

# CONSULTANT AGREEMENT

**THIS AGREEMENT** is made this\_14<sup>th</sup> day of \_\_\_\_\_March ,2023, by the **CITY OF GARDEN GROVE**, a municipal corporation, ("CITY") and **FG Solutions, LLC**, referred to as "CONSULTANT".

## **RECITAL**

The following recitals are a substantive part of this Agreement:

1. This Agreement is entered into pursuant to Garden Grove Council Resolution No. 9212-14 (January 28, 2014).
2. CITY desires to utilize the services of CONSULTANT to provide the agreed upon services as described below.
3. CONSULTANT is qualified by virtue of experience, training, education and expertise to accomplish services.

## **AGREEMENT**

THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **Term and Termination.** This Agreement shall cover services rendered from full execution of this agreement and shall remain and continue in effect until tasks described herein are completed. This agreement may be terminated by the CITY without cause. In such event, the CITY will compensate CONSULTANT for work performed to date in accordance with fee schedule (Attachment "A"). Consultant is required to present evidence to support performed work completion.
2. **Services to be Provided.** The services to be performed by CONSULTANT shall consist of: CONSULTANT to provide a water rate study for the Water Enterprise Fund.
3. **Compensation.** CONSULTANT shall be compensated as follows:
  - 3.1 **AMOUNT.** Total Compensation under this agreement shall not exceed (NTE) Ninety Three Thousand and Forty Six and Eighty Cents (\$93,046.80) payable in arrears and in accordance with proposal in Attachment "A", which is attached and incorporated by reference.

- 3.2 Payment. For work under this Agreement, payment shall be made per invoice for work completed. Within 45 day of delivery of goods or completion of performance of services, CONSULTANT must promptly render an invoice to CITY or payment may be significantly delayed. For extra work not a part of this Agreement, a written authorization by CITY will be required, and payment shall be based on schedule included in proposal (Attachment A).
- 3.3 Records of Expenses. CONSULTANT shall keep complete and accurate records of all costs and expenses incidental to services covered by this Agreement. These records will be made available at reasonable times to CITY.
- 3.4 Termination. CITY shall have the right to terminate this Agreement, without cause, by giving thirty (30) days written notice of termination. If the Agreement is terminated by CITY, then the provisions of paragraph 3 would apply to that portion of the work completed.

#### **4. Insurance requirements.**

- 4.1 COMMENCEMENT OF WORK. CONSULTANT shall not commence work under this Agreement until all certificates and endorsements have been received and approved by the CITY. All insurance required by this Agreement shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance.
- 4.2 WORKERS COMPENSATION INSURANCE. During the duration of this Agreement, CONSULTANT and all subcontractors shall maintain Workers Compensation Insurance in the amount and type required by law, if applicable.
- 4.3 INSURANCE AMOUNTS. CONSULTANT shall maintain the following insurance for the duration of this Agreement. 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.
- (a) Commercial general liability *in an amount not less than \$1,000,000.00 per occurrence* (**claims made and modified occurrence policies are not acceptable**); Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (b) Automobile liability, for all autos, *in an amount not less than \$1,000,000.00 combined single limit*

**(claims made and modified occurrence policies are not acceptable);** Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

*CONTRACTOR has executed the Request for Exemption from Providing Automobile Liability Coverage, attached hereto as Attachment "B" and incorporated herein by this reference, and represents that under the contractual obligations, it does not drive to and from the City, Agency, or District for any reason.*

- (c) Professional liability *in the amount not less than \$1,000,000 per occurrence*; Insurance companies must be acceptable to CITY and have a Best's Guide Rating of A-, Class VII or better, as approved by the CITY. If the policy is written on a "claims made" basis, the policy shall be continued in full force and effect at all times during the term of the agreement, and for a period of three (3) years from the date of the completion of services provided. In the event of termination, cancellation, or material change in the policy, professional/consultant shall obtain continuing insurance coverage for the prior acts or omissions of professional/consultant during the course of performing services under the term of the agreement. The coverage shall be evidenced either by a new policy evidencing no gap in coverage, or by obtaining separate extended "tail" coverage with the present or new carrier.

