



CITY OF LODI
COUNCIL COMMUNICATION

AGENDA TITLE: Adopt resolution authorizing the City Manager to enter into a Professional Services Agreement with Power Engineers, Inc. of Hailey, ID for oil 'Spill Prevention, Control and Countermeasure (SPCC)' evaluation and development of SPCC plans for Henning, Industrial, Killelea and McLane Substations and the service yard; and appropriate funds in the amount not to exceed \$12,000 by a transfer from Distribution System Improvement business to the business unit (EUD)

MEETING DATE: February 16,2005

PREPARED BY Electric Utility Director

RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the Professional Services Agreement with Power Engineers, Inc. of Hailey, ID to perform the SPCC evaluation and to develop substation-specific SPCC plans and appropriate funds for the project from existing budgeted funds in the amount not to exceed \$12,000.

BACKGROUND INFORMATION: On July 17,2002, the Environmental Protection Agency (EPA) amended the Oil Pollution Prevention regulation (40 CFR 112) under the Clean Water Act and included requirements for Spill Prevention, Control, and Countermeasure (SPCC) Plans. The rule requires all facilities with oil-filled equipment to conduct site evaluation, to prepare and implement a plan to prevent any discharge of oil into or upon navigable waters. Oil-filled equipment must meet SPCC requirements to provide appropriate containment and/or diversionary structures for discharged oil from facilities such as electric power generation, transmission, and distribution. Preparation of the SPCC Plan is the responsibility of the facility owner or operator, but it must be certified by a licensed Professional Engineer. EPA requires compliance to the SPCC rules and regulations on February 17,2006 but not later than August 18,2006. For purposes of safeguarding the environment and to formulate plans duly signed by a Professional Engineer, EUD would like Power Engineers, Inc. to conduct the site evaluation and submit site specific plans and procedures for Henning, Industrial, Killelea and McLane Substations and for the service yard at 1331 South Ham Lane, Lodi, CA in accordance with the EPA Spill Prevention, Control and Countermeasure (SPCC) Regulation 40 CFR 112. Site evaluation and the development of SPCC plans will be executed as described in Power Engineers' proposal dated January 28, 2005. We recommend City Council approval to carry out environmental protection.

FUNDING: It is recommended that funding for the SPCC evaluation and plan development services be provided by a transfer of funds (\$12,000) from the Distribution System Improvement business unit to the business unit for this project.

Funding Approval: [Signature] James R. Krueger, Finance Director
[Signature] Alan N. Vallow
Alan N. Vallow, Electric Utility Director

Prepared By: Demy Bucaneg, Sr. Power Engineer

ANV/DB/1st
Attachments
C: City Attorney

APPROVED: [Signature] Blair King, City Manager

**PROFESSIONAL SERVICES AGREEMENT
FOR THE CITY OF LODI
BY POWER ENGINEERS, INC.**

Spill Prevention, Control, and Countermeasures (SPCC) Evaluation & Plans

Power Engineers, Inc. (Power) agrees to enter into a Professional Services Agreement (Agreement) with the City of Lodi to provide Engineering Services to conduct SPCC evaluation and to develop site specific plans on four (4) substations and the service yard owned by the City of Lodi as stipulated in Power's proposal dated January 28, 2005. These facilities include Henning, Industrial, Killelea and McLane Substations and the service yard at 1331 South Ham Lane, Lodi, CA. Power agrees to perform the work and submit all deliverables for a price of \$11,442.00 as shown in the January 28th proposal. Furthermore, the services under this Agreement shall be completed no longer than six (6) weeks following receipt of the Notice to Proceed.

POWER ENGINEERS, INC.
An Idaho Corporation

CITY OF LODI, CALIFORNIA
A California Municipal Corporation

By: _____
John McGrew,
Senior Projects Manager

By: _____
Blair King,
City Manager

Date: _____

Date: _____

Address: 3940 Glenbrook Drive
Hailey, Idaho 83333

Address: 221 W. Pine Street
Lodi, California 95240

Attest:

Susan J. Blackston
City Clerk

Approved as to form:

D. Stephen Schwabauer
City Attorney

City of Lodi

SPCC Evaluations and Plans

Task 0 Project Management

Manage the work and allocate resources as necessary to successfully complete the work. Conduct project accounting and maintain the project record.

Deliverable:

- Project Supervision

Budgeting Assumption:

- Project duration is no longer than six weeks and only one invoice will be produced.

Task 1 Site Visit

Visit four City substations and the service yard at the main office. Verify the existing conditions at each site against site general arrangement drawings. Verify oil filled equipment location and oil volumes. Verify as-built conditions for the oil containment basins or systems if any. Determine receiving waters in the event of an oil spill. Determine oil spill prevention measures needed. Acquire information necessary to prepare a general SPCC Plan for the City and site specific information to include for each of the four stations and the service yard. Acquire the City's existing spill response procedures.

Deliverables:

- Site visits and verification of on-site conditions

Budgeting Assumptions:

- The City has spill response procedures and will provide them to POWER.
- The City will accompany and guide the POWER representative on the site visits.
- The City will provide the general arrangement drawings and drawings for any oil containment systems to POWER in advance of the site visits.

Task 2 SPCC Plan

Prepare a draft general SPCC plan for the City's electrical facilities in accordance with the latest revision to 40CFR 112. Include site specific modules for the four stations and the service yard. Incorporate the spill response procedures provided by the City. Submit the draft to the City for review and comment. Obtain City comment via correspondence or conference call and finalize the SPCC Plan.

Deliverables:

- Draft SPCC Plan for four stations and the service yard.
- Final SPCC Plan for the four stations and the service yard.

Budget Assumptions:

- The City will have one review and comment period.
- No engineering or preparation of construction specifications are included.
- No surveying is included in the budget.
- The City will provide POWER electronic drawings for use in the SPCC Plan.

Budget Estimate

Task	Labor (hr)	Labor (\$)	Expense (\$)	L&E (\$)
0. PM	10	1,054	100	1,154
1. Site Visits	32	3,600	1,700	5,300
2. SPCC Plans	48	4,888	100	4,988
Totals	90	9,542	1,900	11,442

**AGREEMENT FOR THE PROVISION
OF PROFESSIONAL SERVICES**

Engineer: **POWER Engineers, Inc.**
3940 Glenbrook Drive
Hailey, Idaho 83333
(208) 788-3456
(208) 788-2082 (fax)

Client: **City of Lodi Electric**
1331 South Ham Lane
Lodi, CA 95242
(209) 333-6811
(209) 339-0851 (fax)

Project Name: **City of Lodi SPCC Evaluations and Plans**

Project Location: **Lodi, CA**

POWER Project Number:

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AGREEMENT FOR THE PROVISION OF PROFESSIONAL SERVICES

This Agreement for the Provision of Professional Services ("Agreement"), is entered into and effective this 28th day of January 2005, by and between POWER Engineers, Inc. (hereinafter "POWER") with its principal place of business at 3940 Glenbrook Drive, Hailey, Idaho 83333, and City of Lodi (hereinafter "Client") with its principal place of business at 1331 South Ham Lane, Lodi, California 95242

SECTION 1: PERFORMANCE OF SERVICES

1.1 Scope Of Services

- (a) **Project Description.** The project for which the services will be performed is generally described as: City of Lodi SPCC Evaluations and Plans on the City of Lodi substations and as outlined in POWER's Letter Proposal dated January 28, 2005 ("Project").
- (b) **Services.** POWER shall perform the scope of services as outlined in Exhibit "A" ("Task Outline").
- (c) **Location of Project.** The Project is located in the state of California.
- (d) **Contract Documents and Exhibits.** The following Exhibits are attached hereto and incorporated herein by this reference. This Agreement and the Exhibits shall be referred to as the "Contract Documents." In the event of any conflict, inconsistency or ambiguity between or among the Contract Documents, this Agreement shall govern and shall be interpreted in the following order of precedence:
 - i. This Agreement
 - ii. Exhibit "A"– POWER's Letter Proposal, dated January 28, 2005

1.2 Schedule

The Services shall be completed in accordance with the Schedule outlined in Exhibit "A".

