



CITY OF COLTON

PUBLIC WORKS & UTILITY SERVICES DEPARTMENT
160 S 10TH STREET, COLTON, CA 92324

**CONTRACT DOCUMENTS & SPECIFICATIONS
FOR:**

CITY OF COLTON MARKETING PROFESSIONAL SERVICES

BID PUBLISHED:	June 1, 2022 and June 15, 2022
BIDS MUST BE RECEIVED BY:	<u>June 30, 2022, 3:00 P.M.</u>
PLACE OF BID RECEIPT:	Sustainability Office 160 South 10th Street Colton, CA 92324
BID OPENING DATE:	June 30, 2022, @ 3:00 P.M.
BID OPENING LOCATION:	Sustainability Office 160 South 10th Street Colton, CA 92324

CITY OF COLTON

PUBLIC WORKS & UTILITY SERVICES DEPARTMENT

CALIFORNIA

CONTRACT DOCUMENTS & SPECIFICATIONS

FOR:

CITY OF COLTON MARKETING PROFESSIONAL SERVICES

Prepared Under the Supervision of:

Brian A. Dickinson

Brian Dickinson, PW & Utility Services Director Date: June 1, 2022

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NOTICE INVITING BIDS

The City of Colton, Public Works & Utility Services Department (“City”) will receive sealed bids for the **CITY OF COLTON MARKETING PROFESSIONAL SERVICES** at the SUSTAINABILITY DIVISION CONFERENCE ROOM (located at 160 South 10th Street, Colton, California, 92324), no later than **THURSDAY, June, 30 2022, 3:00 P.M.**, at which time or thereafter said bids will be opened and read aloud. Bids received after this time will be returned unopened. Bids shall be valid for 60 calendar days after the bid opening date.

Bids must be submitted on the City’s Bid Forms. Bids must be prepared on the approved Bid Forms and in the manner prescribed in the Instructions to Bidders. Bids must be submitted in a sealed envelope, which is plainly marked on the outside with the following: **“ATTN.: SEALED BID, CITY OF COLTON MARKETING PROFESSIONAL SERVICES”**. Electronic bids will not be accepted.

WORK: *The work consists of, but not limited to, professional marketing and webmaster services for various City departments*

For further information, please see the form titled “Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)” within the Bid Documents. The City of Colton hereby affirmatively ensures that minority business enterprises will be afforded full opportunity to submit Bids in response to this Notice, and that minorities nor minority business enterprises will not be discriminated against on the basis of race, color, national origin, ancestry, sex, or religion in any consideration leading to the award of contract.

Bidders may obtain an electronic copy of the Bid Documents online from BidNet, at www.TheNetworkBidSystem.com. Bidders must be registered with BidNet to obtain the documents. Registration is free to vendors.

QUESTIONS: All questions must be submitted by **5:00 P.M, June 13, 2022**, to **Jessica Sutorus** via email: jsutorus@coltonca.gov. **No questions will be received after this time.**

Each bid shall be accompanied by the security referred to in the Contract Documents, the non-collusion affidavit, the list of proposed subcontractors, and all additional documentation required by the Instructions to Bidders.

Award of Contract: The City shall award the Contract for the Project to the lowest responsive, responsible bidder(S) as determined from the bids for each project area listed by the City. The City reserves the right to reject any or all bids, to award multiple bids by project area, or to waive

any irregularities or informalities in any bids or in the bidding process.

For further information contact the following persons;

Jessica Sutorus, Public Works & Utility Services Department, (909) 370-5560 or by E-mail
jsutorus@coltonca.gov

**CITY OF COLTON
DEPARTMENT OF PUBLIC WORKS & UTILITY SERVICES**

INSTRUCTIONS TO BIDDERS

1. AVAILABILITY OF CONTRACT DOCUMENTS

Bids must be submitted to the City on the Bid Forms which are a part of the Bid Package for the Project. Prospective bidders may obtain the Bid and Contract Documents at no cost, online from BidNet, at www.TheNetworkBidSystem.com, as indicated in the Notice Inviting Bids.

2. EXAMINATION OF CONTRACT DOCUMENTS

The City has made copies of the Contract Documents available, as indicated above. Bidders shall be solely responsible for, examining the Project Contract Documents, including any Addenda issued during the bidding period, availability of required insurance, and other factors that could affect the Work. Bidders are responsible for consulting the standards referenced in the Contract. Failure of Bidder to so examine and inform itself shall be at its sole risk.

3. INTERPRETATION OF CONTRACT DOCUMENTS

Specifications of the Scope of Work or other Contract Documents or questions as to their meaning shall be immediately brought to the attention of the City by submission of a written request for an interpretation or correction to the City. Such submission, if any, must be sent to the **Jessica Sutorus** by emailing to jsutorus@coltonca.gov.

Any interpretation of the Contract Documents will be made only by written addenda duly issued and mailed or delivered to each person or firm who has registered for bidnet. The City will not be responsible for any explanations or interpretations provided in any other manner. No person is authorized to make any oral interpretation of any provision in the Contract Documents to any bidder, and no bidder should rely on any such oral interpretation.

Bids shall include complete compensation for all items that are noted in the scope of work.

4. ADDENDA

The City reserves the right to revise the Contract Documents prior to the bid opening date. Revisions, if any, shall be made by written Addenda. All addenda issued by the City shall be included in the bid and made part of the Contract Documents. Pursuant to Public Contract Code Section 4104.5, if the City issues an Addendum which includes material changes to the Project less than 72 hours prior to the deadline for submission of bids, the City will extend the deadline for submission of bids. The City may determine, in its sole discretion, whether an Addendum warrants postponement of the bid submission date. Any and all Addenda will be distributed solely through BidNet. **Please Note: Bidders are responsible for ensuring that they have received any and all Addenda. To this end, each bidder should have an active account with BidNet, and should ensure they have received addenda issued, if any, prior to the bid opening.**

INSTRUCTIONS TO BIDDERS

5. COMPLETION OF BID FORMS

Bids shall only be prepared using copies of the Bid Forms which are included in the Contract Documents. The use of substitute bid forms other than clear and correct photocopies of those provided by the City will not be permitted. Bids shall be executed by an authorized signatory as described in these Instructions to Bidders. In addition, Bidders shall fill in all blank spaces (including inserting “N/A” where applicable) and initial all interlineations, alterations, or erasures to the Bid Forms. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms nor make substitutions thereon. **USE OF BLACK OR BLUE INK, INDELIBLE PENCIL OR A TYPEWRITER IS REQUIRED.** Deviations in the bid form may result in the bid being deemed non-responsive.

6. MODIFICATIONS OF BIDS

Each Bidder shall submit its Bid in strict conformity with the requirements of the Contract Documents. Unauthorized additions, modifications, revisions, conditions, limitations, exclusions or provisions attached to a Bid may render it non-responsive and may cause its rejection. Bidders shall neither delete, modify, nor supplement the printed matter on the Bid Forms, nor make substitutions thereon. Oral, telephonic and electronic modifications will not be considered, unless the Notice Inviting Bids authorizes the submission of electronic bids and modifications thereto and such modifications are made in accordance with the Notice Inviting Bids.

7. DESIGNATION OF SUBCONTRACTORS

Pursuant to the funding regulation, the Bidders must designate the name and location of each subcontractor who will perform work or render services for in the amount of \$500, as well as the portion of work each such subcontractor will perform on the form provided herein by the City. No additional time will be provided to bidders to submit any of the requested information in the Designation of Subcontractor form.

8. LICENSING REQUIREMENTS

Must obtain City of Colton Business License.

9. SIGNING OF BIDS

All Bids submitted shall be executed by the Bidder or its authorized representative. Bidders may be asked to provide evidence in the form of an authenticated resolution of its Board of Directors or a Power of Attorney evidencing the capacity of the person signing the Bid to bind the Bidder to each Bid and to any Contract arising therefrom.

If a Bidder is a joint venture or partnership, it may be asked to submit an authenticated Power of Attorney executed by each joint venturer or partner appointing and designating one of the joint venturers or partners as a management sponsor to execute the Bid on behalf of Bidder. Only that joint venturer or partner shall execute the Bid. The Power of Attorney shall also: (1) authorize that particular joint venturer or partner to act for and bind Bidder in all matters relating to the Bid; and (2) provide that each venturer or partner shall be jointly and severally liable for any and all of the duties and obligations of Bidder assumed under the Bid and under any Contract arising therefrom.

The Bid shall be executed by the designated joint venturer or partner on behalf of the joint venture or partnership in its legal name.

10. SUBMISSION OF SEALED BIDS

Once the Bid and supporting documents have been completed and signed as set forth herein, they shall be placed, along with the Bid Guarantee and other required materials in an envelope, sealed, addressed and delivered or mailed, postage prepaid to the City at the place and to the attention of the person indicated in the Notice Inviting Bids. No oral or telephonic bids will be considered. No forms transmitted via the internet, e-mail, facsimile, or any other electronic means will be considered unless specifically authorized by City as provided herein. The envelope shall also contain the following in the lower left-hand corner thereof:

Bid of _____ **(Bidder's Name)**
for the **CITY OF COLTON MARKETING PROFESSIONAL SERVICES**

Only where expressly permitted in the Notice Inviting Bids, may Bidders submit their bids via electronic transmission pursuant to Public Contract Code Sections 1600 and 1601. The acceptable method(s) of electronic transmission shall be stated in the Notice Inviting Bids. City reserves the right to not accept electronically transmitted bids where not specifically authorized in the Notice Inviting Bids, and may reject any bid not strictly complying with City's designated methods for delivery.

11. DELIVERY AND OPENING OF BIDS

Bids will be received by the City at the address shown in the Notice Inviting Bids up to the date and time shown therein. The City will leave unopened any Bid received after the specified date and time, and any such unopened Bid will be returned to the Bidder. It is the Bidder's sole responsibility to ensure that its Bid is received as specified. Bids may be submitted earlier than the dates(s) and time(s) indicated.

Bids will be opened at the date and time stated in the Notice Inviting Bids, and the amount of each Bid will be read aloud and recorded. All Bidders may, if they desire, attend the opening of Bids. The City may in its sole discretion, elect to postpone the opening of the submitted Bids. City reserves the right to reject any or all Bids and to waive any informality or irregularity in any Bid. In the event of a discrepancy between the written amount of the Bid Price and the numerical amount of the Bid Price, the written amount shall govern.

12. WITHDRAWAL OF BID

Prior to bid opening, a Bid may be withdrawn by the Bidder only by means of a written request signed by the Bidder or its properly authorized representative.

13. BASIS OF AWARD; BALANCED BIDS

The City shall award the Contract to the lowest responsive, responsible Bidder(S) submitting a responsive Bid. The City reserves the right to award Contracts to multiple bidders, based on the

Project Site locations. The City may reject any Bid which, in its opinion when compared to other bids received or to the City's internal estimates, does not accurately reflect the cost to perform the Work. The City may reject as non-responsive any bid which unevenly weights or allocates costs, including but not limited to overhead and profit to one or more particular bid items.

14. **DISQUALIFICATION OF BIDDERS; INTEREST IN MORE THAN ONE BID**

No bidder shall be allowed to make, submit or be interested in more than one bid. However, a person, firm, corporation or other entity that has submitted a subproposal to a bidder, or that has quoted prices of materials to a bidder, is not thereby disqualified from submitting a subproposal or quoting prices to other bidders submitting a bid to the City. No person, firm, corporation, or other entity may submit subproposal to a bidder, or quote prices of materials to a bidder, when also submitting a prime bid on the same Project.

15. **INSURANCE REQUIREMENTS**

The successful bidder shall procure the insurance in the form and in the amount specified in the Contract Documents.

16. **AWARD PROCESS**

Once all Bids are opened and reviewed to determine the lowest responsive and responsible Bidder(s), the City Council may award the contract(s). The apparent successful Bidder(s) should begin to prepare the following documents: (1) the required insurance certificates and endorsements. Once the City notifies the Bidder of the award, the Bidder will have ten (10) consecutive calendar days from the date of this notification to execute the Contract and supply the City with all of the required documents and certifications. Regardless whether the Bidder supplies the required documents and certifications in a timely manner, the Contract time will begin to run ten (10) calendar days from the date of the notification. Once the City receives all of the properly drafted and executed documents and certifications from the Bidder, the City shall issue a Notice to Proceed to that Bidder.

17. **FILING OF BID PROTESTS**

Bidders may file a "protest" of a Bid with the City's **Public Works and Utility Services Director**. In order for a Bidder's protest to be considered valid, the protest must:

- A. Be filed in writing within five (5) calendar days after the bid opening date;
- B. Clearly identify the specific irregularity or accusation;
- C. Clearly identify the specific City staff determination or recommendation being protested;
- D. Specify, in detail, the grounds of the protest and the facts supporting the protest; and
- E. Include all relevant, supporting documentation with the protest at time of filing.

INSTRUCTIONS TO BIDDERS

If the protest does not comply with each of these requirements, it will be rejected as invalid.

If the protest is valid, the City's **Public Works and Utility Services Director**, or other designated City staff member, shall review the basis of the protest and all relevant information. The **Public Works and Utility Services Director** will provide a written decision to the protestor. The protestor may then appeal the decision of the **Public Works and Utility Services Director** to the **City Manager**.

18. **WORKERS COMPENSATION**

Each bidder shall submit the Contractor's Certificate Regarding Workers' Compensation form.

19. **EXECUTION OF CONTRACT**

As required herein the Bidder to whom an award is made shall execute the Contract in the amount determined by the Contract Documents. The City may require appropriate evidence that the persons executing the Contract are duly empowered to do so.

END OF INSTRUCTIONS TO BIDDERS

BID FORM

NAME OF BIDDER: _____

CITY OF COLTON MARKETING PROFESSIONAL SERVICES

Each Proposal will be evaluated by the following criteria:

- Experience providing marketing and webmaster services

Proposals received will first be reviewed for completeness and inclusion of the information specified in the submittal requirements. The absence of required information may result in exclusion from further consideration.

We hereby propose to furnish all labor, materials, transportation, and services, and to discharge all duties and obligations necessary and required to perform and complete the Project for the following BID PRICE:

TOTAL BID PRICE FOR BID \$ _____

The undersigned agrees that this Bid Form constitutes a firm offer to the City which cannot be withdrawn for the number of calendar days indicated in the Notice Inviting Bids from and after the bid opening, or until a Contract for the Work is fully executed by the City and a third party, whichever is earlier.

The Contract duration shall commence on the date stated in the City’s Notice to Proceed, and shall be completed by the consultant in the time specified in the Contract Documents. In no case shall the consultant commence work prior to the date stated in the City’s Notice to Proceed.

Bidder certifies that it holds a business license in in the City of Colton.

The undersigned acknowledges receipt, understanding and full consideration of the following addenda to the Contract Documents.

1. Addenda No. _____ thru _____
2. Attached is the completed Bidder Information Form.
3. Attached is the completed Contractor’s Certificate Regarding Workers’ Compensation form.

I hereby certify under penalty of perjury under the laws of the State of California, that all of the information submitted in connection with this Bid and all of the representations made herein are true and correct.

Name of Bidder _____

Signature _____

Name and Title _____

Dated _____

**CONTRACTOR'S CERTIFICATE REGARDING
WORKERS' COMPENSATION**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract.

Name of Bidder _____

Signature _____

Name _____

Title _____

Dated _____

INFORMATION REQUIRED OF BIDDERS

A. INFORMATION ABOUT BIDDER

[**Indicate not applicable (“N/A”) where appropriate.**]

NOTE: Where Bidder is a joint venture, pages shall be duplicated and information provided for all parties to the joint venture.

1.0 Name of Bidder: _____

2.0 Type, if Entity: _____

3.0 Bidder Address: _____

Facsimile Number

Telephone Number

4.0 How many years has Bidder’s organization been in business as a Consultant?

5.0 How many years has Bidder’s organization been in business under its present name? _____

5.1 Under what other or former names has Bidder’s organization operated?: _____

6.0 If Bidder’s organization is a corporation, answer the following:

6.1 Date of Incorporation: _____

6.2 State of Incorporation: _____

6.3 President’s Name: _____

6.4 Vice-President’s Name(s): _____

6.5 Secretary’s Name: _____

6.6 Treasurer’s Name: _____

INFORMATION REQUIRED OF BIDDERS

7.0 If an individual or a partnership, answer the following:

7.1 Date of Organization: _____

7.2 Name and address of all partners (state whether general or limited partnership):

8.0 If other than a corporation or partnership, describe organization and name principals:

9.0 List other states in which Bidder's organization is legally qualified to do business.

10.0 What type of work does the Bidder normally perform with its own forces?

11.0 Has Bidder ever failed to complete any work awarded to it? If so, note when, where, and why:

12.0 Within the last five years, has any officer or partner of Bidder's organization ever been an officer or partner of another organization when it failed to complete a contract? If so, attach a separate sheet of explanation:

INFORMATION REQUIRED OF BIDDERS

13.0 List References:

B. LIST OF CURRENT MARKETING CONTRACTS (Backlog)

[**Duplicate Page if needed for listing additional current projects.**]

Project	Description of Bidder's Work	Completion Date	Cost of Bidder's Work	Contact Name & Phone

C. EXPERIENCE AND TECHNICAL QUALIFICATIONS QUESTIONNAIRE

Personnel:

The Bidder shall identify the key personnel to be assigned to this project in a management, construction supervision or engineering capacity.

- 1. List each person’s job title, name and percent of time to be allocated to this project:

- 2. Summarize each person’s specialized education:

- 3. List each person’s years of Marketing experience relevant to the project:

- 4. Summarize such experience:

Bidder agrees that personnel named in this Bid will remain on this Project until completion of all relevant Work, unless substituted by personnel of equivalent experience and qualifications approved in advance by the City.

Additional Bidder's Statements:

If the Bidder feels that there is additional information which has not been included in the questionnaire above, and which would contribute to the qualification review, it may add that information in a statement here or on an attached sheet, appropriately marked:

D. VERIFICATION AND EXECUTION

These Bid Forms shall be executed only by a duly authorized official of the Bidder:

I declare under penalty of perjury under the laws of the State of California that the foregoing information is true and correct:

Name of Bidder _____

Signature _____

Name _____

Title _____

Dated _____

Exhibit “A”

Scope of Services

I. OBJECTIVE:

Provide Marketing and Design Services for the Energy Efficiency and Water Conservation Division of the City of Colton

Energy Efficiency Marketing and Brand Management Services

1. Provide strategic marketing and brand management direction focused on community outreach efforts and Overall communication goals.
2. Develop new brand assets as needed that are consistent and cohesive with the existing City of Colton Energy Efficiency Division brand standards.
3. Monitor annual trends and provide ongoing analysis of consumer attitudes and behavior as it pertains to the City of Colton Energy Efficiency Division and their customers.
4. Develop advertising assets and creative campaigns for all new and existing programs and initiatives.
5. Develop presentation materials for both in-house and external presentations.
6. Develop all graphic content for social media.
7. Manage graphic asset and production file library
8. Schedule, facilitate and attend all monthly marketing planning meetings.

Production and Creative Services

1. Create, produce and provide production ready files for (but not limited to) the following*:
 - Printed marketing collateral
 - Outdoor signage or Digital Kiosk
 - Social media content
 - Motion graphic production,
 - Promotional material
 - Video and Photo production
 - Presentation materials and other miscellaneous collateral where applicable.

*May include both English and Spanish translation on any and all of the above mentioned project types.

2. Traffic and coordinate all necessary communications with City of Colton Energy Efficiency Division vendors where applicable. Can include media outlets, printers, technology partners, community partners, social media channels, and other third party vendors as needed.
3. Light to medium copywriting services as it pertains to programmatic and communication goals.

Water Conservation Division Marketing and Brand Management Services

1. Provide strategic marketing and brand management direction focused on community outreach efforts and Overall communication goals.
2. Develop new brand assets as needed that are consistent and cohesive with the existing City of Colton Water Conservation Division brand standards.
3. Monitor annual trends and provide ongoing analysis of consumer attitudes and behavior as it pertains to the City of Colton Water Conservation Division and their customers.
4. Develop advertising assets and creative campaigns for all new and existing programs and initiatives.
5. Develop presentation materials for both in-house and external presentations.
6. Develop all graphic content for social media.
7. Manage graphic asset and production file library
8. Schedule, facilitate and attend all monthly marketing planning meetings.

Production and Creative Services

1. Create, produce and provide production ready files for (but not limited to) the following*:
 - Printed marketing collateral
 - Outdoor signage or Digital Kiosk
 - Social media content
 - Motion graphic production,
 - Promotional material
 - Video and Photo production
 - Presentation materials and other miscellaneous collateral where applicable.

*May include both English and Spanish translation on any and all of the above mentioned project types.

2. Traffic and coordinate all necessary communications with City of Colton Water Conservation Division vendors where applicable. Can include media outlets, printers, technology partners, community partners, social media channels, and other third party vendors as needed.
3. Light to medium copywriting services as it pertains to programmatic and communication goals.

Provide Marketing and Design Services for the Energy Efficiency
Division of the City of Colton

Marketing and Brand Management Services

1. Provide strategic marketing and brand management direction focused on community outreach efforts and Overall communication goals.

2. Develop new brand assets as needed that are consistent and cohesive with the existing City of Colton Water Conservation Division brand standards.
3. Monitor annual trends and provide ongoing analysis of consumer attitudes and behavior as it pertains to the City of Colton Water Conservation Division and their customers.
4. Develop advertising assets and creative campaigns for all new and existing programs and initiatives.
5. Develop presentation materials for both in-house and external presentations.
6. Develop all graphic content for social media.
7. Manage graphic asset and production file library
8. Schedule, facilitate and attend all monthly marketing planning meetings.

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1. Create, produce and provide production ready files for (but not limited to) the following*:
 - Printed marketing collateral
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 - Social media content
 - Motion graphic production,
 - Promotional material
 - Video and Photo production
 - Presentation materials and other miscellaneous collateral where applicable.

*May include both English and Spanish translation on any and all of the above mentioned project types.

2. Traffic and coordinate all necessary communications with City of Colton Water Conservation Division vendors where applicable. Can include media outlets, printers, technology partners, community partners, social media channels, and other third party vendors as needed.
3. Light to medium copywriting services as it pertains to programmatic and communication goals.

Webmaster Services – Maintain and update as needed, the Colton Electric Energy Efficiency website (www.ColtonOnline.com) This includes all departments specified below. All updates would be performed within the Government Websites by *CivicPlus* platform.

This proposal addresses an ongoing need for “webmaster” support that would be provided and scheduled on a regular bi-weekly, monthly or yearly basis (for the period of one year) in conjunction with provided marketing communications or regularly scheduled changes that address formal or legal data that must be kept up to date and in compliance.

List of Divisions under Contract for Web Services:

1. Electric 85% Energy Efficiency updates
2. Water (Water Energy Nexus)
3. Waste water (Water Energy Nexus)
4. Public Works

5. Development Services

Website Updates: The Marketing firm selected will be responsible for both regularly scheduled updates, be on call for emergency updates and proactively make suggestions for integrating current marketing communications into monthly updates as deemed necessary and appropriate. Below is a list of foreseeable updates that would be performed throughout the year.

- a) Monthly and yearly updates to mandatory data reporting or tabular information
- b) Bi-Weekly updates to Planning Commission agenda materials, public notices and building permit activity reports.
- c) Update temporary, seasonal, or urgent community messaging on the homepage
- d) Update each divisional information as needed
- e) Create any necessary or additional online applications or forms (limited to 5 total, one page maximum for the year)
- f) Troubleshoot any technical issues on the front end of the site
- g) Post any requested promotional or educational video to website for each division.

EXHIBIT "B"

SAMPLE PROFESSIONAL SERVICES AGREEMENT

*****MODEL - REMOVE THIS TITLE WHEN USED*****

**CITY OF COLTON
PROFESSIONAL SERVICES AGREEMENT**

1. PARTIES AND DATE.

This Agreement is made and entered into this _____ day of _____, 20____, by and between the City of Colton, a municipal corporation, organized under the laws of the State of California, with its principal place of business at 650 North La Cadena Drive, Colton, California 92324 ("City") and [INSERT NAME OF COMPANY], a [INSERT TYPE OF BUSINESS; I.E., CORPORATION (INCLUDE STATE OF INCORPORATION), LIMITED LIABILITY COMPANY, SOLE PROPRIETORSHIP, ETC.], with its principal place of business at [INSERT ADDRESS] ("Consultant"). City and Consultant are sometimes individually referred to herein as "Party" and collectively as "Parties."

2. RECITALS.

2.1 Consultant.

Consultant desires to perform and assume responsibility for the provision of certain professional consulting services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing [***INSERT TYPE***] services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.2 Project: Colton Utility Authority.

City desires to engage Consultant to render such professional [***INSERT TYPE***] consulting services for the [***INSERT NAME OF PROJECT, AND CONTRACT NUMBER, IF APPLICABLE***] project ("Project") as set forth in this Agreement. [***INCLUDE THE FOLLOWING 2 SENTENCES ONLY IF AGREEMENT INVOLVES WATER OR WASTEWATER UTILITIES – DELETE OTHERWISE; ALSO DELETE "COLTON UTILITY AUTHORITY FROM TITLE OF RECITAL ***] Consultant understands that the City has entered into a Utility System Management Agreement, dated as of September 1, 2000, with the Colton Utility Authority ("CUA") for the maintenance, management and operation of its Water Enterprise and Wastewater Enterprise ("CUA Management Agreement"). To the extent that this Agreement is deemed to be a "material contract" under the CUA Management Agreement, City enters into this Agreement on behalf of the CUA and subject to the terms of the CUA Management Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional *****INSERT TYPE***** consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations. *****INSERT IF FEDERAL FUNDS WILL BE USED; OTHERWISE ALWAYS DELETE: Additionally, Consultant shall comply with all Federal requirements applicable to the Services as set forth in Exhibit "A-I."*****

3.1.2 Term. The term of this Agreement shall be from *****INSERT DATE***** to *****INSERT DATE*****, unless earlier terminated as provided herein. *****INSERT THE FOLLOWING SENTENCE FOR MULTI-YEAR, AUTOMATIC RENEWAL NOT TO EXCEED THREE CONSECUTIVE YEARS; OTHERWISE, ALWAYS DELETE: The City shall have the unilateral option, at its sole discretion, to renew this Agreement automatically for no more than [INSERT NUMBER] additional one-year terms.***** Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Services.

3.2 Responsibilities of Consultant.

3.2.1 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Neither City, nor any of its officials, officers, directors, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents, except as set forth in this Agreement. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, City shall respond to Consultant's submittals in a timely manner. Upon request of City, Consultant shall

provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: *****INSERT NAME AND TITLE*****.

3.2.5 City's Representative. The City hereby designates *****INSERT NAME AND TITLE*****, or his/her designee, to act as its representative in all matters pertaining to the administration and performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for review and approval of all products submitted by Consultant but not the authority to enlarge the Scope of Work or change the total compensation due to Consultant under this Agreement. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change the Consultant's total compensation subject to the provisions contained in Section 3.3 of this Agreement. Consultant shall not accept direction or orders from any person other than the City Manager, City's Representative or his/her designee.

3.2.6 Consultant's Representative. Consultant hereby designates *****INSERT NAME AND TITLE*****, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences, and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subconsultants shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subconsultants have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services,

and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Period of Performance *****DELETE "and Liquidated Damages" IF NO LDS INCLUDED** and Liquidated Damages. Consultant shall perform and complete all Services under this Agreement within the term set forth in Section 3.1.2 above ("Performance Time"). Consultant shall also perform the Services in strict accordance with any completion schedule or Project milestones described in Exhibits "A" or "B" attached hereto, or which may be separately agreed upon in writing by the City and Consultant ("Performance Milestones"). Consultant agrees that if the Services are not completed within the aforementioned Performance Time and/or pursuant to any such Project Milestones developed pursuant to provisions of this Agreement, it is understood, acknowledged and agreed that the City will suffer damage. *****INCLUDE THE FOLLOWING SENTENCE ONLY IF YOU'RE INCLUDING LD'S – DELETE OTHERWISE – DON'T SIMPLY INSERT \$0***** Pursuant to Government Code Section 53069.85, Consultant shall pay to the City as fixed and liquidated damages the sum of *****INSERT WRITTEN DOLLAR AMOUNT*** Dollars (\$***INSERT NUMERICAL DOLLAR AMOUNT***)** per day for each and every calendar day of delay beyond the Performance Time or beyond any Project Milestones established pursuant to this Agreement.

3.2.10 Laws and Regulations; Employee/Labor Certification. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If Consultant performs any work knowing it to be contrary to such laws, rules and regulations, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees, agents, and volunteers free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10.1 Employment Eligibility; Consultant. By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Such requirements and restrictions include, but are not limited to, examination and retention of documentation confirming the identity and immigration status of each employee of the Consultant. Consultant also verifies that it has not committed a violation of any such law within the five (5) years immediately preceding the date of execution of this Agreement, and shall not violate any such law at any time during the term of the Agreement. Consultant shall avoid any violation of any such law during the term of this Agreement by participating in an electronic verification of work authorization program operated by the United States Department of Homeland Security, by

participating in an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, or by some other legally acceptable method. Consultant shall maintain records of each such verification, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Consultant's compliance with the requirements provided for in Section 3.2.10 or any of its sub-sections.

3.2.10.2 Employment Eligibility; Subcontractors, Consultants, Sub-subcontractors and Subconsultants. To the same extent and under the same conditions as Consultant, Consultant shall require all of its subcontractors, consultants, sub-subcontractors and subconsultants performing any work relating to the Project or this Agreement to make the same verifications and comply with all requirements and restrictions provided for in Section 3.2.10.1.

3.2.10.3 Employment Eligibility; Failure to Comply. Each person executing this Agreement on behalf of Consultant verifies that they are a duly authorized officer of Consultant, and understands that any of the following shall be grounds for the City to terminate the Agreement for cause: (1) failure of Consultant or its subcontractors, consultants, sub-subcontractors or subconsultants to meet any of the requirements provided for in Sections 3.2.10.1 or 3.2.10.2; (2) any misrepresentation or material omission concerning compliance with such requirements (including in those verifications provided to the Consultant under Section 3.2.10.2); or (3) failure to immediately remove from the Project any person found not to be in compliance with such requirements.

3.2.10.4 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.2.10.5 Air Quality. To the extent applicable, Consultant must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD) and/or California Air Resources Board (CARB). Although the SCAQMD and CARB limits and requirements are more broad, Consultant shall specifically be aware of their application to "portable equipment", which definition is considered by SCAQMD and CARB to include any item of equipment with a fuel-powered engine. Consultant shall indemnify City against any fines or penalties imposed by SCAQMD, CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Consultant, its sub-consultants, or others for whom Consultant is responsible under its indemnity obligations provided for in this Agreement.

3.2.10.6 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate

to the nature of the work and the conditions under which the work is to be performed. Safety precautions, where applicable, shall include, but shall not be limited to: (A) adequate life protection and lifesaving equipment and procedures; (B) instructions in accident prevention for all employees and subconsultants, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

USE*** 3.2.11 Insurance. *****CITY RISK MANAGER TO REVIEW PRIOR TO EACH**

Time for Compliance. Consultant shall not commence Work under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this Section. In addition, Consultant shall not allow any subconsultant to commence work on any subcontract until it has provided evidence satisfactory to the City that the subconsultant has secured all insurance required under this Section.

3.2.11.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subconsultants. Consultant shall also require all of its subconsultants to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. The policy shall not contain any exclusion contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for (1) contractual liability (including but not limited to ISO CG 24 26 or 21 29); or (2) cross liability for claims or suits by one insured against another.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: *****INSERT AMOUNT - TYPICALLY \$1,000,000 MINIMUM; HOWEVER, AMOUNT OF INSURANCE REQUIRED DEPENDS UPON NATURE OF CONTRACT AND RISK TO CITY. PLEASE CONTACT RISK MANAGEMENT TO CONFIRM AMOUNT***** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used including, but not limited to, form CG 2503, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: *****INSERT AMOUNT - TYPICALLY \$1,000,000 MINIMUM; HOWEVER, AMOUNT OF INSURANCE REQUIRED DEPENDS**

UPON NATURE OF CONTRACT AND RISK TO CITY. PLEASE CONTACT RISK MANAGEMENT TO CONFIRM AMOUNT***] per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of [***INSERT AMOUNT - TYPICALLY \$1,000,000 MINIMUM; HOWEVER, AMOUNT OF INSURANCE REQUIRED DEPENDS UPON NATURE OF CONTRACT AND RISK TO CITY. PLEASE CONTACT RISK MANAGEMENT TO CONFIRM AMOUNT***] per accident for bodily injury or disease. Defense costs shall be paid in addition to the limits.

(C) Notices; Cancellation or Reduction of Coverage. At least fifteen (15) days prior to the expiration of any such policy, evidence showing that such insurance coverage has been renewed or extended shall be filed with the City. If such coverage is cancelled or materially reduced, Consultant shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the City evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, the City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by the City will be promptly reimbursed by Consultant or the City may withhold amounts sufficient to pay premium from Consultant payments. In the alternative, the City may suspend or terminate this Agreement.

3.2.11.3 Professional Liability. [***INCLUDE THIS SUBSECTION ONLY IF APPLICABLE; DELETE OTHERWISE***] Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than [***INSERT AMOUNT - TYPICALLY \$1,000,000 MINIMUM; HOWEVER, AMOUNT OF INSURANCE REQUIRED DEPENDS UPON NATURE OF CONTRACT AND RISK TO CITY. PLEASE CONTACT RISK MANAGEMENT TO CONFIRM AMOUNT***] per claim, and shall be endorsed to include contractual liability. Defense costs shall be paid in addition to the limits.

3.2.11.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall include or be endorsed (amended) to state that: (1) using ISO CG forms 20 10 and 20 37, or endorsements providing the exact same coverage, the City of Colton, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insured with respect to the Services or ongoing and completed operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) using ISO form 20 01, or endorsements providing the exact same coverage, the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any excess insurance shall contain a provision that such coverage shall also

apply on a primary and noncontributory basis for the benefit of the City, before the City's own primary insurance or self-insurance shall be called upon to protect it as a named insured. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.4(A).

(B) Automobile Liability. The automobile liability policy shall include or be endorsed (amended) to state that: (1) the City, its directors, officials, officers, employees, agents, and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents, and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents, and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way. Notwithstanding the minimum limits set forth in Section 3.2.11.2(B), any available insurance proceeds in excess of the specified minimum limits of coverage shall be available to the parties required to be named as additional insureds pursuant to this Section 3.2.11.4(B).

(C) Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents, and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days (10 days for nonpayment of premium) prior written notice by certified mail, return receipt requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents, and volunteers. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officials, officers, employees, agents and volunteers, or any other additional insureds.

3.2.11.5 Separation of Insureds; No Special Limitations; Waiver of Subrogation. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents, and volunteers. All policies shall waive any right of subrogation of the insurer against the City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications

to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City, its officials, officers, employees, agents, and volunteers, or any other additional insureds, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

3.2.11.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents, and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

3.2.11.7 Subconsultant Insurance Requirements. Consultant shall not allow any subconsultants to commence work on any subcontract relating to the work under the Agreement until they have provided evidence satisfactory to the City that they have secured all insurance required under this Section. If requested by Consultant, the City may approve different scopes or minimum limits of insurance for particular subconsultants. The Consultant and the City shall be named as additional insureds on all subconsultants' policies of Commercial General Liability using ISO form 20 38, or coverage at least as broad.

3.2.11.8 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the City.

3.2.11.9 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11.10 Reporting of Claims. Consultant shall report to the City, in addition to Consultant's insurer, any and all insurance claims submitted by Consultant in connection with the Services under this Agreement.

3.2.12 Water Quality Management and Compliance.

3.2.12.1 Storm Water Management. Storm, surface, nuisance, or other waters may be encountered at various times during the Services. Consultant hereby acknowledges that it has investigated the risk arising from such waters, and assumes any and all risks and liabilities arising therefrom.

3.2.12.2 Compliance with Water Quality Laws, Ordinances and Regulations. Consultant shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may

impact, or be implicated by the performance of the Services including, without limitation, all applicable provisions of the City's ordinances regulating water quality and storm water; the Federal Water Pollution Control Act (33 U.S.C. § 1251, *et seq.*); the California Porter-Cologne Water Quality Control Act (Water Code § 13000 *et seq.*); and any and all regulations, policies, or permits issued pursuant to any such authority. Consultant must additionally comply with the lawful requirements of the City, and any other municipality, drainage district, or other local agency with jurisdiction over the location where the Services are to be conducted, regulating water quality and storm water discharges.

3.2.12.3 Standard of Care. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the work assigned to them without impacting water quality in violation of the laws, regulations and policies described in Section 3.2.12.2 of this Agreement. Consultant further warrants that it, its employees and subcontractors have or will receive adequate training, as determined by the City, regarding these requirements as they may relate to the Services.

3.2.12.4 Liability for Non-compliance.

(A) Indemnity: Failure to comply with laws, regulations, and ordinances listed in Section 3.2.14.2 of this Agreement is a violation of federal and state law. Notwithstanding any other indemnity contained in this Agreement, Consultant agrees to indemnify and hold harmless the City, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, losses or liabilities of any kind or nature which the City, its officials, officers, agents, employees and authorized volunteers may sustain or incur for noncompliance with the laws, regulations, and ordinances listed above, arising out of or in connection with the Services, except for liability resulting from the sole established negligence, willful misconduct or active negligence of the City, its officials, officers, agents, employees or authorized volunteers.

(B) Defense: City reserves the right to defend any enforcement action or civil action brought against the City for Consultant's failure to comply with any applicable water quality law, regulation, or policy. Consultant hereby agrees to be bound by, and to reimburse the City for the costs associated with, any settlement reached between the City and the relevant enforcement entity.

(C) Damages: City may seek damages from Consultant for delay in completing the Services caused by Consultant's failure to comply with the laws, regulations and policies described in Section 3.2.12.2 of this Agreement, or any other relevant water quality law, regulation, or policy.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation shall not exceed *****INSERT AMOUNT WRITTEN OUT***** (\$*****INSERT NUMBER*****) without written approval of the City Council or City Manager as applicable. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly invoice which indicates work completed and hours of Services rendered by Consultant. The invoice shall describe the amount of Services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. City shall, within 30 days of receiving such invoice, review the invoice and pay all non-disputed and approved charges thereon. If the City disputes any of Consultant's fees, the City shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth therein.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City, or included in Exhibit "C" of this Agreement.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from the City.

3.3.5 Rate Increases. In the event that this Agreement is renewed pursuant to Section 3.1.2, the rate set forth in Exhibit "C" may be adjusted each year at the time of renewal as set forth in Exhibit "C."

3.4 Labor Code Requirements

3.4.1 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Consultant shall therefore comply with such Labor Code sections to the fullest extent required by law. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, agents, and volunteers free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4.2 Registration/DIR Compliance. If the Services are being performed on a public works project of over \$25,000 when the project is for construction, alteration, demolition, installation, or repair work, or a public works project of over \$15,000 when the project is for maintenance work, in addition to the foregoing, then pursuant to Labor Code sections 1725.5 and 1771.1, the Consultant and all subconsultants must be registered with the Department of Industrial Relations ("DIR"). Consultant shall maintain registration for the duration of the project

and require the same of any subconsultants. This project may also be subject to compliance monitoring and enforcement by the DIR. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements, including the submission of payroll records directly to the DIR. Any stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the City. Consultant shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subconsultant.

3.4.3 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5 Accounting Records.

3.5.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.6 General Provisions.

3.6.1 Termination of Agreement.

3.6.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.6.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.6.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.6.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Consultant: [INSERT BUSINESS NAME]
[INSERT STREET ADDRESS]
[INSERT CITY STATE ZIP]
ATTN: [INSERT NAME AND TITLE]

City: City of Colton
650 North La Cadena Drive
Colton, CA 92324
ATTN: [INSERT NAME AND TITLE]

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.6.3 Ownership of Materials and Confidentiality.

3.6.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement ("Documents & Data"). All Documents & Data shall be and remain the property of City, and shall not be used in whole or in substantial part by Consultant on other projects without the City's express written permission. Within thirty (30) days following the completion, suspension, abandonment or termination of this Agreement, Consultant shall provide to City reproducible copies of all Documents & Data, in a form and amount required by City. City reserves the right to select the method of document reproduction and to establish where the reproduction will be accomplished. The reproduction expense shall be borne by City at the actual cost of duplication. In the event of a dispute regarding the amount of compensation to which the Consultant is entitled under the termination provisions of this Agreement, Consultant shall provide all Documents & Data to City upon payment of the undisputed amount. Consultant shall have no right to retain or fail to provide to City any such documents pending resolution of the dispute. In addition, Consultant shall retain copies of all Documents & Data on file for a minimum of fifteen (15) years following completion of the Project, and shall make copies available to City upon the payment of actual reasonable duplication costs. Before destroying the Documents & Data following this retention period, Consultant shall make a reasonable effort to notify City and provide City with the opportunity to obtain the documents.

3.6.3.2 Subconsultants. Consultant shall require all subconsultants to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subconsultant prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no

such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or its subconsultants, or those provided to Consultant by the City.

3.6.3.3 Right to Use. City shall not be limited in any way in its use or reuse of the Documents and Data or any part of them at any time for purposes of this Project or another project, provided that any such use not within the purposes intended by this Agreement or on a project other than this Project without employing the services of Consultant shall be at City's sole risk. If City uses or reuses the Documents & Data on any project other than this Project, it shall remove the Consultant's seal from the Documents & Data and indemnify and hold harmless Consultant and its officers, directors, agents and employees from claims arising out of the negligent use or re-use of the Documents & Data on such other project. Consultant shall be responsible and liable for its Documents & Data, pursuant to the terms of this Agreement, only with respect to the condition of the Documents & Data at the time they are provided to the City upon completion, suspension, abandonment or termination. Consultant shall not be responsible or liable for any revisions to the Documents & Data made by any party other than Consultant, a party for whom the Consultant is legally responsible or liable, or anyone approved by the Consultant.

3.6.3.4 Indemnification. Consultant shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless, pursuant to the indemnification provisions of this Agreement, for any alleged infringement of any patent, copyright, trade secret, trade name, trademark, or any other proprietary right of any person or entity in consequence of the use on the Project by City of the Documents & Data, including any method, process, product, or concept specified or depicted.

3.6.3.5 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.6.3.6 Confidential Information. The City shall refrain from releasing Consultant's proprietary information ("Proprietary Information") unless the City's legal counsel determines that the release of the Proprietary Information is required by the California Public Records Act or other applicable state or federal law, or order of a court of competent jurisdiction, in which case the City shall notify Consultant of its intention to release Proprietary Information. Consultant shall have five (5) working days after receipt of the Release Notice to give City written notice of Consultant's objection to the City's release of Proprietary Information. Consultant shall indemnify, defend and hold harmless the City, and its officers, directors, employees, and agents from and against all liability, loss, cost or expense (including attorney's fees) arising out of a legal action brought to compel the release of Proprietary Information. City shall not release the

Proprietary Information after receipt of the Objection Notice unless either: (1) Consultant fails to fully indemnify, defend (with City's choice of legal counsel), and hold City harmless from any legal action brought to compel such release; and/or (2) a final and non-appealable order by a court of competent jurisdiction requires that City release such information.

3.6.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.6.5 Indemnification.

3.6.5.1 To the fullest extent permitted by law, Consultant shall defend (with counsel of City's choosing), indemnify and hold the City, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subconsultants or agents in connection with the performance of the Consultant's Services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the City, its officials, officers, employees, agents, or volunteers.

3.6.5.2 If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance as a "design professional" (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

3.6.6 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.6.7 Governing Law; Government Code Claim Compliance. This Agreement shall be governed by the laws of the State of California. Venue shall be in San Bernardino County. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City.

3.6.8 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.6.9 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.6.10 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties.

3.6.11 Assignment or Transfer; Colton Utility Authority. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. *****INCLUDE THE FOLLOWING 2 SENTENCES ONLY IF AGREEMENT INVOLVES WATER OR WASTEWATER UTILITIES – DELETE OTHERWISE; ALSO DELETE “COLTON UTILITY AUTHORITY FROM TITLE OF SECTION***]**To the extent that this Agreement is deemed to be a "material contract" under the CUA Management Agreement, Consultant has no right to terminate this Agreement, either with or without cause, based upon the existence or non-existence of the CUA Management Agreement. Therefore, if the CUA Management Agreement expires or terminates for any reason, Consultant shall remain fully obligated to perform under this Agreement on behalf of the CUA or another third party contracted by the CUA for the maintenance, management and operation of the Water Enterprise and/or Wastewater Enterprise.

3.6.12 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subconsultants of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.6.13 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.6.14 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.6.15 No Third-Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.6.16 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.6.17 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subconsultants to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.6.18 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.6.19 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6.20 Federal Provisions. *****INCLUDE THIS SECTION ONLY IF APPLICABLE; DELETE OTHERWISE. IF APPLICABLE, YOU MAY ALSO NEED TO INCLUDE SOME INFORMATION IN THE RFP. CONSULT THE CITY ATTORNEY IF NECESSARY***** When funding for the Services is provided, in whole or in part, by an agency of the federal government, Consultant shall also fully and adequately comply with the provisions included in Exhibit "A-1" (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

3.7 Subcontracting.

3.7.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON NEXT PAGE]

SIGNATURE PAGE TO

PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN THE CITY OF COLTON AND **[**INSERT NAME**]**

CITY OF COLTON

**[*INSERT NAME OF CONSULTANT*]
[*INSERT NAME OF LEGAL ENTITY*]**

By: _____
[INSERT NAME**]
[**INSERT TITLE**]**

By: _____
[INSERT NAME**]
[**INSERT TITLE**]**

Attest:

City Clerk

By: _____
[INSERT NAME**]
[**INSERT TITLE**]**

[INCLUDE FOLLOWING SIGNATURE BLOCK ONLY IF AGREEMENT INVOLVES WATER OR WASTEWATER UTILITIES – DELETE OTHERWISE **]**

Recommended for Approval:

Executive Director
Colton Utility Authority

[NOTE (READ AND DELETE THIS BLOCK BEFORE USING MODEL): SIGNATURE BLOCKS CAN VARY DEPENDING UPON THE CONSULTANT’S TYPE OF LEGAL ENTITY (E.G. CORPORATION; GENERAL PARTNERSHIP; LIMITED PARTNERSHIP; LIMITED LIABILITY PARTNERSHIP OR COMPANY; OR AN INDIVIDUAL). THIS**

MODEL CONTAINS A GENERAL FRAMEWORK WHICH WILL WORK FOR MOST CORPORATIONS, INDIVIDUAL (NON-CORPORATE) PARTNERSHIPS AND INDIVIDUAL SOLE PROPRIETORSHIPS. PLEASE REFER TO THE CITY CLERK'S "SIGNATURE REQUIREMENT" MEMO ON THE CITY OF COLTON INFO WEB FOR COMPLETE INFORMATION***]

SAMPLE

**EXHIBIT "A"
SCOPE OF SERVICES**

[INSERT SCOPE]**

SAMPLE

EXHIBIT "A-I"
FEDERALLY REQUIRED PROVISIONS FOR SERVICES

**[INSERT FEDERALLY REQUIRED PROVISIONS TRIGGERED BY RECEIPT OF
FEDERAL FUNDS FOR THE SERVICES; OTHERWISE
ALWAYS DELETE ENTIRE EXHIBIT "A-I"]**

SAMPLE

**EXHIBIT "B"
SCHEDULE OF SERVICES**

[INSERT SCHEDULE]

SAMPLE

EXHIBIT "C"
COMPENSATION

[INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES]

[INSERT THE FOLLOWING PROVISION IF THE AGREEMENT WILL AUTOMATICALLY RENEW: In the event that this Agreement is renewed pursuant to Section 3.1.2, the rates set forth above may be increased or reduced each year at the time of renewal, but any increase shall not exceed the Consumer Price Index, All Urban Consumers, Los Angeles-Riverside-Orange Counties.]

[INSERT SECTION OF CONTRACT TO BE AMENDED AND NEW WORDING TO REPLACE THE SECTION**]**

SAMPLE