An **On-Going and Completed Operations Additional Insured Endorsement** for the policy under section 4.3 (a) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for liability arising out of work or operations performed by or on behalf of the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, it's officers, officials, employees, agents, and volunteers as additional insureds for automobiles, owned, leased, hired, or borrowed by the CONSULTANT. CONSULTANT shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, CONSULTANT's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, and volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

*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.*

5. **Non-Liability of Officials and Employees of the City.** No official or employee of CITY shall be personally liable to CONSULTANT in the event of any default or breach by CITY, or for any amount which may become due to CONSULTANT.
6. **Non-Discrimination.** CONSULTANT covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this Agreement.
7. **Independent Contractor.** It is agreed to that CONSULTANT shall act and be an independent contractor and not an agent or employee of the CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
8. **Compliance with Law.** CONSULTANT shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government.
9. **Disclosure of Documents.** All documents or other information developed or received by CONSULTANT are confidential and shall not be disclosed without authorization by the CITY.
10. **Ownership of Work Product.** All documents or other information developed or received by CONSULTANT shall be the property of the CITY. CONSULTANT shall provide CITY with copies of these items upon demand or upon termination of this Agreement.
11. **Conflict of Interest and Reporting.** CONSULTANT shall at all times avoid conflict of interest or appearance of conflict of interest in performance of this Agreement.

12. **Notices.** All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.
- a. (CONSULTANT)  
 FG Solutions, LLC  
 Attention: Debi Fortin- CEO  
 697 Grand St #118  
 New York, NY 11211
  
  - b. (Address of City Purchasing) (with a copy to):  
 City of Garden Grove                      Garden Grove City Attorney  
 11222 Acacia Parkway                      11222 Acacia Parkway  
 Garden Grove, CA 92840                      Garden Grove, CA 92840
13. **CONSULTANT'S PROPOSAL.** This Agreement shall include CONSULTANT'S proposal or bid which shall be incorporated herein by reference. In the event of any inconsistency between the terms of the proposal and this Agreement, this Agreement shall govern.
14. **Licenses, Permits, and Fees.** At its sole expense, CONSULTANT shall obtain a Garden Grove Business License, all permits, and licenses as may be required by this Agreement.
15. **Familiarity with Work.** By executing this Agreement, CONSULTANT warrants that: (1) it has investigated the work to be performed; (2) it has investigated the site of the work and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this Agreement. Should Consultant discover any latent or unknown conditions materially differing from those inherent in the work or as represented by CITY, it shall immediately inform CITY of this and shall not proceed, except at CONSULTANT'S risk, until written instructions are received from CITY.
16. **Time of Essence.** Time is of the essence in the performance of this Agreement. Notwithstanding the foregoing, neither Consultant nor City shall be liable for delays in or including, but not limited to, acts of God, acts and/or omissions of federal, state, and local government authorities and regulatory agencies, strikes, riots, civil unrest, war, lockouts and accidents. For delays resulting from actions or inactions of City, Consultant shall be given an appropriate time extension and, where applicable, shall be compensated for all reasonable costs of labor, equipment, and other direct and indirect costs Consultant incurs during any such delay or interruption of services.
17. **Limitations Upon Subcontracting and Assignment.** The experience, knowledge, capability, and reputation of CONSULTANT, its principals and employees were a substantial inducement for CITY to enter into this Agreement. CONSULTANT shall not contract with any other entity to perform

the services required without written approval of the CITY. This Agreement may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If CONSULTANT is permitted to subcontract any part of this Agreement, 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 relationship 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.

18. **Authority to Execute.** The persons executing this Agreement on behalf of the parties warrant that they are duly authorized to execute this Agreement and that by executing this Agreement, the parties are formally bound.
19. **Indemnification.** To the fullest extent permitted by law, CONTRACTOR defend, and hold harmless CITY and its elective or appointive boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damages of any nature, including interference with use of property, arising out of, or in any way connected with the negligence, recklessness and/or intentional wrongful conduct of CONTRACTOR, CONTRACTOR'S agents, officers, employees, subcontractors, or independent contractors hired by CONTRACTOR in the performance of the Agreement. The only exception to CONTRACTOR'S responsibility to protect, defend, and hold harmless CITY, is due to the negligence, recklessness and/or wrongful conduct of CITY, or any of its elective or appointive boards, officers, agents, or employees.  
  
This hold harmless agreement shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the CONSULTANT.
20. **Modification.** This Agreement constitutes the entire agreement between the parties and supersedes any previous agreements, oral or written. This Agreement may be modified only by subsequent mutual agreements executed by the CITY and CONSULTANT.
21. **Waiver.** All waivers of the provisions of this Agreement must be in writing by the appropriate authorities of the CITY and CONSULTANT.
22. **California Law.** This Agreement shall be construed in accordance with the laws of the State of California. Any action commenced about this Agreement shall be filed in the central branch of the Orange County Superior Court.

23. **Appropriations.** This Agreement is subject to and contingent upon funds being appropriated therefor by the Garden Grove City Council for each fiscal year covered by the term of this Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to the CITY.

**IN WITNESS THEREOF**, these parties have executed this Agreement on the day and year shown below.

Date: \_\_\_\_\_

**"CITY"  
CITY OF GARDEN GROVE**

**By: City Manager**

**ATTESTED:**

**City Clerk**

**Date:** \_\_\_\_\_

**"CONSULTANT"  
ProActive Consulting Group, LLC**

By:

Name: Debi Fortin

Title: CEO

Date: \_\_\_\_\_

Tax ID No. \_\_\_\_\_

If CONSULTANT 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:**

Garden Grove City Attorney

\_\_\_\_\_  
Date





## “Attachment A”

February 23, 2023

Ms. Raquel Manson  
Senior Administrative Analyst, Water Services Division  
City of Garden Grove  
13802 Newhope Street  
Garden Grove, CA 92843

**Subject:** Draft Proposal for 2023 Water Rate Study

Dear Ms. Manson:

Thank you very much for inviting FG Solutions, LLC (Consultant) to complete a 2023 Water Rate Study (Rate Study) proposal for the City of Garden Grove Water Services Division (City). This proposal details the scope, schedule, and fee estimate for the Water Rate Study.

Please feel free to call or email us anytime with questions or changes. We look forward to working with the City of Garden Grove.

### Scope of Work

#### Task 1. Project Management and Project Initiation

##### Introduction

This task consists of work to initiate the project including the remote kick-off meeting and ongoing project management throughout the estimated completion of the project for rate changes effective beginning January 1, 2024.

##### Scope of Work

Project management activities include monthly invoicing and status updates.

Project Initiation includes facilitation and attendance at the kick-off meeting. FG Solutions staff will attend the kick-off meeting remotely. Prior to the kick-off meeting, Consultant will provide a preliminary data request and a meeting agenda to City staff. A follow-up data request will be provided after the kick-off meeting.

## “Attachment A”

The purpose of the kick-off meeting is to:

1. Review the Water Rate Study scope, schedule, and deliverables with the City to confirm project goals and deadlines.
2. Identify the key project goals to be addressed in the Water Rate Study.
3. Review communication protocols.
4. Review the preliminary data request, to be sent in advance of the meeting.

### Task 1 Deliverables

1. Kick-off meeting agenda.
2. Preliminary and follow-up data request.
3. Facilitation and remote attendance at kick-off meeting.
4. Monthly invoices and status reports.

### Task 2. Revenue Requirement Analysis

#### Introduction

The Revenue Requirement Analysis is a projection of water utility revenues and water utility expenses for the five-year Rate Study Planning period beginning Fiscal Year (FY) 23/24 and ending FY 27/28.

There are many factors that will define the sizing and timing of potential water rate increases. Two of the most significant factors are:

1. The schedule for each capital improvement.
2. Water use and the effect of water conservation on the utility.

#### Scope of Work

Consultant will develop a five-year Revenue Requirement Analysis, for the five-year Rate Study period beginning FY 23/24 and ending in FY 27/28.

The Revenue Requirement Analysis will be developed using MS Excel and will consist of updating the existing Water Rate Model by FG Solutions. Specific tasks involved in the update will include:

1. Extend the Water Rate Model calculations thru FY 27/28.
2. Incorporate the City's FY 23/24 budget, including projected 6/30/23 reserve balances for the City's 601, 602, and 603 Funds.
3. Incorporate Calendar Year 2022 water production and metered water consumption data.
4. Incorporate the most recent Capital Improvement Plan and include any additional capital expenditures identified by the City that are not contained in the Capital Improvement Plan.

## “Attachment A”

5. Incorporate past drawdowns of the 2020A Bonds, and incorporate projected drawdown schedule.
6. Incorporate an annual conservation adjustment that will allow for sensitivity analysis of future reductions in water consumption.
7. Incorporate current PFAS treatment expense projections, schedules for startup of PFAS treatment facilities, and projected production volumes from PFAS wells.
8. Working collaboratively with the City to define inflation projections during the five-year Rate Study period.
9. Incorporate the City’s current minimum Fund reserve policies.

The Revenue Requirement analysis will be prepared using FY 23/24 costs for purchased water, including costs from Municipal Water District of Orange County (MWDOC) and the Orange County Water District (OCWD) Replenishment Assessment. Future increases in these costs will be address in future Water Commodity Rate Adjustment calculations to be performed on an annual basis.

- City to advise on the amount of new customer growth over the Rate Study period.
- City to advise on any projected changes to operation and maintenance (O&M) costs other than inflationary increases, including costs (if any) related to compliance with Draft Water Use Efficiency Standards as outlined in MWDOC’s April 2022 Economic Analysis.

Consultant will provide up to three iterations of the Revenue Requirement Analysis. One of the iterations will be selected for presentation to the City Council in the workshops describe in Task 4.

The result of the Revenue Requirement Analysis is the projected increase in water rate revenues in each year of the Rate Study period.

### Custom Rate Model Dashboard and Scenario Evaluation

City staff and Council may want to evaluate multiple scenarios to assess the financial impacts of inflation, capital project scheduling and water conservation alternatives.

FG Solutions developed a customized Rate Model Dashboard that provides the ability to quickly evaluate how capital project scheduling and water conservation alternatives affected rate projections. An inflation component has been added to the Dashboard. The Dashboard will expedite scenario development and serve as a decision-making aid.

The Rate Model Dashboard is a tool that staff can use after the Rate Study is complete, for scenario development and demonstration.

### Task 2 Deliverables

Deliverables under this task will be incorporated into the deliverables under Tasks 3 through 7.

## “Attachment A”

### Task 3. Cost of Service Analysis and Rate Design

#### Introduction

The Water Cost of Service Analysis (COSA) and Rate Design calculate the water rate schedule that defines each customer’s water bill. The COSA distributes the Revenue Requirement among the Water Utility customer classes.

The Rate Design will develop the schedule of water rates applicable to each customer class, which will include a fixed Bi-Monthly Minimum Charge, a fixed Capital Improvement Charge, a Commodity Charge, and Fire Service Charges.

#### Scope of Work

1. Consultant will develop a COSA based on industry-standard principles such as those outlined in the American Water Works Association (AWWA) M1 Manual.
2. The Water COSA will include the Functionalization, Allocation, and Distribution steps as outlined in the AWWA M1 Manual. It will be based on a FY 23/24 Test Year. To develop the COSA, Consultant will use water consumption and water meter data provided by the City for Calendar Year 2022, with adjustments for projected conservation in FY 23/24 incorporated into the Revenue Requirement Analysis. The outcome of the Water COSA is a Revenue Requirement for each customer class.
3. Consultant will develop a five-year schedule of Bi-Monthly Minimum Charges and Capital Improvement Charges.
4. Consultant will develop a cost-based, two-tier rate structure based on the methodology used in the City’s existing water rate structure. The first rate tier will emphasize groundwater costs, and the second rate tier will emphasize imported water costs.
5. Consultant will update the City’s Fire Service Rates.
6. A monthly water bill comparison with up to six local water utilities. Consultant will compare the proposed monthly water bill for one example single-family residential customer at monthly consumption ranging from 0 to 30 hundred cubic feet (ccf), with up to six water utilities. The six water utilities are expected to be the Cities of Westminster, Santa Ana, Orange, Fountain Valley, Stanton, and Anaheim.

#### Task 3 Deliverables

1. Electronic copy of the Rate Model in MS Excel.
2. Other deliverables are merged with the deliverables in Task 4 through 7.

## “Attachment A”

### Task 4. Council Workshops and Presentations

#### Introduction

This task is the preparation and in-person delivery of Rate Study presentations at four City Council workshops.

#### Scope of Work

FG Solutions will prepare and deliver in-person PowerPoint presentations to City Council at the following times during the Rate Study:

1. Project Initiation. The goal of this workshop is to introduce the Rate Study and to obtain feedback from Council. Topics of discussion are expected to include an overview of the Rate Study, anticipated key issues related to the Rate Study, project schedule, and anticipated City Council decision points.
2. After Draft Revenue Requirement Analysis results are available.
3. After draft proposed rate schedules are available.
4. After final proposed rate schedules are available.

This task includes travel and out of pocket expenses for one FG Solutions staff to attend in-person meetings. If remote attendance is available, a second FG Solutions staff will attend meetings remotely.

#### Task 4 Deliverables

1. One custom PowerPoint presentation for each workshop.
2. In-person attendance and delivery of presentation at each workshop.

### Task 5. Public Involvement

#### Introduction

A community meeting is planned to inform the public about the water utility and the proposed rate schedules.

#### Scope of Work

FG Solutions will prepare and deliver an in-person PowerPoint presentations at one community meeting.

City staff will be responsible for setting up the meeting and developing content describing the water system and the capital improvements that the proposed rate increases will fund.

## “Attachment A”

### Task 5 Deliverables

1. Consultant in-person attendance and delivery of PowerPoint presentation at each meeting.
2. Revised analyses, up to the budgetary allowance described in the Fee Estimate section of this proposal.
3. Presentation development as needed.

### Task 6. Council Meetings

#### Introduction

This task is the preparation and delivery of Rate Study presentations at two City Council meetings.

#### Scope of Work

FG Solutions will prepare and deliver in-person PowerPoint presentations at the following meetings.

1. Authorization to send out Proposition 218 mailings.
2. Council vote on the rate proposal, to be held in conjunction with the Proposition 218 Public Hearing.

This task includes travel and out of pocket expenses to attend in-person meetings.

### Task 6 Deliverables

1. One custom PowerPoint presentation for each meeting.
2. This task includes travel and out of pocket expenses for one FG Solutions staff to attend in-person meetings. If remote attendance is available, a second FG Solutions staff will attend meetings remotely.

### Task 7. Reports

#### Introduction

FG Solutions will deliver a written report describing the development of the Water Rate Study. The key assumptions, methodology, and results of the Rate Study will be documented in the report.

#### Scope of Work

Consultant will prepare draft, final draft, and final reports. Draft and final draft reports will be delivered in editable electronic MS Word format for the City’s review. The final report will be delivered in pdf format. Hardcopies of reports will not be provided.

## “Attachment A”

The draft report will be delivered after the fourth Council Workshop in Task 4. The final draft report will be delivered prior to the Council meeting authorizing the Proposition 218 mailing. The final report will be prepared after the Proposition 218 Public Hearing and after the Council vote on the rate proposal.

City staff is responsible for the preparation of and mailing the Proposition 218 mailing. Consultant will provide review comments on the draft Proposition 218 mailing that is prepared by City staff. Consultant labor for any other Proposition 218 work is not provided for in this task.

### Task 7 Deliverables

1. Draft and Final Draft reports in editable MS Word format.
2. Final Report in pdf format.
3. Review comments on the draft Proposition 218 mailing.

### Schedule

The City’s goal is to have revised water rates effective on January 1, 2024. The proposed schedule milestones are based on Notice to Proceed no later than March 31, 2023. A preliminary data request will be provided no later than April 5, 2023. A proposed schedule is shown in the graphic below. The schedule for Tasks 4 through 7 will depend on the feedback received from City Council during the Task 4 Council Workshops.

PROPOSED WATER RATE STUDY SCHEDULE										
2023										
Task	Task Description	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
1.	Project management and initiation	◆ ~4/6								
2.	Revenue requirement analysis	█								
3.	Cost of service analysis and rate design		█							
4.	Council workshops and presentations		◆	◆	◆	◆				
5.	Public involvement						█			
6.	Draft and final reports								◆	◆
							Draft and Final Draft Reports			Final Report
7.	Council meetings								◆	◆
							Authorize 218 Mailing			Adopt Rates



## “Attachment A”

### Fee Estimate

The Fee Estimate of \$93,046.80 is shown in the table below. The Fee Estimate includes labor and out-of-pocket expenses for travel. FG Solutions adjusts its hourly rates on January 1.

Task Description in Brief	Labor Hours		Labor Budget	Expenses	Fee
	Griffith Proj. Manager	Fortin Sr. Consultant			
Project management and initiation	10	14	\$4,973.50		\$4,973.50
Revenue requirement analysis	50	12	\$14,137.50		\$14,137.50
Cost of service analysis and rate design	40	48	\$18,414.00		\$18,414.00
Council workshops and presentations	44	34	\$16,777.40	\$5,600.00	\$22,377.40
Public involvement	18	10	\$6,140.30	\$1,400.00	\$7,540.30
Draft and final reports	24	48	\$14,600.40		\$14,600.40
Council meetings	22	16	\$8,203.70	\$2,800.00	\$11,003.70
<b>Total</b>	<b>208</b>	<b>182</b>	<b>\$83,246.80</b>	<b>\$9,800.00</b>	<b>\$93,046.80</b>

Hourly rates for FG Solutions staff:

Art Griffith, Project Manager	\$238.35
Debi Fortin, Senior Consultant	\$185.00

The fee estimate is based on the following assumptions:

1. Four trips to Council workshops in Garden Grove in Task 4.
2. One trip to the community meeting in Garden Grove in Task 5.
3. Two trips to Council meetings in Garden Grove in Task 7.
4. Completion of all work in 2023, for a 1/1/2024 rate increase.

Thank you very much for this opportunity to work with the City of Garden Grove. We look forward to our continued working relationship with the City of Garden Grove.

Best Regards,

Debi Fortin, CEO  
FG Solutions, LLC