

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT is made and entered into, to be effective the 23th day of October, 2018, by and between the CITY OF GARDEN GROVE, a municipal corporation, hereinafter referred to as "City," and JIG Consultants a Corporation, hereinafter referred to as "Consultant." City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, City has determined that there is a need for Construction Management and Inspection services for Westhaven Reservoirs Rehabilitation Project and Magnolia Reservoir and Booster Pump Station Rehabilitation Project (the "Project");

WHEREAS, City desires to retain Consultant to provide such services; and

WHEREAS, Consultant is qualified by virtue of experience, training, education, and expertise to perform the professional services required by this Agreement and has agreed to provide such services.

NOW, THEREFORE, in consideration of the promises and mutual benefits which will result to the Parties in carrying out the terms of this Agreement, it is mutually agreed as follows:

AGREEMENT

I. SCOPE OF WORK

City agrees to retain Consultant, and Consultant agrees to perform the services set forth in the Scope of Services described in Exhibit "A", attached hereto and by reference made a part of this Agreement (hereinafter the "Services"). Consultant agrees that its provision of Services under this Agreement shall be within accepted standards within the profession, and its specialized services shall be in accordance with customary and usual practices in Consultant's profession. By executing this Agreement, Consultant warrants that it has carefully considered how the work should be performed and fully understands the facilities, difficulties, and restrictions attending performance of the work under this Agreement.

II. TERM

This Agreement shall be effective as of the date first set forth above. This Agreement shall commence upon the effective date of this Agreement, and shall remain and continue in effect until tasks described herein are completed unless otherwise terminated prior to this date pursuant to the provisions of this Agreement.

III. FEES

A. Accounting Records

Consultant shall keep complete, accurate, and detailed accounts of all time, costs, expenses, and expenditures pertaining in any way to this Agreement. Upon request of City, Consultant shall provide City with all records pertaining to this Agreement.

B. Total Payment

The Parties agree that Consultant shall bill for the Services provided by Consultant to City on an hourly basis and in accordance with the charges and fee schedule attached as Exhibit "B," except as otherwise set forth herein, provided compensation under this Agreement shall not exceed \$508,087.

C. Monthly Payment

1. City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment, as set forth in Exhibit "B," attached hereto based upon actual time spent providing the services outlined in this Agreement. Consultant shall submit to City monthly or periodic statements requesting payment. Such requests shall be based upon the amount and value of the Services performed by Consultant under this Agreement and shall be prepared by Consultant and accompanied by such reporting data including a detailed breakdown of all costs incurred and tasks performed during the period covered by the statement, as may be required by City. Invoices shall be submitted on or about the first business day of each month, for Services provided the prior month. City shall use reasonable efforts to make payment to Consultant within forty-five (45) days after the date of the invoice or as soon thereafter as reasonably practicable. If City determines that the approved written Scope of Work under this Agreement or any specified task hereunder is incomplete, the City Manager, or his or her designee, shall notify Consultant and may withhold the payment amount for the unfinished work accordingly.

2. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement, which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager.

IV. TERMINATION

City may terminate this Agreement for its convenience at any time, with or without cause, in whole or in part, upon giving Consultant thirty (30) days written notice. Upon said notice, City shall pay Consultant its allowable costs incurred to date of termination and those allowable costs determined by City to be reasonably necessary to effect such termination. Upon receipt of said notice, Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If City terminates a portion of this Agreement, such termination shall not make void or invalidate the remainder of this Agreement. Thereafter, Consultant shall have no further claims against City under this Agreement. Upon termination of the Agreement pursuant to this Section, Consultant will submit an invoice to City pursuant to Section 3. Consultant may terminate this Agreement, with or without cause, upon thirty (30) days written notice to City.

V. DEFAULT OF CONSULTANT

A. Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event Consultant is in default, except as provided for in Section XXI, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate the Agreement immediately upon written notice to Consultant.

B. If the City Manager, or his/her designee, determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall notify Consultant in writing of such default. Consultant shall have ten (10) days to cure the default by rendering a satisfactory performance. In the event Consultant fails to cure its default within such period of time, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice of any remedy to which City may be entitled at law, in equity or under this Agreement. Consultant shall be liable for any and all reasonable costs incurred by City as a result of such default including, but not limited to, procurement costs of the same or similar services defaulted by Consultant under this Agreement.

VI. LEGAL RELATIONSHIP BETWEEN THE PARTIES

A. The legal relationship between the Parties hereto is that of an independent contractor, and nothing herein shall be deemed to make Consultant a City employee. During the performance of this Agreement, Consultant and its officers, employees, and agents shall act in an independent capacity and shall not act as City officers, employees, or agents. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Consultant or any of its officers, employees, or agents, except as set

forth in this Agreement. Consultant, its officers, employees, or agents shall not maintain an office or any other type of fixed business location at City's offices.

B. Consultant shall not incur or have the power to incur any debt, obligation, or liability against City, or bind City in any manner.

C. No City benefits shall be available to Consultant, its officers, employees, or agents in connection with any performance under this Agreement. Except for fees paid to Consultant as provided for in this Agreement, City shall not pay salaries, wages, or other compensation to Consultant for the performance of Services under this Agreement. City shall not be liable for compensation or indemnification to Consultant, its officers, employees, or agents for injury or sickness arising out of performing Services hereunder. If for any reason, any court or governmental agency determines that City has financial obligations, other than pursuant to Section III herein, of any nature related to salary, taxes, or benefits of Consultant's officers, employees, servants, representatives, subcontractors, or agents, Consultant shall indemnify City for all such financial obligations.

VII. MODIFICATIONS AND AMENDMENTS TO AGREEMENT

No modification or amendment of this Agreement or any of the provisions hereof shall be effective for any purpose unless set forth in writing signed by duly authorized representatives of both Parties.

VIII. ASSIGNMENTS AND SUBCONTRACTING

The experience, knowledge, capability, and reputation of Consultant, its principals and employees were a substantial inducement for City to enter into this Agreement. Consultant may not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, voluntarily or by operation of law, without the prior written approval of City. Except as otherwise expressly provided in the Scope of Services (Exhibit "A"), Consultant shall not contract with any other person or entity to perform the Services required without written approval of City. If Consultant is permitted to subcontract any part of this Agreement by City, Consultant shall be responsible to City for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in this Agreement shall create any contractual relationships between any subcontractor and City. All persons engaged in the work will be considered employees of Consultant. City will deal directly with and will make all payments to Consultant as provided for in Section III.

IX. SUCCESSORS IN INTEREST

This Agreement shall be binding upon and inure to the benefit of the Parties' successors and assignees.

X. THIRD PARTY BENEFICIARY

Except as may be specifically provided for herein, nothing contained in this Agreement is intended to confer, nor shall this Agreement be construed as conferring, any rights, including, without limitation, any rights as third-party beneficiary or otherwise, upon any entity or person not a party hereto.

XI. INSURANCE

A. Insurance Required

Consultant shall procure and maintain the insurance described herein for the duration of this Agreement, or as otherwise specified herein, against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives, or employees. Insurance required herein shall be provided by a reputable insurance company in good standing with the State of California and having a minimum A.M. Best's Guide Rating of A-, Class VII or better. City will require Consultant to substitute any insurer whose rating drops below the levels specified herein. Such substitution shall occur within twenty (20) days of written notice to Consultant by City.

Consultant shall provide to City certificates of insurance in a form acceptable to City indicating the deductible or self-retention amounts and the expiration date of the policy, and shall provide renewal certificates not less than ten (10) days prior to the expiration of each policy term. The certificates of insurance shall specifically identify this Agreement and shall contain express conditions that City is to be given at least thirty (30) days advance written notice of any material modification in or termination of insurance. Such insurance shall be primary to and not contributing with any other insurance maintained by City of Garden Grove and/or its respective councilmembers, officers, officials, employees, agents, and volunteers. The insurance shall name the City of Garden Grove and its respective councilmembers, officers, officials, employees, agents and volunteers as additional insureds by endorsement to the insurance policies. Except as expressly authorized herein, all insurance shall be on an occurrence basis.

1. Errors and Omissions Insurance

Consultant shall maintain in full force and effect throughout the term of this Agreement, standard industry form professional negligence errors and omissions insurance coverage in an amount of not less than One Million Dollars (\$1,000,000.00) per claim or per occurrence and Two Million Dollars (\$2,000,000.00) aggregate, in accordance with the provisions of this Section. If the policy of insurance is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of this Agreement, and for a period of three (3) years from the date of the completion of the Services provided hereunder. In the event of termination of the policy during this period, Consultant shall obtain continuing insurance coverage for the

prior acts or omissions of Consultant during the course of performing Services under the terms of this Agreement. The coverage shall be evidenced by either a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

In the event the policy of insurance is written on an "occurrence" basis, the policy shall be continued in full force and effect during the term of this Agreement, or until completion of the Services provided for in this Agreement, whichever is later. In the event of termination of the policy during this period, new coverage shall be obtained for the required period to ensure coverage for the prior acts of Consultant during the course of performing the Services under the terms of this Agreement.

2. Workers' Compensation

Consultant shall obtain and maintain, during the term of this Agreement, Workers' Compensation Employer's Liability Insurance in the statutory amount as required by state law. Such worker's compensation insurance shall be endorsed to provide for a waiver of subrogation against City of Garden Grove, its respective councilmembers, officers, officials, agents, employees, and volunteers.

B. Minimum Limits of Insurance

Consultant shall maintain limits no less than:

1. General Liability:

\$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

2. Automobile Liability:

\$1,000,000 per accident for bodily injury combined single limit. **(claims made and modified occurrence policies are not acceptable)**; Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

3. **Employer Liability:**

\$1,000,000 per accident for bodily injury or disease. (claims made and modified occurrence policies are not acceptable); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the Risk Manager. At the option of the Risk Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Garden Grove, and its councilmembers, officials, officers, employees, agents and volunteers, or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses, or Consultant shall otherwise provide an alternative satisfactory to the Risk Manager.

D. Other Insurance Provisions

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

1. The City of Garden Grove and its respective councilmembers, officers, officials, employees, agents and volunteers are to be covered as insureds with respect to: liability arising out of activities and work performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned occupied or used by Consultant; and automobiles owned, leased, hired, or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Garden Grove Sanitary District, the City of Garden Grove, the Garden Grove Agency for Community Development and their respective councilmembers, board members, officers, officials, employees, agents, and volunteers.

2. For any claims related to this Agreement, Consultant's coverage shall be primary insurance as respects the City and its councilmembers, officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by Garden Grove Sanitary District, the City of Garden Grove, and their respective councilmembers, board members, officers, officials, employees, agents, and volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies, including breaches of warranties shall not affect coverage provided to the City of Garden Grove and its respective councilmembers, board members, officers, officials, employees, agents, and volunteers.

4. Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this Section shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been provided to City.

6. Consultant agrees to ensure that subcontractors, and any other parties involved with the project who are brought onto or involved in the project by Consultant, provide the same minimum insurance coverage required of Consultant. 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 project will be submitted to City for review.

E. Verification of Coverage

Consultant shall furnish City with original endorsements effecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before work commences.

If CONSULTANT maintains higher insurance limits than the minimums shown above, CONSULTANT shall provide coverage for the higher insurance limits otherwise maintained by the CONSULTANT

XII. INDEMNITY

A. Indemnification

To the fullest extent permitted by law, Consultant shall indemnify, defend (at Consultant's sole cost and expense), protect and hold harmless the City of Garden Grove and its respective councilmembers, officers, officials, employees, agents, and volunteers, (individually "Indemnified Party"; collectively "Indemnified Parties") against any and all liability, claims, judgments, costs, and demands (collectively, "Claims"), including Claims arising from injuries or death of persons (Consultant's employees included) and damage to property, which Claims arise out of, pertain to, or are related to the negligence, recklessness or willful misconduct of Consultant, its agents, employees, or subcontractors, or arise from Consultant's negligent, reckless or willful performance of or failure to perform any term, provision, covenant or condition of this Agreement ("Indemnified Claims"), but Consultant's liability for Indemnified Claims shall be reduced to the extent such Claims arise from the negligence, recklessness or willful misconduct of the City of Garden Grove and its councilmembers, officers, directors, officials, employees, or agents.

Consultant shall reimburse the Indemnified Parties for any reasonable expenditures, including reasonable attorneys' fees, expert fees, litigation costs and expenses that each Indemnified Party may incur by reason of Indemnified Claims. Upon request by an Indemnified Party, Consultant will defend with legal counsel

reasonably acceptable to the Indemnified Party all Claims against the Indemnified Party that may arise out of, pertain to, or relate to Indemnified Claims, whether or not Consultant is named as a party to the Claim proceeding. The determination whether a Claim may "arise out of, pertain to, or relate to" Indemnified Claims shall be based on the allegations made in the Claim and the facts known or subsequently discovered by the parties. In the event a final judgment, arbitration award, order, settlement, or other final resolution expressly determines that Claims did not arise out of, pertain to, nor relate to the negligence, recklessness or willful misconduct of Consultant to any extent, then City will reimburse Consultant for the reasonable costs of defending the Indemnified Parties against such Claims, except City shall not reimburse Consultant for attorneys' fees, expert fees, litigation costs and expenses as were incurred defending Consultant or any parties other than Indemnified Parties against such Claims.

Consultant's liability for indemnification hereunder is in addition to any liability Consultant may have to City for a breach by Consultant of any of the provisions of this Agreement. Under no circumstances shall the insurance requirements and limits set forth in this Agreement be construed to limit Consultant's indemnification obligation or other liability hereunder. The terms of this Agreement are contractual and the result of negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party, shall not be employed in the interpretation of this Agreement.

Consultant's indemnification obligation hereunder shall survive the expiration or earlier termination of this Agreement until all actions against the Indemnified Parties for such matters indemnified hereunder are fully and finally barred by the applicable statute of limitations or, if an action is timely filed, until such action is final. This provision is intended for the benefit of third party Indemnified Parties not otherwise a party to this Agreement.

XIII. COMPLIANCE WITH LAW

A. Consultant certifies by the execution of this Agreement the following: that it pays employees not less than the minimum wage as defined by law and that it does not discriminate in its employment with regard to race, color, religion, sex, age, marital status, ancestry, or national origin; that Consultant is in compliance with all federal and state laws, local directives, and executive orders regarding non-discrimination in employment; and that Consultant agrees to demonstrate positively and aggressively the principle of equal opportunity in employment.

B. Consultant shall keep itself informed of State and Federal laws and regulations, which in any manner affect those employed by it or in any way affect the performance of its Services pursuant to this Agreement. Consultant shall at all times observe and comply with all such laws and regulations. The City of Garden Grove and its respective councilmembers, officers, employees, and agents shall not be liable at law or in equity for Consultant's failure to comply with such laws and regulations.

XIV. LICENSES AND QUALIFICATIONS

Consultant represents and warrants to City that it has obtained all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval, which is legally required for Consultant to perform Services under this Agreement.

XV. CONFIDENTIALITY AND OWNERSHIP OF DOCUMENTS

A. All information gained by Consultant in the performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subcontractors shall not without written authorization from the City Manager or unless requested by City's Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the Services performed under this Agreement or relating to any project or property location within City. Response to a subpoena or court order shall not be considered "voluntary" for the purposes of this Section, provided Consultant gives City proper notice of such subpoena or court order. Consultant shall properly notify City of any summons, complaints, subpoenas, notice of deposition, request for documents, interrogatories, requests for admissions or other discovery requests received by Consultant, its officers, employees, agents or subcontractors, related to Services performed pursuant to this Agreement. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing, or similar proceeding, the cost of which shall be borne by City. Consultant agrees to cooperate fully with City and to provide City with an opportunity to review and respond to discovery requests provided by Consultant, arising out of Services performed pursuant to this Agreement. However, City's right to review any such request or response does not imply or mean City has the right to control, direct, write or rewrite said response.

B. The documents and study materials for this project shall become the property of City upon the termination or completion of the work. Consultant agrees to furnish to City copies of all memoranda, correspondence, computation, and study materials in its files pertaining to the work described in this Agreement, which is requested in writing by City.

XVI. INTERPRETED UNDER LAWS OF THE STATE OF CALIFORNIA

This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be

employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof. Venue for any litigation concerning this Agreement shall be in the Superior Court for the County of Orange, California.

XVII. ATTORNEYS' FEES

If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements in addition to any other relief to which they may be entitled.

XVIII. WAIVER

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. Any waiver by the Parties of any default or breach of any covenant, condition, or term contained in this Agreement, shall not be construed to be a waiver of any subsequent or other default or breach, nor shall failure by the Parties to require exact, full, and complete compliance with any of the covenants, conditions, or terms contained in this Agreement be construed as changing the terms of this Agreement in any manner or preventing the Parties from enforcing the full provisions hereof.

XIX. NOTICES

All notices or other communications required or permitted hereunder shall be in writing and shall be personally delivered, sent by registered or certified mail, postage prepaid, return receipt requested, or delivered or sent by electronic transmission, and shall be deemed received upon the earlier of: (i) the date of delivery to the address of the person to receive such notice if delivered personally or by messenger or overnight courier; (ii) three (3) business days after the date of posting by the United States Post Office if by mail; or (iii) when sent if given by electronic transmission. Any notice, request, demand, direction, or other communication sent by electronic transmission must be confirmed within forty-eight (48) hours by letter mailed or delivered. Notices or other communications shall be addressed as follows:

To City: City of Garden Grove
13802 Newhope Street
Garden Grove, CA 92843
Attention: Project Engineer

To Consultant: JIG Consultants
4887 East La Palma Avenue, Suite 708
Anaheim, CA 92807
Attention: Joseph Gutierrez, P.E.

Either Party may, by written notice to the other, designate a different address, which shall be substituted for that specified above.

XX. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, arrangements, representations, and understandings, if any, made by or among the parties with respect to the subject matter hereof. No amendments or other modifications of this Agreement shall be binding unless executed in writing by both parties hereto, or their respective successors, assigns, or grantees.

XXI. FORCE MAJEURE

If either party shall be delayed or prevented from the performance of any service under this Agreement by reason of acts of God, strikes, lockouts, labor troubles, restrictive governmental laws or regulations or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of delay, and the period for performance of any such act shall be extended for a period equivalent to the period of such delay.

XXII. TIME IS OF THE ESSENCE

The Parties agree that time is of the essence of this Agreement with respect to the deadlines set forth herein.

XXIII. SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be invalid under the applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of that provision, or the remaining provisions of this Agreement.

XXIV. PROHIBITED INTERESTS

Consultant covenants that, for the term of this Agreement, no Board Member, official, officer or employee of City during his/her tenure in office/employment, or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof. Consultant warrants that it has not given or paid and will not give or pay any third party money or other consideration for obtaining this Agreement.

XXV. SCOPE CHANGES

In the event of a change in the scope of the proposed project, as requested by City, the Parties hereto shall execute an addendum to this Agreement, setting forth, with particularity, all terms of the new Agreement, including but not limited to any additional Consultant's fees.

XXVI. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer or employee of the City or City of Garden Grove shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or its successor, or for breach of any obligation of the terms of this Agreement.

XXVII. AGREEMENT EXECUTION AUTHORIZATION

Each of the undersigned represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that such execution is binding upon the entity for which he or she is executing this Agreement.

XXVIII. RECITALS

The Recitals above are hereby incorporated into this section as though fully set forth herein and each party acknowledges and agrees that such Party is bound, for purposes of this Agreement, by the same.

IN WITNESS WHEREOF, this Agreement has been executed in the name of City, by its officers thereunto duly authorized, and Consultant as of the day and year first above written.

CITY OF GARDEN GROVE

By: _____
Scott C. Stiles
City Manager

ATTEST:

By: _____
Teresa Pomeroy
City Clerk

JIG Consultants

By: 
Name: Joseph Gutierrez, P.E.
Title: President

By: _____
Name: _____
Title: _____

If CONTRACTOR is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a Partnership, Statement of Partnership must be submitted to CITY.

APPROVED AS TO FORM:

Woodruff, Spradlin & Smart

By: 
Omar Sandoval
City Attorney

EXHIBIT A

SCOPE OF SERVICES

SCOPE OF WORK

The City's Request for Proposal (RFP) includes a comprehensive scope which details construction management and inspection services. The Scope of Work is incorporated herein by reference and will serve as an integral part of this proposal with the following clarifications on duties and responsibilities.

Pre-Construction Phase

- ▶ **Review and be knowledgeable of the contract documents and City Standard Plans and Specifications prior to the pre-construction meeting.** | The Construction Manager and Inspector will review the contract documents, City Standard Plans and Specifications and become familiar with the design intent and typical construction methods employed by the City.
- ▶ **Review and be knowledgeable of existing site conditions.** | The Construction Manager and Inspector will visit the project site prior to the Pre-construction meeting and review existing facilities closely.
- ▶ **Conduct the pre-construction meeting and provide detailed meeting minutes of the meeting.** | The Construction Manager will draft an agenda for the pre-construction meeting and submit it to the City for review. The agenda will also include any questions or discussions of interest to the Contractor. Unless otherwise required by the City, the Construction Manager will record meeting proceedings and draft meeting minutes to be sent to the City for review and comment, before distributing to all meeting participants.

Construction Phase

- ▶ **Serve as the City's representative and field liaison with the Contractor during the construction of the project.** | The Inspector will serve as the City's representative on the project. However, the Inspector will not make any commitments on behalf of the City without the City's concurrence. The role of the Inspector will be of liaison and coordination. The Inspector will observe and report to the City daily.
- ▶ **Provide daily Construction Management and all inspection services of the work covered in the contract documents.** | The Construction Manager and Inspector will follow the contract documents during the construction phase of this project. The Inspector will not allow any deviations from the contract documents, unless authorized by the City through due process. Should the Contractor want to deviate from the contract documents, such requests must be submitted through RFI's, submittals, substitution requests, or through other procedures allowed in the contract documents. In all cases, the City will have the final authority. The Inspector will work closely with the Construction Manager and City staff and will fully inform the City staff on the project progress.
- ▶ **Prepare and submit to the City daily inspection reports documenting the Contractor's workforce, material and equipment used, a summary of construction activities, field problems, disputes or claims, resolutions of issues and directions given to the contractor.** | Inspection reports will be completed by the Inspector, reviewed by the Construction Manager, and submitted to the City monthly. The Inspector will prepare detailed daily reports in sufficient detail to fully inform the City on the progress of the project. The daily reports will be attached with pictures to give the City staff sufficient information about the progress of the project. Items requiring a decision by the City will be highlighted and followed up by e-mail and phone calls, after submitting the daily reports.

- ▶ **Administer the construction contract per Construction Contract Documents, City of Garden Grove Standard Specification and Plans, Garden Grove Municipal Code and other applicable standards.** | Standard Plans and Specifications, as well as other applicable codes and standards, will be maintained electronically in the project files for use as reference during construction.
- ▶ **Prepare and maintain a correspondence log organized in chronological order with the following headings:**
 - **Section 1 – Correspondence with the Contractor**
 - **Section 2 – General Correspondence**
 - **Section 3 – Inspection Reports**
 - **Section 4 – Material Information/Survey**
 - **Section 5 – Weekly Statement of Working Days**
 - **Section 6 – Financial Information**

The correspondence log will be organized in a Project Binder and will be maintained by the Construction Manager. The City will have access to the Project Binder at any time during the construction. The Project Binder will be turned it to the City at the end of the project.

- ▶ **Prepare bi-weekly statement of working days documenting the construction progress, time of completion, delays and time extensions, and submit to the Contractor and the City.** | The Construction Manager will prepare Bi-weekly Statements of Working Days and will submit to the City no later than every other Monday morning.
- ▶ **Receive, log, review, and process all Contractor submittals and shop drawings.** | The Construction Manager will receive submittals and shop drawings, maintain a submittal log, review for deviations from the contract documents, perform a cursory review of submittal contents, and send to the Engineer of Record for review. Once the submittal review comments are received, process the submittals and send back to the Contractor. Construction Manager will keep tabs on each submittal for a timely review.
- ▶ **Effectively and expeditiously communicate with City staff, Design Consultants and Contractor to identify conflicts, construction problems, coordination issues and to obtain needed action and response to submittals and RFIs.** | The Construction Manager will monitor and document all daily communication with all parties involved in the project through e-mail. Verbal communication will be backed up with e-mails for documentation purposes. E-mails may have as attachments diagrams, maps, tables, copies of submittal and RFIs. The project will be handled in such a manner that information can be traced even after a long lapse of time.
- ▶ **Maintain a document tracking system for submittals, RFI's, field orders, change orders, claims inspection reports, test reports, etc.** | The Construction Manager and administration staff will initiate a project document tracking system using "SharePoint". All team members will be provided access to the project SharePoint site. The Construction Manager will be responsible for uploading all project documents and sending emails to team members for important documents that need immediate review and response to.
- ▶ **Review the construction progress schedules and provide an assessment of the progress to the City with recommendations to maintain or improve adherence to the approved project schedule.** | The Construction Manager will review the Contractor's master schedule and provide input and suggestion to the City. The Construction Manager will also review updates to the Contractor's schedule and identify areas where slippage is occurring. He will discuss with the Contractor ways in which the Contractor proposes to maintain the project progress. The Construction Manager will make recommendations to the City staff regarding improvements to the schedule. Progress meetings will be a good venue to discuss schedule issues in the presence of all parties, including the Contractor.

- ▶ **Prepare and maintain a photo journal documenting the construction progress.** | The Inspector will take photos before construction begins, during construction, and upon completion of the project. The journal will comply with the following:
 - Kept in a three-ring binder that is clearly labeled on the cover and the spine with project name and number (more than one may be required for manageability)
 - Date stamped color photographs with 4"x6" dimensions
 - Captions for each photo describing orientation and the reason the shot was taken
 - For each project, provide a CD with all the pictures that were taken for the project organized by date

The Inspector will take detailed digital photos before each project starts. Particular attention will be focused on areas which might change or deteriorate as a consequence of construction work. Examples are surface improvements, pavement, curb and gutter, etc. The Inspector will take many pictures daily to tell the story of what took place each day even to those who are remote from the project. The pictures will be attached with the Daily Reports with captions to explain the items in the pictures. The Inspector will also take pictures after the project completion. A few pictures will be attached to the Daily Report.

- ▶ **Confirm in writing that work being inspected conforms to the contract requirements and promptly report unacceptable work to the City and Contractor.** | Work not conforming to the contract documents will be reflected in a Notice of Non-Compliance and saved in the contract files. However, the Contractor will be notified verbally should an item of non-compliance occur. Such verbal references will be reflected in the Daily Reports. Additionally, the Construction Manager will discuss such items with City staff and suggest actions to handle or rectify the situation.
- ▶ **Monitor project work and adjacent areas for unsafe conditions and promptly report it to the City and the Contractor for resolution.** | Safety, both of the public and of the workers, is of paramount importance in the implementation of this project. In general, the Inspector will bring to the attention of the Contractor any unsafe conditions and report it to the City. Due to the importance of safety issues, e-mail will be the mode of communication for good documentation and tracking. If the safety issue is serious enough that it could threaten life and health, the Inspector will ask the City its permission to stop that particular operation until the unsafe condition is mitigated. In all conditions, the Inspector will work in close coordination with the Contractor and the City until the unsafe condition is mitigated.
- ▶ **Enforce all of the provisions of the Storm Water Pollution Prevention Plan and/or Storm Water Pollution Control Plan.** | The Inspector will inquire with City staff regarding the SWPPP and follow-up with the Contractor to ensure that SWPPP issues are mitigated and SWPPP reports are turned in regularly. Since the project is less than one acre, a SWPPP is not required. Nonetheless, the Inspector will ensure Best Management Practices are followed by the Contractor.
- ▶ **Perform all duties in a manner that promotes the cost-effective execution and progress of the work.** | The Construction Manager is experienced in minimizing potential change orders and helping with managing project costs. Conditions that could be conducive to extra costs will be identified in advance, as well as means found to mitigate those conditions. The Construction Manager will discharge his duties in a timely manner to avoid delays in the project and, thus, eliminate potentials for costs caused by such delays. Where changes might become necessary during the project, the Construction Manager will provide recommendations to City staff in selecting the least costly options for bringing about those changes.

- ▶ **Approve materials and workmanship that meet the contract requirements, notwithstanding the purview and authority of the consulting Engineer, other authorized representative or regulatory authorities having jurisdiction.** | The Inspector will see to it that the Contractor constructs the project in accordance with the contract documents. The Inspector will not approve any materials or workmanship that deviates from the contract documents. If such changes become necessary during the project, the Inspector will bring those changes to the attention of the Construction Manager and the City to resolve with the Project Engineer. Changes from the contract document must be backed up by RFIs and submittals, or other written documentation allowed in the contract documents. In summary, the job of the Inspector is to observe and report to the City. The Inspector will then work with the City and its consulting Engineer to resolve the issues that need to be addressed.
- ▶ **Provide and coordinate inspection for all trades involved in the project included in the contract documents.** | The Inspector will either inspect the Contractor's work himself or coordinate with others to inspect certain specialty items of work. For example, electrical testing and commissioning will be handled by Rockwell Construction Services, LLC. The Inspector will work closely with City personnel or subconsultants on these items. The issue of inspection coordination between various parties will be discussed in the pre-construction meetings, as well as a protocol for coordination.
- ▶ **Coordinate compaction and materials testing using City's geotechnical consultant.** | The Inspector will coordinate with the City's geotechnical consultant for compaction testing and backfill material inspections. The Contractor will provide sufficient advance notice to schedule the geotechnical consultant. This topic will need to be discussed in the pre-construction meeting and appropriate protocols will need to be established based on the contract documents.
- ▶ **Coordinate survey requests using City's survey consultant.** | The Inspector will coordinate with the City's survey consultant for Contractor's request for survey. The Contractor will provide sufficient advanced notice to schedule the survey consultant.
- ▶ **Verify and sign Contractor's daily extra work report documenting force account (time and materials) work.** | The Inspector will first make sure the force account work is authorized by the City before this work is done. The Inspector will verify that the hours expended by the Contractor are documented daily. The Inspector will take pictures of the laborers and the equipment used in such force account work at various times of the day. These pictures will provide additional documentation regarding the number of laborers working on the force account. Daily review of the tickets will be strictly for the laborers and equipment. The Contractor will submit the complete documentation at a later date showing material quantities, prices, equipment hours and applicable rate, and other data for the Inspector and Construction Manager to review and forward to the City to process as an extra work item.
- ▶ **Review and conduct contract change order negotiation with Contractor in cooperation and consultation with the City.** | The Construction Manager will review and discuss with the Contractor any change orders. The Construction Manager will keep the City fully informed throughout the review process. The Construction Manager will forward the Contractor's final change order submittal to the City with his recommendation. The Construction Manager (or Inspector) will not be allowed to approve change orders. Change orders will be valid only when reviewed and approved by the City.
- ▶ **Review Contractor's payment requests and verify quantities of completed work for progress payments to the Contractor.** | The Inspector will review the Contractor's progress payment requests and verify the quantities of work completed in the course of a month. The progress payment must have a set cut-off date to be valid. The cut-off date will need to be established at the pre-construction meeting, and in accordance with the contract documents. Any deviations from the cut-off date will need to be backed up with adequate documentation and approved by the City.

- ▶ **Conduct weekly construction progress meetings and distribute typed and formatted meeting minutes to the City's designated representative and all affected attendees.** | The Construction Manager will conduct weekly construction progress meetings. The Inspector will attend the meeting as well as City representatives. The Construction Manager will work with the City and Contractor to resolve issues, even between the regular meetings. The Contractor will present a three-week look ahead so the project team can prepare for specialty inspections, service shutdowns, etc.
- ▶ **Issue written instructions to the Contractor regarding routine matters, follow-up of verbal instructions and as directed by the City Engineer.** | All communications and instructions to the Contractor will be in writing via emails. Verbal discussions will be followed-up in writing through an email. The designated City staff will be copied on all written communications to and from the Contractor. On those written communications that might have contractual impact, the Construction Manager will send a draft of what he intends to write to the Contractor and provide the City staff the opportunity to reflect on the email issues of interest.
- ▶ **Conduct start-up and testing of the facility to verify all systems are operating properly.** | The Magnolia Booster Pump Station Rehabilitation will require the Contractor to perform start-up and testing of all mechanical and electrical equipment. Rockwell Construction Services, LLC will be present and will oversee the commissioning of the electrical systems.
- ▶ **Conduct pre-final inspection and prepare a written punch list documenting incomplete or corrective work.** | The Construction Manager will conduct a pre-final inspection after receiving a written request from the Contractor to that effect. The Construction Manager will prepare a preliminary punch list of items that need to be corrected or completed. The Construction Manager will repeat this step, if necessary, until such time the Construction Manager is satisfied the project is ready for a final inspection with City staff. The City staff will be notified of the pre-final inspection, in case they wish to participate and see the progress of the project at the pre-final stage.
- ▶ **Conduct final inspection to verify all items on the punch list have been completed or corrected and make recommendation to the City concerning acceptance of the project.** | The Construction Manager will conduct a final inspection after the Contractor has addressed all items on the pre-final punch list. The final inspection will be coordinated with City staff. The City can invite others who might be interested in the final inspections. Once all items on the punch list are corrected to the satisfaction of the City, the Construction Manager will make a recommendation for project acceptance.
- ▶ **Verify Contractor's progress on as-built plan preparation monthly. Verify that the as-built plans submitted by the Contractor are accurate.** | The Inspector will maintain a marked-up set of drawings reflecting any field changes in the project. The Inspector will periodically update his marked-up drawings to reflect the changes brought about through RFI's, field orders and other procedures allowed in the contract documents. The Inspector will review the Contractor's as-built plans and compare them against his own marked-up drawings and notes to verify the Contractor's as-built plans are up to date and accurately reflect all as-built conditions. The Inspector will do this review and verification throughout the course of the project, and at the end of the project.

Post-Construction Phase

- ▶ **Perform project closeout duties including final organization of project files and submit to City for approval.** | The Construction Manager will maintain project files throughout the course of the project. The organization of the files will be discussed with City staff at the beginning of the project. The Construction Manager will submit a list of the files to the City upon project completion. Should the City wish to adjust in the organization of the files, the Construction Manager will address those adjustments to the City's satisfaction. The project files will be submitted to the City digitally.

EXHIBIT B

SCHEDULE OF PAYMENT

**CERTIFICATE OF CORPORATE RESOLUTION OF
JIG Consultants, a California Corporation**

A Meeting of the Board of Directors was duly and held the 27th day of September, 2018, at which were present the President and Secretary of said Corporation: due and proper notice, purpose and call of said meeting was given. Upon motion, second and unanimous vote, the following resolutions were duly and regularly passed:

RESOLVED: That the President and Secretary, Joseph Gutierrez is hereby authorized to sign for and on behalf of said Corporation, the Professional Services Agreement for Construction Management and Inspection Services for Westhaven Reservoirs Rehabilitation Project and Magnolia Reservoir and Booster Pump Station Rehabilitation Project with the City of Garden Grove, and thereby bind the said Corporation as its authorized act, and to make, execute and deliver, on behalf of said Corporation, all instruments arising out of said Professional Services Agreement in compliance therewith;

RESOLVED: That said Corporation approves, confirms and adopts the said Professional Services Agreement and each and all of the terms and conditions thereof and any and all amendments thereof and accepts the same as though done by the Corporation itself and authorizes the above name to make, execute and deliver any and all instruments in compliance with said Professional Services Agreement.

DATED: This 28th day of September, 2018.

JIG Consultants, a California Corporation

By: _____

Name: Joseph Gutierrez, President

The undersigned Secretary hereby represents that the above and forgoing is accurate and true and certifies to the same.

By: _____

Name: Joseph Gutierrez, Secretary