1.3 Standard Of Care

POWER represents that it will perform its services in accordance with generally accepted professional practices existing at the time of performance for the locality where the services are performed. NO OTHER REPRESENTATION, EXPRESS OR IMPLIED, IS MADE OR INTENDED BY THE RENDERING OF THE SERVICES PROVIDED.

1.4 Authorization To Perform

POWER represents it is appropriately licensed and registered to perform its Services in the location(s) contemplated by this Agreement.

1.5 Site Observation

If required within the scope of POWER's Services, POWER shall make visits to the site at intervals appropriate to the various stages of construction as POWER deems necessary in order to observe the progress of Contractor(s)' work. POWER shall not, during such visits or as a result of such observations of Contractor(s)' work in progress, supervise, direct or have control over Contractor(s)' work. POWER shall not have any authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s), for safety precautions and programs incident to the work of Contractor(s) or for any failure of Contractor(s) to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor(s) furnishing and performing their Work. Accordingly, POWER can neither guarantee the performance of the construction contracts by Contractor(s) nor assume responsibility for Contractor(s)' failure to furnish and perform their work in accordance with the Contract Documents.

It is understood and agreed that POWER shall have no constructive use or control of Client's site, and therefore shall have no responsibility whatsoever for construction site safety. Such responsibility has been wholly vested in the general contractor.

SECTION 2: CLIENT RESPONSIBILITIES

Client shall timely provide all criteria and information as may be identified by POWER. POWER may use such information, requirements, reports, data, surveys and instructions in performing its Services and is entitled to rely upon the accuracy and completion thereof. Client shall designate a person to act with authority on Client's behalf with respect to all aspects of the project. Client shall examine and respond promptly to POWER's submittals and requests. Client shall give prompt written notice to POWER whenever Client observes or otherwise becomes aware of any defect in the Work.

SECTION 3: COMPENSATION

In consideration for the Services performed by POWER, Client shall pay POWER the compensation as set forth in the Budget in Exhibit "A" hereto ("Contract Price"). Invoices will be submitted by POWER periodically, approximately once a month and are due within thirty (30) calendar days of invoice date. If Client objects to all or any portion of an invoice, Client shall notify POWER within seven (7) calendar days of invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute. All outstanding balances will accrue a finance charge of 1.0% per month for each month the invoice is outstanding.

With the exception of sales tax specifically relating to procurement, POWER shall pay its appropriate taxes, fees or assessments imposed by local, state, or federal government in effect at the time POWER renders its professional services. Any taxes, fees, or assessments enacted by local, state, or federal government subsequent to the date of this Agreement, will be added to amounts due to POWER under this Agreement.

SECTION 4: DELAYS

POWER shall not be responsible for delays caused by factors beyond POWER'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 Client to furnish timely information or approve or disapprove of POWER's Services or work product promptly, or delays caused by faulty performance by the Client or by contractors of any level. When such delays beyond POWER's reasonable control occur, the Client agrees that POWER shall not be responsible for any damages, nor shall POWER be deemed to be in default of this Agreement. In the event of such delay, the Schedule shall be extended for a period of time equal to such delay and POWER shall be compensated for any costs, expenses or damages incurred as a result of such delay.

SECTION 5: CHANGES IN THE SCOPE OF WORK

5.1 Change Orders

- (a) Client, without invalidating this Agreement, may order changes in the scope of work consisting of additions, deletions, or other revisions, POWER's compensation and the design completion date being adjusted accordingly. All such changes in the Project shall be authorized by Change Order, signed by Client and POWER. POWER shall not be required to perform out-of-scope or extra work without its written approval.
- (b) A Change Order is a written order to POWER, signed by the Client (or its authorized agent) and POWER, issued after the execution of this Agreement, authorizing an addition, deletion, or revision in the Services or an adjustment in the Contract Price or the Schedule.
- (c) The increase or decrease in the Contract Price and change in Schedule resulting from a change in the Project shall be determined by mutual agreement.
- (d) If the parties are unable to agree to such change in POWER's Contract Price, POWER, upon receipt of a written order signed by Client, shall promptly proceed with the Services involved. The cost of such additional Services shall then be determined on the basis of the actual time and expense incurred for performing the Services attributed to the change,

charged at the rates set forth in the Schedule of Charges. In such case, POWER shall maintain a separate time and expense accounting for the additional Services. The amount of decrease in the Contract Price resulting from any deletion or change will be the amount of the actual net decrease computed by POWER. When both an increase and decrease occur in any one change order, the change in compensation shall be calculated by adding the increase or subtracting the decrease to arrive at a net change.

5.2 Changed Conditions

POWER's Services and any known conditions are as set forth in the Contract Documents. If conditions differ materially from those set forth in the Contract Documents, then the Contract Price and the Schedule shall be equitably adjusted by Change Order.

5.3 Differing Site Conditions

- (a) POWER's Services are based on certain conditions as set forth in the Contract Documents. POWER shall promptly notify Client of the following unforeseen conditions, hereinafter called "Differing Site Conditions."
 - i. Subsurface or latent physical conditions at the site of the Services differing materially from those indicated, described, or delineated in the Contract Documents; and
 - ii. Physical conditions at the site of the Services of an unusual nature differing materially from those ordinarily encountered and generally expected; and
 - iii. Hazardous or toxic materials.
- (b) Client shall promptly review the Differing Site Conditions to determine the necessity of obtaining additional explorations, tests, or engineering services with respect thereto, and shall advise POWER, in writing, of how the Client wishes to proceed. Such determination by Client shall be made within five (5) business days of notice from POWER of the Differing Site Condition(s). If the Client determines that because of the Differing Site Condition(s) a change in the Services is required, a Change Order shall be issued to reflect and document the consequences of the Differing Site Condition(s).
- (c) In each such case, an adjustment in the Contract Price or an extension of the Schedule, or any combination thereof, shall be granted to POWER to the extent any adjustment or extension is attributable to any such Differing Site Condition(s).

SECTION 6: SUSPENSION AND TERMINATION

6.1 Suspension

In the event the Project is suspended for longer than thirty (30) days, POWER shall have the right to terminate this Agreement.

6.2 Termination For Cause

Either party shall have the right to terminate this Agreement should the other fail to cure any material breach of this Agreement within seven (7) days notice from the non-breaching party.

6.3 Termination For Convenience

Client shall have the right to terminate this Agreement for convenience after providing POWER seven (7) days written notice.

6.4 Termination Compensation

In case of such termination, POWER shall be paid:

- (a) For completed and acceptable Services executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Services;
- (b) For expenses sustained prior to the effective date of termination in performing Services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Services, plus fair and reasonable sums for overhead and profit on such expenses;
- (c) For all claims, costs, losses and damages incurred in settlement of terminated contracts with subcontractors, suppliers and others; and
- (d) For reasonable expenses directly attributable to termination.

SECTION 7: INDEMNIFICATION

POWER agrees, to the fullest extent permitted by law, to indemnify and hold the Client, its officers and employees harmless from any claim, damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by POWER's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its subconsultants or anyone for whom POWER is legally liable. Notwithstanding the above, POWER's obligation to defend, indemnify and hold harmless shall extend only to POWER's percentage of negligence contributing to such claim, damage, loss or expense on a comparative basis of fault and responsibility between POWER and Client. It is the express intent of this indemnity clause that POWER shall not be obligated to indemnify Client for Client's own negligence.

Client agrees, to the fullest extent permitted by law, to indemnify and hold POWER harmless from any claim, damage, liability or cost (including reasonable attorneys' fees and costs of defense) arising in whole or in part and in any manner from the acts or failure to act, omissions, breach or default of Client, or those of its contractors, subcontractors or consultants or anyone for whom the Client is legally liable, and arising from the project that is the subject of this Agreement. In addition, Client agrees to indemnify, defend and hold POWER harmless from or against any claim or allegation that any process, technology, equipment, materials or information provided by Client in connection with this Agreement constitutes an infringement of any U.S. patent, trade secret, trademark, copyright or other proprietary rights of any third party.

The indemnification obligations of POWER provided in this Section shall expire on the fifth year anniversary from the termination or completion of POWER's professional services provided under this Agreement.

SECTION 8: INSURANCE

8.1 Limits

During the performance of the Services under this Agreement, POWER shall maintain the following insurance:

- (a) General Liability insurance with bodily injury and property damage of not less than \$1,000,000 for each occurrence and not less than \$2,000,000 in the aggregate.
- (b) Automobile Liability insurance with bodily injury and property damage limits of not less than \$1,000,000 for each accident.
- (c) Workers' Compensation insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$500,000 for each occurrence.
- (d) Professional Liability insurance with limits of not less than \$1,000,000 annual aggregate.

8.2 Endorsements

Client shall be named as an additional insured on policies (a) and (b) listed above to the extent claims arise from the Services which are performed pursuant to this Agreement. Insurance policies (a) and (b) above shall be endorsed to include the following language: "Insurance as is afforded by the endorsements for additional insureds shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."

8.3 Proof Of Insurance

POWER shall furnish to Client a certificate of insurance evidencing the above concurrently with the execution of this Agreement and including a provision that such insurance shall not be canceled without at least thirty (30) days written notice to Client.

SECTION 9: LIMITATION OF LIABILITY

Client agrees to limit POWER's liability for insurable events arising from POWER's performance to the insurance limits stated in Section 8, above. POWER's liability for non-insurable events including breach of contract or breach of warranty shall not exceed \$100,000.00.

Neither POWER nor Client nor either party's suppliers, agents, officers, and directors shall have any liability to the other party or any other person or entity for any indirect, incidental, special, or consequential damages whatsoever, including but not limited to loss of revenue or profit, loss of use, failure to realize anticipated profits or savings, loss of or damage to data or other commercial or economic loss, even if POWER has been advised of the possibility of such damages, such damages are foreseeable, or of potential claims by a third party.

SECTION 10: INDEPENDENT CONTRACTOR

POWER agrees it shall operate as an independent contractor and will not be an agent, joint venturer, partner or employee of the Client, nor will it be entitled to any employee benefits provided by the Client. POWER shall be responsible for payment of any and all unemployment, social security, withholding, and other payroll taxes for its employees as applicable.

SECTION 11: DOCUMENTS

11.1 Ownership and Reuse of Documents

- (a) The Client acknowledges that POWER's drawings and specifications, including all documents on electronic media, are instruments of service for use solely with respect to this Project and, unless otherwise provided, POWER shall be deemed the author of the drawings and specifications and shall retain all common law, statutory and other reserved rights, including the copyright. The Client shall be permitted to retain copies, including reproducible copies, of the drawings and specifications for the Client's information, reference and use in connection with the Project. The Client agrees to waive any claim against POWER arising from any unauthorized transfer, reuse or modification of the drawings and specifications.
- (b) Electronic files furnished by POWER shall be subject to an acceptance period of thirty (30) days during which the Client agrees to review and/or perform appropriate acceptance tests. POWER shall

correct any discrepancies or errors detected and reported within the acceptance period at no charge to the Client. After the acceptance period, the electronic files shall be deemed to be accepted and POWER shall have no obligation to correct errors or maintain electronic files. The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy documents. In the event of a conflict between the signed or sealed hard-copy documents prepared by POWER and the electronic files, the hard-copy documents shall govern.

- (c) The Client agrees, to the fullest extent permitted by law, to indemnify and hold POWER harmless from any claim, liability or cost (including reasonable attorneys' fees and defense costs) arising or allegedly arising out of any reuse or modification of the documents by the Client or any person or entity that acquires or obtains the documents from or through the Client.

11.2 Documents Supplied by Others

The parties agree that from time to time POWER may need information from Client for the rendering of the Services hereunder and Client agrees to provide POWER such information as is then available. Client recognizes that it is impossible for POWER to assure the sufficiency and accuracy of such information. Accordingly, Client waives any claim against POWER for liability or injury or loss allegedly arising from errors, omissions, or inaccuracies in documents, drawings, plans or data provided to POWER by Client or by other third parties. If any of the work or Services must be redone because of errors in drawings, plans, or data supplied to POWER, then POWER shall be compensated for such extra Services and the Schedule shall be adjusted accordingly.

SECTION 12: CONFIDENTIALITY

It is understood that the parties may supply to each other confidential or proprietary data during the performance of this Agreement. The parties agree to protect such data from disclosure to outside parties, except where access to such data is necessary for the purpose of performing the services hereunder. Such data shall be marked "Confidential" or "Proprietary" or defined as confidential or proprietary in a separate writing. This confidentiality requirement shall not apply to data that is known to the parties prior to the execution of this Agreement or is in the public domain. In the event such data is subpoenaed by court order, or other legal process, the receiving party shall notify the other party within five (5) business days of receipt of such court order or legal process.

SECTION 13: DISPUTE RESOLUTION

13.1 Exclusive Manner of Dispute Resolution

Unless otherwise agreed to by the parties, the sole means and method of resolving disputes shall be by mediation and arbitration as set forth in this Agreement. Any lawsuit filed to adjudicate a claim shall be promptly dismissed by the filing party.

13.2 Mediation

All controversies or claims arising out of or relating to this Agreement or breach thereof, except for claims which have been waived hereunder, shall first be submitted to mediation following the Commercial Mediation Rules published by the American Arbitration Association. Unless the parties agree otherwise, mediation shall be held in Lodi, California. This Agreement to mediate and any other agreement or consent to mediate entered into in accordance with this Agreement shall be specifically enforceable under the prevailing law of any court having jurisdiction.

13.3 Arbitration

In the event mediation proves unsuccessful within sixty (60) days of the appointment of the mediator, then all claims, disputes and other matters in question arising out of, or relating to, this Agreement or the breach thereof shall be decided by arbitration conducted by one (1) neutral arbitrator following the Construction Arbitration Rules published by the American Arbitration Association, unless the parties mutually agree otherwise. This Agreement to arbitrate shall be specifically enforceable. The Arbitrator shall not have the authority to consider or award attorneys' fees, costs or punitive damages as part of the Arbitrator's Award. Unless the parties agree otherwise, arbitration shall be held in Lodi, California. Arbitration shall be final and binding. This Agreement to Arbitrate shall be specifically enforceable under the prevailing law of any court having jurisdiction.

13.4 Notice

Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

13.5 Costs and Fees

The parties shall share equally the costs and fees of the mediator and arbitrator. Each party shall pay its own costs and attorneys' fees incurred in mediation or arbitration.

SECTION 14: MISCELLANEOUS

14.1 Notices

Any notice hereunder shall be deemed served immediately if hand-delivered in writing to an officer or other duly appointed representative of the party to whom the notice is directed. Notices shall also be deemed served five (5) business days after transmittal by United States first class mail, or within two (2) days if by any overnight service(s), to the business address identified below:

For POWER:

John McGrew
3940 Glenbrook Drive
PO Box 1066
Hailey, ID 83333
208-788-3456
208-788-2082 (fax)

For Client:

Demy Bucaneg
City of Lodi Electric Utilities
1331 S. Ham Lane
Lodi, CA 95242
209-333-6811
209-339-0851

14.2 Applicable Law and Venue

This Agreement and all rights, obligations, liabilities, and responsibilities of the parties hereto shall be governed by, construed, and enforced in accordance with the laws and venue of the State of California.

14.3 Subcontractors

At its request, Client shall have the right to pre-approve the subcontracting of any services to be performed under this Agreement, which approval shall not be unreasonably withheld.

14.4 Successors and Assigns

Client and POWER each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns, and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this Agreement. This Agreement shall not be assigned by either party without the other party's express written consent. Provided, however, POWER shall be entitled to subcontract portions of its work to other companies in which POWER has an ownership interest without first obtaining the written consent provided for under this Section.

14.5 Equal Employment Opportunity

POWER and Client expressly agree not to discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, or disability and shall during the performance of this Agreement comply with all applicable Executive Orders and federal regulations.

14.6 Entire Agreement

The terms and conditions herein represent the entire agreement between the parties, and shall not be modified except by written instrument duly executed by both parties.

14.7 Severability

If any provision of this Agreement is held to be in violation of any applicable law rendering such provision void and unenforceable, such provision shall be deemed severed from the Agreement and the remainder of the Agreement shall remain in full force and effect.

14.8 Survival of Obligations

All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

14.9 Counterparts

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same document.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed as of the date first above written.

City of Lodi**By:** _____**Printed:** _____**Title:** _____**POWER Engineers, Inc.****By:** _____**Printed:** _____**Title:** _____

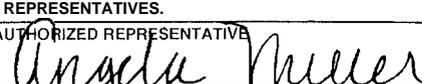
PRODUCER The Hartwell Corporation PO Box 51019 Idaho Falls ID 83405-1019 Phone: 208-522-5656 Fax: 208-524-5721	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED Power En ineers Inc PO Box 1866 Hailey ID 83333-1066	<table border="1" style="width: 100%;"> <tr> <th style="width: 80%;">INSURERS AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A XL Specialty Insurance Co.</td> <td></td> </tr> <tr> <td>INSURER B Transportation Insurance Co.</td> <td></td> </tr> <tr> <td>INSURER C Continental casualty Co</td> <td></td> </tr> <tr> <td>INSURER D</td> <td></td> </tr> <tr> <td>INSURER E</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A XL Specialty Insurance Co.		INSURER B Transportation Insurance Co.		INSURER C Continental casualty Co		INSURER D		INSURER E	
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POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

ISR ADD'L TR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
B X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER POLICY <input checked="" type="checkbox"/> PROJE _{CT} LOC	TCP2066337212	04/01/04	04/01/05	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000
					MED EXP (Any one person) \$ 5,000
					PERSONAL & ADV INJURY \$ 1,000,000
					GENERAL AGGREGATE \$ 2,000,000
					PRODUCTS - COMP/OP AGG 5 2,000,000
C X	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULEDAUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	BUA2066337226	04/01/04	04/01/05	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
					BODILY INJURY (Per person) \$
					BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
					ACC AGG \$
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$
					AGGREGATE \$
					\$
					\$
B B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC2066337257 (MULTISTATE)	04/01/04	04/01/05	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS CTF-ER \$1,000,000
		WC2071953137 (CA ONLY)	04/01/04	04/01/05	E L EACH ACCIDENT \$ 1,000,000
					E L DISEASE-EAEMPLOYEE \$ 1,000,000
					E L DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liab Claims Made Form	DPR9400343	04/01/04	04/01/05	Ea Claim \$1,000,000 Aggregate \$1,000,000

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

Re: Work performed under Written Contract. General & Auto Liability include the City of Lodi, its elected & appointed board, commissions, officers, agents & employees as Additional Insureds per attached forms G-17957-G99 10/01 & CA20480299. General Liability policy is Primary & Non-Contributory, & include Severability of Interest.

CERTIFICATE HOLDER City of Lodi Electric Utility Dept Attn Hans Hansen 133 S Ham Lane Lodi CA 95242-3995	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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RESOLUTION NO. 2005-35

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING
THE CITY MANAGER TO EXECUTE PROFESSIONAL SERVICES
AGREEMENT WITH POWER ENGINEERS, INC., FOR OIL SPILL
PREVENTION, CONTROL AND COUNTERMEASURE (SPCC)
EVALUATION AND DEVELOPMENT OF SPCC PLANS FOR
SUBSTATIONS AND THE SERVICE YARD, AND FURTHER
APPROPRIATE FUNDS

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby authorizes the City Manager to execute professional services agreement with Power Engineers, Inc., of Hailey, ID, for oil Spill Prevention, Control, and Countermeasure (SPCC) evaluation and development of SPCC plans for Henning, Industrial, Killelea, and McLane Substations and the service yard; and

BE IT FURTHER RESOLVED that funds be appropriated in an amount not to exceed \$12,000 by transfer from Distribution System Improvement Business to the Business Unit.

Dated: February 16, 2005

I hereby certify that Resolution No. 2005-35 was passed and adopted by the Lodi City Council in a regular meeting held February 16, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce,
and Mayor Beckman

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk