



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Execute a Master Professional Services Agreement for Engineering Support Services with DJH Engineering, of Placerville, for the Irrigation System at White Slough Water Pollution Control Facility and Appropriate Funds (\$25,000)

MEETING DATE: March 3, 2004

PREPARED BY: Public Works Director

RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the City Manager to execute a Master Professional Services Agreement for engineering support services with DJH Engineering, of Placerville, for the irrigation system at White Slough Water Pollution Control Facility (WSWPCF), and appropriate funds. Task orders related to these services will be presented to the City Manager for approval.

BACKGROUND INFORMATION: In the 2003-04 Capital Improvement Budget, funds were budgeted for the expansion of the irrigation system at WSWPCF. This expansion will extend the irrigation system to include property along Thornton Road. The extension will include the land previously irrigated from a well. The expanded system will provide irrigation of these lands with reclaimed wastewater. Also, the expanded system will provide better delivery of reclaimed water to City properties to the north.

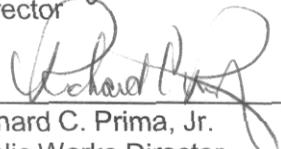
DJH Engineering has been selected to do this design work. They previously designed a system for delivery of reclaimed water to the City properties to the south of the Facility. The new system will include a pumping facility that will provide reclaimed water to the south and to the north along Thornton Road.

It is the intent of this project to design, advertise, bid and award, so that work can begin early this summer. Only a portion of the project will be completed before irrigation season starts. The remainder will be completed when the irrigation season is finished in the fall.

After the Master Professional Services Agreement is approved, Task Order No. 1 will be written. This task order will cover the design of the expanded irrigation system. The estimate for Task Order No. 1 is \$25,000, including contingencies. Additional task orders may be written to cover the construction management.

FUNDING: 2003-04 Capital Improvement Budget \$25,000
Wastewater Capital Outlay Funds (172)


Vicky McAthie, Finance Director

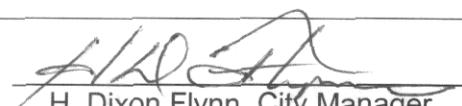

Richard C. Prima, Jr.
Public Works Director

Prepared by Del Kerlin, Assistant Wastewater Treatment Superintendent
RCP/DK/sb
Attachment

cc: Del Kerlin, Asst. Wastewater Treatment Supt.

Steve Schwabauer, Interim City Attorney

Joel Harris, Purchasing Officer

APPROVED: 
H. Dixon Flynn, City Manager

MASTER PROFESSIONAL SERVICES AGREEMENT

Engineering Support Services for the City of Lodi

This Master Professional Services Agreement (hereinafter "Agreement") is made and entered into by and between the City of Lodi, a municipal corporation (hereinafter "CITY") and DJH Engineering, a sole proprietor firm owned by Daniel J. Hinrichs (hereinafter "CONSULTANT")

RECITALS

- A. CONSULTANT services are needed for general engineering support services to perform civil engineering duties for the CITY on an as-needed basis.
- B. After negotiations between CITY and CONSULTANT, the parties have reached an agreement for the performance of services in accordance with the terms set forth in this Agreement. On March 3, 2004, the City Council, by Resolution authorized the City Manager to execute this Agreement with CONSULTANT.

NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. SCOPE OF SERVICES

CONSULTANT shall perform the services described in forthcoming Task Orders made part hereof by reference. The services shall be performed by, or under the direct supervision of, CONSULTANT'S authorized representative:

Daniel J. Hinrichs. CONSULTANT shall not replace its authorized representative, nor shall CONSULTANT replace any of the personnel listed in the specific Task Order, nor shall CONSULTANT use any Subcontractors or subconsultants, without the prior written consent of CITY.

2. TIME OF PERFORMANCE

Time is of the essence in the performance of service under this Agreement and Task Orders and the timing requirements set forth therein shall be strictly adhered to unless otherwise modified in writing in accordance with this agreement. The CONSULTANT is not responsible for delays caused by factors beyond the CONSULTANT'S reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory authority to act in a timely manner, failure of the CITY to furnish timely information or approve or disapprove of the CONSULTANT'S services or work product promptly, or delays caused by faulty performance by the CITY or by Contractors at any level. When such delays beyond the CONSULTANT'S reasonable control occur, the CITY agrees the CONSULTANT is not responsible for damages nor shall the CONSULTANT be deemed to be in default of this Agreement. CONSULTANT shall commence performance, and shall complete required services no later than the dates set forth in each Task Order. CONSULTANT shall submit all requests for extensions of time to CITY in writing no more than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

3. INDEPENDENT CONTRACTOR STATUS

CONSULTANT is an independent contractor and is solely responsible for all acts of its employees, including negligent acts or omissions. CONSULTANT is not City's employee and CONSULTANT shall have no authority, expressed or implied to act on behalf of CITY as an agent, or to bind CITY to any obligation whatsoever, unless CITY provides prior written authorization to CONSULTANT.

