



# CITY OF LODI

PUBLIC WORKS DEPARTMENT

## COUNCIL COMMUNICATION

TO: City Council  
FROM: City Manager  
MEETING DATE: January 21, 1987  
AGENDA TITLE: Approve Consultant's Agreement for Design of Elevated Water Storage Tank

RECOMMENDED ACTION: That the City Council authorize the City Manager to execute the agreement with Psomas & Associates for the design of the City's water tank.

BACKGROUND INFORMATION: Funds for engineering for this project have been budgeted in the last few Capital Improvement Programs. The City Council recently made the determination on the shape of the new water tank. The enclosed agreement with Psomas & Associates covers the preparation of the plans and specifications, together with other miscellaneous services that are associated with the design of the water tank facility.

The amount of Psomas & Associates' basic services totals \$18,900. In addition to this amount, there will be approximately \$5,000 of other services, i.e., soils investigation, coordination with architects preparing site master plan, etc. There is approximately \$9,500 remaining in the water tank replacement account (18.1-450.23), therefore, we will be forwarding to the City Manager a special allocation request for \$15,000 to cover the completion of this design project. The City will be paying Psomas on a time and material basis up to the maximum amount shown in the agreement.

Attached for the Council's information is a copy of the agreement and engineering services to be performed. The agreement has been reviewed by the City Attorney.

Jack L. Ronsko  
Public Works Director

JLR/ma

Attachment

cc: City Attorney  
Chief Civil Engineer

APPROVED:

  
THOMAS A. PETERSON, City Manager

FILE NO.

CWTANK/TXTW.02M

January 14, 1987

These standard forms of agreement are distributed by:

California Council  
of Civil Engineers  
& Land Surveyors

Form BA-1A © 1973 by California Council of Civil Engineers and Land Surveyors

LOD 01 03

(For Office Use)

STANDARD FORM OF AGREEMENT BETWEEN CLIENT AND CONSULTANT

AGREEMENT entered into at City of Lodi, CA

made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_

City of Lodi  
221 W. Pine St., Lodi, CA 95240

hereinafter called "client," and \_\_\_\_\_

Psomas & Associates - Sacramento  
646 N. Market Blvd., #4, Sacramento, CA 95834

hereinafter called "consultant."  
Client intends to design and construct a 100,000 gallon elevated steel storage tank.

hereinafter called "project."

The present record owner is:

Name: City of Lodi  
Address: 221 West Pine Street  
Lodi, CA 95240

The lender is (if none, state below):

Name: N/A  
Address: \_\_\_\_\_

Client and consultant for mutual consideration hereinafter set forth, agree as follows:

A. Consultant agrees to perform the following services:  
See Attachment A - "Engineering Services for Elevated Storage Tank"

B. Client agrees to compensate consultant for such services as follows:  
\_\_\_\_\_  
\_\_\_\_\_

C. Client has read and understands all the Standard Provisions of Agreement set forth on the reverse hereof and the Exhibits hereto, and agrees all Standard Provisions and Exhibits are a part of this Agreement and are binding on client.

D. Client and consultant agree that the late payment charge provided for in Paragraph 33 of the Standard Provisions of Agreement shall be 1.5% per month (18% per annum).

IN WITNESS WHEREOF, the parties hereto have accepted, made and executed this agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

CONSULTANT: Psomas & Associates - Sacramento

By *Harold L. Weisborn*  
(Signature)

Name Harold L. Weisborn  
(Print)

Title Vice President

APPROVED AS TO FORM: *Ronald M. Stein*  
Ronald M. Stein,

CLIENT:

By \_\_\_\_\_  
(Signature)

Name Thomas A. Peterson  
(Print)

Title City Manager

Attest: Alice M. Reimche,  
City Clerk

6-85 2M

## STANDARD PROVISIONS OF AGREEMENT

Client and consultant agree that the following provisions shall be part of their agreement:

1. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of client and consultant.
2. This agreement shall not be assigned by either client or consultant without the prior written consent of the other.
3. This agreement contains the entire agreement between client and consultant relating to the project and the provision of services to the project. Any prior agreements, promises, negotiations or representations not expressly set forth in this agreement are of no force or effect. Subsequent modifications to this agreement shall be in writing and signed by both client and consultant.
4. Consultant's waiver of any term, condition, or covenant, or breach of any term, condition, or covenant, shall not constitute the waiver of any other term, condition, or covenant, or the breach of any other term, condition, or covenant.
5. If any term, condition, or covenant of this agreement is held by a court of competent jurisdiction to be invalid, void or enforceable, the remaining provisions of this agreement shall be valid and binding on client and consultant.
6. Consultant is not responsible for delay caused by activities or factors beyond consultant's reasonable control, including but not limited to, delays by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of client to furnish timely information or approve or disapprove consultant's work promptly, faulty performance by client or other contractors or governmental agencies. When such delays beyond consultant's reasonable control occur, client agrees consultant is not responsible in damages nor shall consultant be deemed to be in default of this agreement.
7. Consultant shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, and building permits.
- ~~8. Consultant shall only act or advise in all governmental relations.~~
9. In the event that client institutes a suit against consultant, either directly by complaint or by way of cross-complaint including cross-complaint for indemnity, for alleged negligence, error, omission, or other failure to perform, and if client fails to obtain a judgement in client's favor, the lawsuit is dismissed, or if judgement is rendered for consultant, client agrees to pay consultant all costs of defense, including attorney's fees, expert witness fees, court costs, and any and all other expenses of defense. Client agrees such payment shall be made immediately following dismissal of the case or upon entry of judgement.
10. If any action at law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this agreement, the prevailing party shall be entitled to reasonable attorneys' fees, which fees may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which he may be entitled.
11. Client agrees that in the event client institutes litigation to enforce or interpret the provisions of this agreement, such litigation is to be brought and adjudicated in the appropriate court in the county in which consultant's principal place of business is located, and client waives the right to bring, try or remove such litigation to any other county or judicial district.
12. All original papers, documents, drawings and other work product of consultant, and copies thereof, produced by consultant pursuant to this agreement, except documents which are required to be filed with public agencies, shall remain the property of consultant and may be used by consultant without the consent of client.
13. All services provided pursuant to this agreement may be used by client only for the project described on the face hereof.
14. Client and consultant agree to cooperate with each other in every way on the project.
15. Upon written request, client shall execute and deliver, or cause to be executed and delivered, such additional instruments and documents which are necessary to perform the terms of this agreement.
16. This agreement shall not be construed to alter, affect or waive any lien or stop notice rights which consultant may have for the performance of services pursuant to this agreement.
17. If payment for consultant's services is to be made on behalf of client by a third-party lender, client agrees that consultant shall not be required to indemnify the third-party lender, in the form of an endorsement or otherwise, as a condition of receiving payment for services.
18. Consultant makes no representation concerning the estimated quantities and cost figures made in connection with maps, plans, specifications, or drawings other than that all such figures are estimates only and consultant shall not be responsible for fluctuations in cost factors.
19. Consultant does not guarantee the completion or quality of performance of contract or the completion or quality of performance of contracts by the construction contractor or contractors, or other third parties, nor is he responsible for their acts or omissions.
20. Consultant makes no warranty, either express or implied, as to his findings, recommendations, specifications, or professional advice except that the work was performed pursuant to generally accepted standards of practice in effect at the time of performance.
- ~~21. Consultant makes no representations concerning soil conditions unless specifically included in writing in this agreement, and he is not responsible for any liability that may arise out of the failure to make soil surveys, or subsurface soil tests, or general soil testing.~~
- ~~22. Estimates of cost provided under this agreement are not to be considered precise unless consultant specifically agrees to provide the precise determination of such estimates.~~
23. In the event that changes are made in the plans and specifications by client or by any other person other than consultant, which changes affect consultant's work, any and all liability arising out of or resulting from such changes is waived by client against consultant, and client assumes full responsibility and liability for such changes unless client gives consultant prior written notice of such changes and consultant consents in writing to such changes. Client agrees to indemnify consultant against any and all liability, loss, costs, damages, fees of attorneys and other expenses which consultant may sustain or incur as a result of such unconsented changes.
24. Client agrees not to use or permit any other person to use plans, drawings, or other documents prepared by consultant, which plans, drawings, or other documents are not signed by consultant. Client agrees to be liable and responsible for any such use of unsigned plans, drawings, or other documents not signed by consultant and waives liability against consultant for their use.
25. In the event this agreement is terminated before the completion of all services, client agrees to release consultant from all liability for work performed.
26. If the client fails to pay consultant within sixty (60) days after invoices are rendered, client agrees consultant shall have the right to consider such default in payment a material breach of this entire agreement, and upon written notice, the duties, obligations, and responsibilities of consultant under this agreement are terminated. In such event, client shall promptly pay consultant for all fees, charges, and services provided by consultant.
27. Client agrees consultant will not perform on-site construction review, construction management, supervision of construction of engineering structures, or other construction supervision, for this project unless specifically provided for in this agreement, and that such services will be performed by others, and client will defend, indemnify, and hold consultant harmless from any and all liability arising from or resulting from the performance of construction review, construction management, supervision of construction of engineering structures, or other construction supervision by other persons or entities.
28. Client agrees that in accordance with generally accepted construction practices, construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property; that this requirement shall be made to apply continuously and not be limited to normal working hours, and client further agrees to defend, indemnify and hold consultant harmless from any and all liability, real or alleged, in connection with the performance of work on this project, excepting liability arising from the sole negligence of consultant.
29. Client agrees to limit consultant's liability to client and to all contractors and subcontractors on the project, due to professional negligence, acts, errors or omissions of consultant, to the sum of \$50,000 or consultant's fees, whichever is greater.
- ~~30. Client agrees to purchase and maintain, during the course of construction, builders risk "all risk" insurance which will name consultant as an additional insured as their interest may appear.~~
31. All fees and other charges will be billed monthly and shall be due at the time of billing unless otherwise specified in this agreement.
32. Client agrees that the periodic billings from consultant to client are correct, conclusive, and binding on client unless client within ten (10) days from the date of receipt of such billing, notifies consultant in writing of alleged inaccuracies, discrepancies, or errors in the billing.
33. Client agrees to pay a late payment charge which will be computed at the periodic rate specified on the front hereof and will be applied to any unpaid balance commencing sixty (60) days after the date of the original billing.
34. If consultant, pursuant to this agreement, produces plans, specifications, or other documents and/or performs field work, and such plans, specifications, and other documents and/or field work are required by one or more governmental agencies, and one or more such governmental agency changes its ordinances, policies, procedures or requirements after the date of this agreement, any additional office or field work thereby required shall be paid for by client as extra work.
35. In the event of any increase of costs due to the granting of wage increases and/or other employee benefits to field or office employees due to the terms of any labor agreement, or rise in the cost of living, during the lifetime of this agreement, such percentage increase shall be applied to all remaining compensation.
36. Client agrees that if client requests incidental services not specified pursuant to Paragraph A on the front hereof, client agrees to pay for all such incidental services as extra work.
37. In the event that any staking is destroyed, damaged, or disturbed by an act of God or parties other than consultant, the cost of restaking shall be paid for by client as extra work.
38. Client shall pay the costs of checking and inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial topography fees, and all other fees, permits, bond premiums, title company charges, blueprints and reproductions, and all other charges not specifically covered by the terms of this agreement.
39. "Original backup of costs incurred" shall be defined as a copy of consultant's standard computer printout, provided by consultant at the request of client. Additional backup will be provided by consultant at the request of client, for which client agrees to pay an administrative expense of 25% of costs requiring additional backup, and which will be billed as a reimbursable expense.
40. In the event all or any portion of the work prepared or partially prepared by consultant be suspended, abandoned, or terminated, client shall pay consultant for all fees, charges, and services provided for the project, not to exceed any contract limit specified herein.
41. This agreement shall be governed by and construed in accordance with the laws of the State of California.
42. Client agrees that in performing requested ALTA surveys in accordance with this contract, consultant agrees to sign the statement on the survey documents attached hereto as Exhibit 1 and incorporated herein by this reference. In the event that consultant is required to sign a statement or certificate which differs from that contained in Exhibit 1, client hereby agrees to indemnify and hold consultant harmless from any and all liability arising from or resulting from the signing of any statement which differs from the statement contained in Exhibit 1.
43. Client acknowledges and agrees that if consultant provides surveying services, which services result in the requirement to file a Record of Survey in accordance with Business and Professions Code Section 8762, that all of the costs of preparation, examination and filing for the Record of Survey will be paid by client as extra services.

44. See attached Exhibit B.

**PSOMAS**ENGINEERING SERVICES  
FOR  
ELEVATED STORAGE TANK

<u>Scope of Work</u>	<u>Budget</u>
<u>DESIGN</u>	
1. Project Administration	\$800
2. Foundation Design	1,500
3. Site work, piping, valving, distribution system connection, etc.	5,200
4. Electrical and telemetry (coord. with exist) and corrosion system	2,200
5. Specifications	2,100
6. Engineer's Estimate	400
7. Travel and Misc. Expenses	<u>200</u>
Subtotal:	\$12,400
<u>BIDDING</u>	
1. Prepare bid packages (excluding printing)	\$200
2. Assistance during bidding, including pre-bid meeting	700
3. Bid evaluation and recommendation	200
4. Travel and Misc. Expenses	<u>100</u>
Subtotal:	\$1,200

**PSOMAS**

<u>Scope of Work</u>	<u>Budget</u>
<u>CONSTRUCTION</u>	
1. Periodic site visits	\$800
2. Progress meetings (assumed 2)	600
3. Change orders and shop drawings review	2,300
4. Plans and specification interpretation and coordination with inspector	900
5. Final Inspection	450
6. Travel and Misc. Expenses	<u>250</u>
Subtotal:	\$5,300
BASIC SERVICES TOTAL:	<u><u>\$18,900</u></u>
<u>ADDITIONAL SERVICES</u>	
1. Foundation Investigations (soils)	\$3,500
2. Printing (limited distribution)	200
3. Corrosion Testing & Analysis	500
4. Coord. with City on Planning	<u>800</u>
Subtotal:	\$5,000
Inspector \$1,500/week (estimate) (estimate 12 weeks @ 1/2 time)	\$9,000

EXHIBIT B

44. INDEMNIFICATION - The Consultant shall defend, indemnify, and save harmless the City of Lodi, its officers and employees, from and against any and all claims, demands, losses, defenses, costs, or liability of any kind or nature which the City of Lodi, its officers and/or employees, may sustain or incur, or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's actively or passively negligent performance or attempted negligent performance of this agreement, excepting only liability arising out of the willful misconduct or negligence of the City of Lodi, its officers or employees.