice reflects the amount of time ordinarily expended for such Services by members of the profession currently practicing in the same locality under similar conditions, and (3) that all expenses, rates and other information set forth in the invoice are consistent with the terms and conditions of this Agreement.

- 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

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

Consultant

Jeff Pierce
SCS Energy
3900 Kilroy Airport Way, Suite 100
Long Beach, CA 90806-6816

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 who notices and payments are to be given by giving notice pursuant to this section 5.3.

ARTICLE 6 - INSURANCE AND INDEMNIFICATION

- 6.1 Insurance; generally. All 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 all 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. All insurance policies, except Worker's Compensation, and Employer's Liability, shall include a provision prohibiting cancellation or modification of the policy except upon thirty (30) days prior written notice to City.
- 6.2 Workers' Compensation and Employer's Liability. Consultant shall secure and maintain Worker's 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.
- 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 Consultant's and its officers', employees' and agents' sole negligent acts or omissions in performing the Services.
- 6.4 Assignment. Consultant is expressly prohibited from assigning any of the Services without the express prior written consent of City. In the event of agreement by the Parties to assign a portion of the Services, Consultant shall add the assignee as an additional insured and provide City with the insurance endorsements required by this Agreement prior to the performance of any Services by the assignee. Assignment does not include printing or other customary reimbursable expenses that may be provided for in this Agreement.

- 6.5 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. Such insurance shall be primary and non-contributing to any insurance or self-insurance maintained by City.
- 6.6 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.
- 6.7 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. Such insurance shall be primary and non-contributing to any insurance or self insurance maintained by City. City shall be named as an additional insured.

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 which 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 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 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 all 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 **Documents and Records.** All documents, records, drawings, designs, cost estimates, electronic data files, databases and 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.
- 8.3 **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 any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as herein set forth. Consultant shall supply all tools and instrumentalities required to perform the Services. All personnel employed by Consultant are for its account only, and in no event shall Consultant or any 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.

8.4 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 any 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.

8.5 Books and Records. Consultant shall maintain any and all books, ledgers, invoices, accounts and all 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 all reasonable times for examination by City at the office of Consultant.

8.6 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, any amendment to this Agreement shall be in writing, approved by City and signed by City and Consultant.

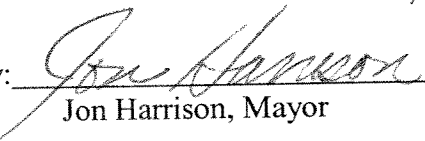
8.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

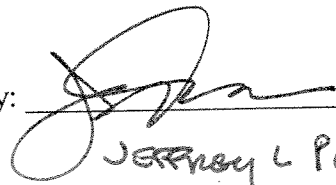
8.8 Severability. If one or more of the sentences, clauses, paragraphs or sections contained in this Agreement is declared invalid, void or unenforceable by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall not affect, impair or invalidate any of 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

SCS ENERGY

By: 
Jon Harrison, Mayor

By: 
JERNEY L. PIERCE
VICE PRESIDENT

Attest:


City Clerk

EXHIBIT A SCOPE OF SERVICES

Ongoing Operation and Maintenance Service at the Cogeneration Facility Located at the City of Redlands Wastewater Treatment Plant

BACKGROUND

The Electricity Cogeneration Facility (Cogen) is located at the City of Redlands Water Reclamation Facility (WRF) and is an internal combustion engine, Deutz Corporation model TBG 620 V12K, 12 cylinders, turbo charged, aftercooled, 1350 BHP. The Cogen has a rated capacity of 970 kW and uses landfill gas (LFG) from the nearby California Street Landfill (CSL), which is owned and operated by the City, as fuel.

SCOPE OF WORK

Perform routine day-to-day operation and maintenance of the Landfill gas fired cogeneration facility located at the City of Redlands WRF. The consultant shall provide general tools and safety equipment at no cost to the City. Major equipment covered shall include:

- A. One Deutz Engine/Generator; Model TBG620 V12; gross rated output = 970 kW;
- B. Engine radiator;
- C. Horiba continuous emissions monitoring system (CEMS);
- D. Heat recovery heat exchanger;
- E. Landfill gas blower/flare station;
- F. Landfill gas air-to-gas after cooler; and
- G. Encorp switchgear.

Services shall include:

- A. General site operation, clean-up, and data recording
- B. Engine maintenance
 - 1. Valve adjustments
 - 2. Spark plug adjustments and replacement
 - 3. Air filter cleaning and replacement
 - 4. Oil testing, replacement and disposal

5. Generator lubrication

C. Balance of plant maintenance

1. Radiator coil cleaning and lubrication
2. After-cooler cleaning and lubrication
3. Liquid pump cleaning and lubrication
4. Annual cleaning of the hot water heat exchanger
5. Gas analyzer calibration gas
6. Annual instrumentation calibration and safety shutdown testing

D. Emissions system

1. CEMS maintenance, including one annual factory (Horiba) calibration
2. CEMS calibration gas
3. Engineering and operations support for the annual source test. SCEC to provide the actual testing
4. SCAQMD operational reporting

E. Blower/flare station maintenance

1. Blower and motor lubrication
2. Propane supply
3. Sump pumps
4. Instrumentation review

F. Miscellaneous repair and replacement of pipe fittings, supports, and gauges as required

G. Permit to operate

1. Perform all applicable annual monitoring & testing in accordance with South Coast Air Quality Management District requirements

H. E70 overhaul of engine

It is expected that an E70 overhaul of the engine will be required in Calendar Year 2009.

The month of the E70 overhaul will be dictated by total operating hours on the engine and by measurement of key operating parameters -- valve recession; crankcase blow by; cylinder pressure -- and by engine manufacturer operation and maintenance manual recommendations. It is likely that this overhaul will occur in the third quarter.

The overhaul will follow the scope of work for an E70 overhaul as is generally outlined in the Deutz operation and maintenance manual. It is currently expected that the overhaul will be undertaken by: disassembly of the engine and generator; removal of the engine block; replacement of the engine block with a Deutz remanufactured engine block; removal, rebuild and reinstallation of the turbocharger; and completion of other activities associated with an E50 overhaul.

EXHIBIT B PROJECT SCHEDULE

TASK 1: ROUTINE OPERATION AND MAINTENANCE

Complete the assignment twelve months from notice-to-proceed.

TASK 2: E70 OVERHAUL

Complete overhaul within four weeks of initiation of overhaul. The initiation of the overhaul will be by mutual agreement of City and Consultant.

EXHIBIT C-1
PROJECT COSTS

TASK 1: ROUTINE OPERATION AND MAINTENANCE

Not-to-exceed \$164,420

TASK 2: E70 OVERHAUL

Not-to-exceed \$271,220

EXHIBIT C-2
BREAKOUT OF PROJECT COSTS
ROUTINE OPERATIONS AND MAINTENANCE COST
(LABOR)

Individual	Hours	Rate	Total
Hiczewski, J.	900	\$94.00	\$84,600
Guevara, D.	290	\$76.00	\$22,040
Munoz, E.	40	\$94.00	\$3,760
Shin, H.	110	\$59.00	\$6,490
Kamphuis, N.	60	\$114.00	\$6,840
Pierce, J.	10	\$208.00	\$2,080
TOTAL			\$125,810

Balance of Task 1 coats are materials and supplies.

SCS ENERGY

EXHIBIT D RATE SCHEDULE

(Effective July 1, 2008, Through June 30, 2009)

	<u>Rate/Hour</u>
Project Director	\$208
Project Manager	167
Senior Professional	129
Project Professional	114
Staff Professional/Operations Manager	94
Associate Professional	85
Project Administrator	78
Senior Technician/Operator	76
Designer/Drafter	71
Technician	59
Administrative/Secretarial	52

General Terms

1. Scheduled rates are effective through June 30, 2009. Work performed thereafter is subject to a new Fee Schedule.
2. Scheduled labor rates include overhead, administration, and profit. Costs for outside consultants and subcontractors, and for job-related employee travel and subsistence, reproduction, telephone, equipment, and supplies are billed at actual cost plus a 15 percent administrative fee.
3. Vehicle mileage is invoiced at \$0.60 per mile for company autos and \$0.75 per mile for company trucks.
4. Invoices will be prepared monthly or more frequently for work in progress, unless otherwise agreed. Invoices are due and payable upon receipt. Invoices not paid within 30 days are subject to a service charge of 1.5 percent per month on the unpaid balance.
5. Payment of SCS invoices for services performed will not be contingent upon the client's receipt of payment from other parties, unless otherwise agreed in writing. Client agrees to pay legal costs, including attorney's fees, incurred by SCS in collecting any amounts past due and owing on client's accounts.
6. For special situations such as expert court testimony and limited consultation, hourly rates will be on an individually negotiated basis.