4. CONFLICT OF INTEREST

CONSULTANT (including its employees) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement and any Task Orders. In the event that CONSULTANT maintains or acquires such a conflicting interest any contract (including this Agreement) involving CONSULTANT'S conflicting interest may be terminated by CITY.

5. COMPENSATION

- 5.1 For services performed by CONSULTANT in accordance with this Agreement, CITY shall pay CONSULTANT on a time and expenses basis at the billing rate set forth in the Task Orders. CONSULTANT'S billing rates shall cover all costs and expenses of every kind and nature for CONSULTANT'S performance of the specific Task Orders. No work shall be performed by CONSULTANT in excess of the Not-to-Exceed amount without the prior written approval of CITY.
- 5.2 CONSULTANT shall submit monthly invoices to CITY describing the services performed including times, dates, and names of persons performing this service.
- 5.3 Within thirty (30) days after CITY'S receipt of invoice, CITY shall make payment to the CONSULTANT based upon the services described on the invoice and approved by CITY, which approval shall not be unreasonably withheld.
- 5.4 In the event that CONSULTANT'S negligent act, errors, or omissions, or willful misconduct in fact result in damages to the CITY, CONSULTANT shall reimburse the CITY (and CONSULTANT'S payment may be offset) to the extent of the damages incurred as the result of CONSULTANT'S negligent acts, errors, or omissions, or willful misconduct.

6. TERMINATION

CITY may terminate this agreement or any Task Order by giving ten (10) days written notice to CONSULTANT. Upon termination, CONSULTANT shall give CITY all original documents, including preliminary drafts and supporting documents prepared by CONSULTANT. CITY shall pay CONSULTANT for all services satisfactorily performed in accordance with this Agreement and any Task Orders up to the date notice is given.

7. OWNERSHIP OF WORK

All original documents prepared by CONSULTANT under Task Orders are the property of CITY, and shall be given to CITY at the conclusion of CONSULTANT'S services, or upon demand from CITY. The CITY acknowledges that CONSULTANT documents are

instruments of professional service. Nevertheless, the documents prepared under this Agreement and the specific Task Orders shall become the property of the CITY upon completion of the work and payment in full of all monies due to CONSULTANT. The CITY shall not reuse or make any modification to the documents without notification to the CONSULTANT. The CITY agrees, to the fullest extent permitted by law, to indemnify and hold CONSULTANT harmless from any claim, liability or cost (including reasonable attorney's fees and defense costs) arising or allegedly arising out of unauthorized reuse or modification of the documents by any person or entity acquires or obtains the documents from or through the City without the written authorization of CONSULTANT except to the extent that the records are required to be released under the California Public Records Act. In addition, CONSULTANT shall be allowed to release information to its insurance carriers in the event of a claim or when ordered by subpoena.

8. INDEMNIFICATION

CONSULTANT shall indemnify and hold harmless CITY (including its elected officials, officers, and employees) from and against any and all claims for damages, demands, liability, costs and expenses including court costs and attorneys fees to the extent that they arise out of CONSULTANT'S negligent act, error or omission(s) in the performance of services under this Agreement and its task orders.

9. BUSINESS LICENSE

Prior to the commencement of any work under this Agreement, CONSULTANT shall obtain a City of Lodi Business License.

10. INSURANCE

10.1 General CONSULTANT shall, throughout the duration of this Agreement and any Task Orders, maintain insurance to cover CONSULTANT, its agents, representatives, and employees in connection with the performance of services under this Agreement at the minimum levels set forth herein. CONSULTANT shall be entitled to rely on all data, plans, surveys, maps, and other information provided by or on behalf of CITY in performing its services under this Agreement, and such reliance shall, in all events, be considered reasonable.

10.2 Commercial General Liability Coverage shall be maintained in an amount not less than \$2,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage (with coverage at least as broad as ISO form CG 00 01 01 96).

10.3 Automobile Liability Coverage shall be maintained in an amount not less than \$1,000,000 per accident for bodily injury and property damage (with coverage at least as broad as ISO form CA 00 01 07 97 for "any auto").

10.4 Workers Compensation Coverage shall be maintained as required by the State of California.

10.5 Professional Liability Coverage shall be maintained to cover damages that may be the result of negligent acts, errors or omissions in the rendering of professional

services by the CONSULTANT in an amount not less than \$1,000,000 per claims made.

10.6 Endorsements CONSULTANT shall obtain endorsements to the automobile and commercial general liability with the following provisions:

10.6.1 CITY, its elected and appointed boards, commissions, officers, agents and employees shall be named as additional insured.

10.6.2 For any claims related to this Agreement, CONSULTANT'S coverage shall be primary insurance with respect to CITY. Any insurance maintained by CITY shall be excess of the CONSULTANT'S insurance and shall not contribute with it.

10.7 Notice of Cancellation CONSULTANT shall obtain endorsements to all insurance policies by which each insurer is required to provide thirty (30) days prior written notice to CITY should the policy be canceled before the expiration date. For the purpose of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.

10.8 Authorized Insurers All insurance companies providing coverage to CONSULTANT shall be insurance organizations authorized by the Insurance Commission of the State of California to transact the business of insurance in the State of California.

10.9 Insurance Certificate CONSULTANT shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance in a form satisfactory to the City's Risk Manager no later than five (5) days after the execution of this Agreement.

10.10 Substitute Certificates No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, CONSULTANT shall provide a substitute certificate of insurance.

10.11 CONSULTANT'S Obligation Maintenance of insurance by CONSULTANT as specified in this Agreement shall in no way be interpreted as relieving CONSULTANT of any responsibility whatsoever (including indemnity obligations y under this Agreement) and CONSULTANT may carry at its own expense such additional insurance as it deems necessary.

11. ASSIGNMENT AND DELEGATION

This Agreement and any portion thereof shall not be assigned or transferred, nor shall any of CONSULTANT'S duties be delegated, without the written consent of CITY. Any attempt to assign or delegate this Agreement without the written consent of CITY shall be void and of no force and effect. Consent by CITY of one assignment shall not be deemed to be consent to any subsequent assignment.

12. NOTICES

12.1 All notices, demands, or other communications which this agreement contemplates or authorizes shall be in writing and be personally delivered or mailed to the respective party as follows:

To CITY:
Director of Public Works
City of Lodi
221 West Pine Street
Lodi, CA 95240-1910

To CONSULTANT:
Dan Hinrichs, Owner
DJH Engineering
4541 Luneman Road
Placerville, CA 95667

12.2 Communications shall be deemed to have been given and received on the first to occur of (1) actual receipt at the address designated above or (2) three working days following the deposit in the United States Mail of registered or certified mail, sent to the address designated above.

13. MODIFICATIONS

This Agreement or any task orders may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

14. WAIVERS

Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

15. SEVERABILITY

In the event any term of this Agreement is held invalid by a court of competent jurisdiction, the Agreement shall be construed as not containing that term and the remainder of this Agreement shall remain in full force and effect.

16. JURISDICTION AND VENUE

The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement or any task order shall be filed and heard in a court of competent jurisdiction in the County of San Joaquin.

17. ENTIRE AGREEMENT

This Agreement and subsequent task orders comprise the entire integrated understanding between the parties concerning the services to be performed for any project. This Agreement supercedes all prior negotiations, representations or agreements.

18. COMPLIANCE WITH THE LAW

CONSULTANT shall comply with all local, State, and federal laws, whether or not said laws are expressly stated in this Agreement or any task orders.

19. SIGNATURES

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT CITY. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY OF LODI

CONSULTANT

H. Dixon Flynn, City Manager
Date _____

Daniel J. Hinrichs, Owner, DJH Engineering
Date _____

Attest:

Approved as to Form:

Susan Blackston, City Clerk
Date _____

D. Stephen Schwabauer, Interim City Attorney
Date _____

RESOLUTION NO. 2004-35

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A MASTER PROFESSIONAL SERVICES AGREEMENT FOR ENGINEERING SUPPORT SERVICES WITH DJH ENGINEERING FOR THE IRRIGATION SYSTEM AT WHITE SLOUGH WATER POLLUTION CONTROL FACILITY, AND APPROPRIATE FUNDS FOR THE PROJECT

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby authorize the City Manager to execute a master professional services agreement for engineering support services with DJH Engineering, of Placerville, for the irrigation system at White Slough Water Pollution Control Facility, in an amount not to exceed \$25,000.00; and

BE IT FURTHER RESOLVED that funds in the amount of \$25,000.00 be appropriated from the 2003-04 Capital Improvement Budget Wastewater Capital Outlay Funds (172).

Dated: March 3, 2004

I hereby certify that Resolution No. 2004-35 was passed and adopted by the Lodi City Council in a regular meeting held March 3, 2004, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hitchcock, Howard, Land, and Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk