

# THOUSAND OAKS CITY COUNCIL



## Supplemental Information Packet

*Cynthia M. Rodriguez*

**Agenda Related Items - Meeting of April 2, 2019  
Supplemental Packet Date: April 2, 2019**

**2:30 P.M.**

### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed, typically a minimum of two—one available on the Thursday preceding the City Council meeting and the second on Tuesday at the meeting. The Thursday Supplemental Packet is available for public inspection in the City Clerk Department, 2100 E. Thousand Oaks Boulevard, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). Both the Thursday and Tuesday Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2100 E. Thousand Oaks Boulevard.

### **Americans with Disabilities Act (ADA):**

In compliance with the ADA, if you need special assistance to participate in this meeting or other services in conjunction with this meeting, please contact the City Clerk Department at (805) 449-2151. Assisted listening devices are available at this meeting. Ask City Clerk staff if you desire to use this device. Upon request, the agenda and documents in this agenda packet, can be made available in appropriate alternative formats to persons with a disability. Notification at least 48 hours prior to the meeting or time when services are needed will assist City staff in assuring reasonable arrangements can be made to provide accessibility to the meeting or service.

**TO:** Andrew P. Powers, City Manager  
**FROM:** Jay T. Spurgin, Public Works Director  
**DATE:** April 2, 2019  
**SUBJECT:** Item 7.D Hill Canyon Treatment Plant Secondary Clarifier Coating/  
Concrete Rehabilitation (MI 2532)

This memorandum is to correct the Consultant's name from AECOM, Inc. to AECOM Technical Services, Inc.

2019 APR -2 PM 2: 07  
CITY OF ERK DEPARTMENT  
CITY OF THOUSAND OAKS

TO COUNCIL 4-2-2019  
AGENDA ITEM NO. 7D  
MEETING DATE 4-2-2019

**TO:** Andrew P. Powers, City Manager  
**FROM:** Jay T. Spurgin, Public Works Director  
**DATE:** April 2, 2019  
**SUBJECT: Secondary Clarifier Coating/Concrete Rehabilitation (MI 2532)**

**RECOMMENDATION:**

1. Approve Professional Services Agreement with AECOM Technical Services, Inc. (Los Angeles, CA) in an amount not-to-exceed \$75,000 for preparation of a condition assessment, plans and specifications for rehabilitation of secondary clarifier #2 at the HCTP, plus extra services of \$10,000, with a term ending June 30, 2020.
2. Authorize expenditure in the amount of \$85,000 (\$75,000 agreement, plus extra services of \$10,000) from A/C #624-8250-682-5500 (MI 2532, HCTP Coating/Concrete Rehabilitation)

**FINANCIAL IMPACT:**

**No Additional Funding Requested.** \$680,000 is included in the Adopted FY 2018-19 Wastewater Capital Fund Budget.

**BACKGROUND:**

The Hill Canyon Treatment Plant (HCTP) treats wastewater from the community of Thousand Oaks. Constructed in the 1960s with major improvements over the following decades, the HCTP provides tertiary level wastewater treatment for the community. As part of the treatment processes, HCTP includes two secondary clarifiers as part of the treatment process. The clarifiers are reinforced concrete, open topped circular structures. They are mostly buried and surrounded by hardscape. The bottom of the clarifier is sloped to the center where a central pipe column is located.

The center column supports a catwalk, rotating sweeping arms that travel along the bottom and top of the liquid, and is also the flow inlet pipe to the clarifier and the Return Activated Sludge (RAS) suction pipe (a pipe inside a pipe). The clarifier structures contain certain metallic and plastic (PVC) components, which require analysis for corrosion protection or replacement. This project is focused on rehabilitation of Secondary Clarifier No. 2. Other secondary clarifiers will be

addressed in the future. Secondary Clarifier No. 2 is required to be in service during the rainy season (October through May); the project schedule has been set accordingly.

**DISCUSSION/ANALYSIS:**

As part of the secondary clarifier rehabilitation, it is necessary to retain the services of a professional engineering firm to review the existing condition once the interior is cleaned, perform testing of the structural concrete to determine its integrity along with the internal metallic and plastic components, and provide plans and specifications for any recommended repairs.

In accordance with Government Code section 4526 and Thousand Oaks Municipal Code section 3-10.401, staff solicited a Request for Proposals/Qualifications (RFP/Q) for the HCTP Coating and Concrete Rehabilitation. Unlike the low bid requirements of the Public Contract Code, contracts for professional, management, general or special services should only be awarded to firms or persons who have demonstrated an adequate level of experience, competence, training, credentials, resources, staffing, and other professional qualifications necessary for more than a satisfactory performance of the services solicited. The award of an RFP/Q is based upon a variety of factors that demonstrate best value to the City for the solicited scope of service. The cost of the service may be considered as one of those factors; however, the lowest cost is not the sole factor in deciding who will be awarded the contract.

An RFP/Q was issued in December 2018 and proposals were received in January 2019 from the following two consulting firms:

1. HDR, Inc. – Los Angeles, CA
2. AECOM Technical Services, Inc. – Los Angeles, CA

A team of Public Works engineering and operations staff evaluated the proposals based on the following criteria:

- Project understanding and approach
- Relevant experience (projects of similar size and scope)
- Quality, clarity, responsiveness, and conformance with the terms of the RFP/Q
- Qualifications and availability of key persons working on the project
- Team (subconsultants) qualifications
- Reasonableness of schedule and estimated level of effort dedicated to complete each task.

After careful review and consideration of both firms' qualifications and project team/approach, AECOM Technical Services, Inc. was determined to be the most qualified to best fit the City's needs for this project. Detailed scope of work and consulting fees have been negotiated and finalized with AECOM Technical Services, Inc. Staff recommends approval of the Professional Services Agreement with AECOM Technical Services, Inc. (Attachment #1).

Staff will return to City Council for authorization to bid on the construction of the rehabilitation work in Fall 2019.

**CIP PROJECT PRIORITY** (as outlined in FY 2017-18 and FY 2018-19 CIP Program Budget)

Priority One – Essential projects which address health and safety, legal, and regulatory requirements, as well as City Council's "Top Ten Priorities" projects.

**COUNCIL GOAL COMPLIANCE:**

Meets City Council Goal E:

- E. Provide and enhance essential infrastructure to ensure that the goals and policies of the Thousand Oaks General Plan are carried out and the City retains its role and reputation as a leader in protecting the environment and preserving limited natural resources.

**PREPARED BY:** Nader Heydari, PE, Engineering Division Manager

Attachment:

Attachment #1 – Professional Services Agreement with AECOM Technical Services, Inc.

Project Name: HCTP Secondary Clarifier #2  
Coating & Concrete Rehab (MI 2532)

**AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF THOUSAND OAKS  
AND  
AECOM Technical Services, Inc.**

THIS AGREEMENT is made and entered into this 2nd day of April, 2019, by and between **CITY OF THOUSAND OAKS**, a municipal corporation ("City"), and **AECOM Technical Services, Inc.** ("Consultant").

City and Consultant agree as follows:

**1. RETENTION AS CONSULTANT**

City hereby retains Consultant, and Consultant hereby accepts such engagement, to perform the services described in Section 2. Consultant warrants it has the qualifications, experience, and facilities to properly and timely perform said services.

**2. DESCRIPTION OF SERVICES**

The services to be performed by Consultant are as follows:

Professional services in conjunction with delivering the Hill Canyon Treatment Plant Secondary Clarifier 2 Coating/Concrete Rehabilitation project, including coordination with staff, review and assessment of the Secondary Clarifier No. 2, preparation of a condition assessment report, preparation of construction ready plans and specifications, bid phase services, management of deliverables and schedule milestones, coordination of staff review comments on deliverables, preparation of technical reports and other tasks as identified. Services and deliverables shall generally include development of construction ready plans and specifications and are more particularly set forth in the Scope of Work, attached as Exhibit "A", which is incorporated herein by reference.

**3. COMPENSATION AND PAYMENT**

(a) **Maximum and Rate.** The total compensation payable to Consultant by City for the services under this Agreement **SHALL NOT EXCEED** the sum of \$75,000 (herein "not to exceed amount"), and shall be earned as the work progresses on the following basis:

Hourly at the hourly rates and with reimbursement to Consultant for those expenses set forth in Consultant's Schedule of Fees attached as Exhibit "B", which

is incorporated herein. The rates and expenses set forth in that exhibit shall be binding upon Consultant until December 31, 2019, after which any change in the rates and expenses must be approved in writing by City's Project Manager (City is to be given 60 days-notice of any rate increase request), provided the not to exceed amount is the total compensation due Consultant for all work described under this Agreement.

(b) **Payment.** Consultant shall provide City with written verification of the actual compensation earned, in a form satisfactory to City's Project Manager. Invoices shall be made no more frequently than on a monthly basis, and describe the work performed (including, if applicable, a list of hours worked by personnel classification). All payments shall be made within 30 days after City's approval of the invoice.

(c) **Extra Services.** Additional work not reasonably encompassed by the Scope of Services described in Section 2 may be agreed upon only by execution of a written Amendment to this Agreement. No liability or right to compensation for extra services shall exist without such Amendment. Unless otherwise stated in the Amendment, applicable rates for extra services shall be at the rates set forth in Exhibit "B".

#### **4. CITY PROJECT MANAGER**

The services to be performed by Consultant shall be accomplished under the general direction of, and coordinate with, City's "Project Manager", as that staff person is designated by City from time to time, and who presently is Nader Heydari.

#### **5. TERM, PROGRESS AND COMPLETION**

The term of this Agreement is from the date first written above to June 30, 2020, unless term of this Agreement is extended or the Agreement is terminated as provided for herein.

Consultant shall not commence work on the services to be performed under the Agreement until (i) Consultant furnishes proof of insurance as required by paragraph 9 below, and (ii) City's Project Manager gives written authorization to proceed with the work. All services shall be completed within the term of this Agreement.

#### **6. OWNERSHIP OF DOCUMENTS**

All drawings, designs, data, photographs, reports and other documentation (other than Consultant's drafts, notes and internal memorandum), including duplication of same prepared by Consultant in the performance of these services, are the property of City. City shall be entitled to immediate possession of the same

upon completion of the work under this Agreement, or at any earlier or later time when requested by City. City agrees to hold Consultant harmless from all damages, claims, expenses, and losses arising out of any reuse of the plans, specifications, graphics, brochures, reports, and other documentation for purposes other than those described in this Agreement, unless written authorization of Consultant is first obtained.

## **7. PERSONAL SERVICES/NO ASSIGNMENT/SUBCONTRACTS**

This Agreement is for professional services, which are personal to City. William Black is deemed to be especially experienced and is a key member of Consultant's firm, and shall be directly involved in performing, supervising or assisting in the performance of this work. This key person shall communicate with, and periodically report to, City on the progress of the work. Should said individual be removed from assisting in this contracted work for any reason, City may terminate this Agreement.

This Agreement is not assignable by Consultant without City's prior written consent.

The following portions of the work described in this Agreement may be subcontracted out to other parties by Consultant: None.

## **8. HOLD HARMLESS AND INDEMNITY**

**(a) Hold Harmless for Consultant's Damages.** Consultant holds City, its elected officials, officers, agents, employees and volunteers, harmless from all of Consultant's claims, demands, lawsuits, judgments, damages, losses, injuries or liability to Consultant, to Consultant's employees, to Consultant's contractors or subcontractors, or to the owners of Consultant's firm, which damages, losses, injuries or liability occur during the work or services required under this Agreement, or performance of any activity or work required under this Agreement.

**(b) Defense and Indemnity of Third Party Claims/Liability.** To the maximum extent allowed by law, Consultant shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability including, but not limited to, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of City. Should conflict of interest principles preclude a single legal counsel from representing both City and Consultant, or should City otherwise find Consultant's legal counsel

unacceptable, then Consultant shall reimburse City its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay City any final judgment rendered against City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of Consultant's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Consultant's obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Consultant shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of the Consultant will be for that entire portion or percentage of liability not attributable to the active negligence of City.

**(c) Nonwaiver.** City does not waive, nor shall be deemed to have waived, any indemnity, defense or hold harmless rights under this section because of the acceptance by City, or the deposit with City, of any insurance certificates or policies described in Section 9.

## **9. MINIMUM SCOPE AND LIMIT OF INSURANCE**

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, and any extension thereof, policies of insurance of the type and amounts described below and in a form that is satisfactory to the City.

Coverage shall be at least as broad as:

**(a). Commercial General Liability (CGL):** Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry General Liability insurance coverage at least as broad as Insurance Services form CG 00 01 in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate for bodily injury, personal and advertising injury and property damage, including without limitation, blanket contractual liability.

(b). **Automobile Liability:** Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry Automobile Liability insurance coverage at least as broad as Insurance Services form CA 00 01 or the exact equivalent covering bodily injury and property damage for all activities of Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage of any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

(c). **Worker's Compensation:** Consultant shall, at Consultant's sole cost and expense and throughout the term of this Agreement, and any extensions thereof, carry workers' compensation statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident for bodily injury or disease. Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees and volunteers for all work performed by Consultant, its employees, agents and subcontractors.

(d). **Professional Errors and Omissions Insurance:** Consultant shall, at Consultant's sole cost and expense throughout the term of this Agreement, and any extensions thereof, carry professional errors and omissions coverage of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate, with tail coverage for an extended reporting period of three (3) years.

If Consultant maintains higher limits than the minimum shown above, City requires and shall be entitled to coverage for the higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### Additional Insured Status

City, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 10 01 and CG 20 37 10 01 if a later edition is used). The provision shall also apply to any excess liability policies. In addition, Consultant shall ensure that the automobile liability policy contains a provision

covering City as an additional insured, and shall obtain an endorsement to that effect if it does not.

#### Excess Insurance

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Umbrella or excess policies shall provide coverage at least as broad as specified for underlying coverages and covering those insured in the underlying policies. Coverage shall be "pay on behalf" with defense costs payable in addition to policy limits. There shall be no cross liability exclusion of claims or suits by one insured against the other. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City as required in written contract or agreement before City's own insurance or self-insurance shall be called upon to protect it as a named insured.

#### City's Rights of Enforcement

In the event any policy of insurance required under this Agreement does not comply with these specifications or is cancelled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Consultant, or City will withhold amounts sufficient to pay premium from Consultant's payments. In the alternative, City may cancel this Agreement.

#### City's Right to Revise Specifications

City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.

#### Primary and Non-Contributory Coverage

For any claims related to this Agreement, Consultant's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees or volunteers shall be excess of Consultant's insurance and shall not contribute with it and shall be at least as broad as CG 20 01 04 13.

#### Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by City. City may require Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

### Acceptability of Insurers

All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of California, with a current A.M. Best's rating of no less than A:VII, (unless otherwise acceptable to the City).

### Waiver of Subrogation

All insurance coverage maintained or procured pursuant to this Agreement shall be endorsed to waive subrogation against City, its officers, officials, employees or volunteers 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 his own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors. Copies of these waivers shall be submitted to City prior to commencement of work.

### Claims Made Policies

If any of the required policies provided coverage on a claims-made basis:

- (a). The Retroactive Date must be shown and must be before the date of the Agreement or the beginning of contract work.
- (b). Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work required under this Agreement.
- (c). If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Agreement effective date, Consultant must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Agreement work.

### Verification of Coverage

Consultant shall provide City with copies of certificates (on City certificate form or an Accord form as modified per City direction) for all policies, with the appropriate

named additional insured coverage and an endorsement that they are not subject to cancellation without 30 days prior written notice to City. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Consultant's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### Subcontractors

Consultant shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Consultant shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

## **10. RELATION OF THE PARTIES**

The relationship of the parties to this Agreement shall be that of independent contractors and in no event shall Consultant be considered an officer, agent, servant or employee of City. Consultant shall be solely responsible for any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the described work.

## **11. CORRECTIONS**

In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work that may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by City, and the cost thereof shall be charged to Consultant or withheld from any funds due to Consultant hereunder.

## **12. TERMINATION BY CITY**

City may, upon 30 calendar days written notice, terminate without cause any portion or all of the services agreed to be performed under this Agreement. If termination is for cause, no advance notice need be given. In the event of termination, Consultant shall have the right and obligation to immediately assemble work in progress for the purpose of closing out the job. All compensation for actual work performed and charges outstanding at the time of termination shall be payable by City to Consultant within 30 days following submission of a final statement by Consultant unless termination is for cause. In such event, Consultant shall be compensated only to the extent required by law.

### **13. ACCEPTANCE OF FINAL PAYMENT CONSTITUTES RELEASE**

The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished, or relating to Consultant's work or services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within 10 calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors, agents and consultants for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors, agents and consultants.

### **14. AUDIT OF RECORDS**

Consultant shall maintain, in accordance with generally accepted accounting principles, complete and accurate records of all activities and operations relating to this Agreement. Records, including but not limited to, timecards, employment records, work progress reports, reimbursements, invoices, project records, proprietary data and information, as well as licensed software and any electronic records shall be kept for a period of four years beyond the termination of this Agreement. Consultant agrees that City, or its authorized representative, shall have the right to examine, audit, excerpt, copy or transcribe any of the records pertaining to this Agreement at any time during normal business hours. Consultant shall reimburse City for all reasonable costs of the audit, including travel time and auditor costs, should such audit reveal an overcharge of five (5) percent or more. Any overcharge will be considered a breach of this Agreement and could be cause for termination. The obligations of this section shall be explicitly included in any subcontracts or other agreements entered into by Consultant with respect to this Agreement.

### **15. WAIVER; REMEDIES CUMULATIVE**

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand strict compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available

to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

**16. CONFLICT OF INTEREST**

Consultant is unaware of any City employee or official that has a financial interest in Consultant's business. During the term of this Agreement and/or as a result of being awarded this Agreement, Consultant shall not offer, encourage or accept any financial interest in Consultant's business by any City employee or official.

**17. CONSTRUCTION OF LANGUAGE OF AGREEMENT**

The provisions of this Agreement shall be construed as a whole according to its common meaning of purpose of providing a public benefit and not strictly for or against any party. It shall be construed consistent with the provisions hereof, in order to achieve the objectives and purposes of the parties. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neutral genders or vice versa.

**18. MITIGATION OF DAMAGES**

In all situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**19. GOVERNING LAW**

This Agreement, and the rights and obligations of the parties, shall be governed and interpreted in accordance with the laws of the State of California. Should litigation occur, venue shall be in Superior Court of Ventura County.

**20. TAXPAYER IDENTIFICATION NUMBER**

Consultant shall provide City with a complete Request for Taxpayer Identification Number and Certification, Form W-9 (Rev. 12-87), as issued by the Internal Revenue Service.

**21. NON-APPROPRIATION OF FUNDS**

Payments due and payable to Consultant for current services are within the current budget and within an available, unexhausted and unencumbered appropriation of City funds. In the event City has not appropriated sufficient funds for payment of Consultant services beyond the current fiscal year, this Agreement shall cover only those costs incurred up to the conclusion of the current fiscal year.

**22. MODIFICATION/AMENDMENT OF AGREEMENT**

Any amendment, modification, or variation of the terms or tasks of this Agreement shall be in writing and shall be effective only upon the mutual written approval by the City Manager, or his designee, and Consultant.

**23. USE OF THE TERM "CITY"**

Reference to "City" in this Agreement includes City Manager or any authorized representative acting on behalf of City.

**24. PERMITS AND LICENSES**

Consultant, at its sole expense, shall obtain and maintain during the term of this Agreement, all appropriate permits, licenses, and certificates that may be required in connection with the performance of services under this Agreement.

**25. CAPTIONS**

The captions or headings in this Agreement are for convenience only and in no other way define, limit or describe the scope or intent of any provision or section of the Agreement.

**26. AUTHORIZATION**

Each party has expressly authorized the execution of this Agreement on its behalf and bind said party and its respective administrators, officers, directors, shareholders, divisions, subsidiaries, agents, employees, successors, assigns, principals, partners, joint venturers, insurance carriers and any others who may claim through it to this Agreement.

**27. ENTIRE AGREEMENT BETWEEN PARTIES**

Except for Consultant's proposals and submitted representations for obtaining this Agreement, this Agreement supersedes any other agreements, either oral or in writing, between the parties hereto with respect to the rendering of services and contains all of the covenants and agreements between the parties with respect to said services.

**28. PARTIAL INVALIDITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**29. NOTICES**

Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

TO CITY:                   Nader Heydari  
Public Works Department  
City of Thousand Oaks  
2100 Thousand Oaks Boulevard  
Thousand Oaks, CA 91362

TO CONSULTANT: William Black  
AECOM Technical Services, Inc.  
1220 Avenida Acaso  
Camarillo, CA 93012

**In concurrence and witness whereof**, this Agreement has been executed by the parties effective on the date and year first above written.

AECOM Technical Services, Inc.

\_\_\_\_\_  
Glen H. Hille, Vice President

\_\_\_\_\_  
Charles Szurgot, Secretary

CITY OF THOUSAND OAKS

\_\_\_\_\_  
Robert McCoy, Mayor

ATTEST:

\_\_\_\_\_  
Cynthia M. Rodriguez, City Clerk

APPROVED AS TO ADMINISTRATION:

---

Andrew P. Powers, City Manager

APPROVED BY DEPARTMENT HEAD:

---

Jay T. Spurgin, Public Works Director

APPROVED AS TO FORM:  
Office of the City Attorney

---

Felicia Liberman, Assistant City Attorney

## EXHIBIT A

### Scope of Services

CONSULTANT shall provide engineering services to assess the condition of the HCTP Secondary Clarifier #2 and develop plans and specifications for its rehabilitation. Works shall also include engineering assistance during the bid phase, including the inspection of coatings and repairs. CONSULTANT's work shall be coordinated with plant operations.

CONSULTANT shall perform the following Tasks:

#### PHASE I – DESIGN

##### **TASK A: PROJECT MANAGEMENT**

**A-1) Meetings:** CONSULTANT will prepare and conduct meetings according to the City requirements. An agenda followed by minutes and action items will be used. There will be two meetings, one workshop and up to six phone meetings.

**A-2) Kickoff Meeting:** The purpose of the kickoff meeting will be to introduce the team, refine scope, refine schedule, discuss construction budget and establish communications protocol. In advance, CONSULTANT will prepare the agenda and work with the City's project manager to schedule time and place for the meeting. CONSULTANT will also cover schedule and use the meeting as a forum to request documents and set up times for inspection of the clarifier by CONSULTANT staff and by the coating consultant. A tentative schedule by phase and task to be completed is provided under TASK C, (Tentative Schedule.) The meeting will conclude with action items and those responsible for each. Following the meeting, minutes and action items will be prepared and sent to the City's project manager for review. Minutes will be finalized after revisions have been made and maintained in the project file for reference.

**A-3) Workshop:** A workshop will be held after the initial draft of the CAR has been presented and the City has had time for the initial review. The workshop will be presented to the City's project manager, to City Engineering staff and operations personal using visual graphics. At the presentation, the technical lead will be present to answer questions and take direction.

**A-4) Progress meetings (2 assumed):** Two Face-to-face progress meetings will be held during the design phase to discuss schedule, construction budget updates, project challenges and proposed recommendations.

**A-5) Project Management:** CONSULTANT will manage the project according to our internal procedures and as requested by the City of Thousand Oaks. For invoicing, CONSULTANT will follow the process requested by the City of Thousand Oaks. For every deliverable, CONSULTANT will see that they are reviewed for Quality Assurance in accordance with ISO 2001 requirements.

## **TASK B: SITE VISIT AND REVIEW OF DOCUMENTS**

**B-1) Site visits:** CONSULTANT's Project Engineer, Technical Lead, Structural Engineer, and our coating consultant, will perform a site visit to assess existing conditions of equipment and concrete surfaces. CONSULTANT will look at each piece of mechanical equipment; piping and appurtenant facilities to confirm condition and develop recommendations for reconditioning or replacement.

**B-2) Research and Review of City provided record drawings:** As stated above, CONSULTANT will request in advance of the site visit, the record drawings of the facility, the O&M manuals, submittals and other related items. We will use them as reference material through the life of the project.

**B-3) Meet with Wastewater Treatment Staff:** CONSULTANT will meet with wastewater treatment plant staff to discuss the project to receive their input into the CAR.

**B-4) Additional Information to Complete Design Documents:** After initial research, site visits and meeting with Wastewater Treatment Staff and later after beginning the design process, there will be the need for additional site visits and additional requests for information. CONSULTANT will make the requests and do additional site visits as needed.

## **TASK C: CONDITION ASSESSMENT REPORT (CAR) PREPARATION**

### **C-1) Develop a letter form CAR that will include:**

Site reviews/inspections, investigative work (existing records, staff interviewed) – This information will come from Task B above and used to support the basis of design.

Design approach that will include the following:

Concrete repair techniques. Concrete repair techniques could range from a thin coating of high strength material to structural repair that involves material removal, replacing reinforcement bar and placement of deep concrete patches.

Surface Preparation: CONSULTANT will discuss surface preparation such as high pressure water blasting, sand blasting (method approved by the AQMD), detergent cleaning and other techniques appropriate for this project.

Coating: Coating material selection, surface preparation, dry film thickness and weather condition upon application will be discussed.

Metallic component coating products and repairs. Some of the equipment and appurtenances may be in such poor condition that the best solution may well be complete replacement. For the items that are to remain, CONSULTANT will make

recommendations for repair and recoating and will explain reasoning with photographs as necessary. For recoating, CONSULTANT will describe the recommended preparation and coating techniques as well as selection of coating materials.

The Engineers Opinion of Probable Construction Cost (EOPCC) will be included with the recommendations.

**C-2) Draft CAR:** CONSULTANT will prepare a draft CAR for the project, and submit five (5) copies of the draft CAR for review by the City.

**C-3) Meeting:** CONSULTANT will meet with City staff to review the comments of the first draft CAR in the form of a workshop. City staff will have the opportunity to review the draft CAR prior to the presentation as previously discussed under Section A-3. The workshop will be presented with technical experts in attendance to answer questions. Following the workshop, CONSULTANT will provide minutes to the City's project manager and will include ideas that improve and refine the design solution in the final CAR.

**C-4) Final CAR:** CONSULTANT will finalize the CAR incorporating written comments received by the City, oral comments received during the workshop and refinements from our internal review process. The CAR will be stamped, signed and delivered in two hard copies and one electronic copy to the City.

#### **TASK D: CONTRACT DOCUMENTATION AND PREPARATION**

**D-1) 50 percent Deliverable:** CONSULTANT will prepare the 50 percent Deliverable Package for the Secondary Clarifier Rehabilitation. 50 percent plans will be provided in a manner acceptable to the City. These plans will include the overall design intent without all of the callouts, details or sections. The purpose of the 50 percent deliverable is to confirm design requirements.

CONSULTANT will submit one paper and one electronic deliverable to the City Project Manager for Review. Along with this submittal will be an updated EOPCC. The EOPCC is important and may result in some requested revisions by the City.

CONSULTANT will meet with City Staff to review the comments on the deliverable package.

CONSULTANT will coordinate and conduct Project design meetings and prepare meeting agendas and notes as described under A-4 above.

**D-2) 75 percent Deliverable:** CONSULTANT will prepare 75 percent Deliverable Package for the Secondary Clarifier Rehabilitation. The 75 percent package will be provided as full plans, technical specifications and EOPCC for review and comment. The drawing list that we anticipate is provided under Section D.

CONSULTANT will submit one paper and one electronic deliverable to the City Project Manager for Review. Along with this submittal will be an updated EOPCC as previously described.

CONSULTANT will meet with City Staff to review the comments on the deliverable package.

CONSULTANT will coordinate and conduct Project design meetings and prepare meeting agendas and notes as described under A-4 above.

**D-3) Bid Deliverable:** CONSULTANT will prepare the Issued for Bid Deliverable for the Secondary Clarifier Concrete coating Improvements including the following:

Special and technical provisions as described in the RFP.

Design Plan set in pdf and paper formats.

Opinion of Probable Construction Cost in its final form prior to bidding.

**D-4) Bid Phase support:** CONSULTANT assumes the City will advertise the project and CONSULTANT will perform the following bid phase services:

The CONSULTANT project manager will attend and participate in the pre-bid meeting.

CONSULTANT understands that our services will include up to 10 requests for information.

CONSULTANT understands that CONSULTANT will provide up to three addenda.

# Exhibit B

**AECOM Technical Services, Inc.  
(CAMARILLO OFFICE)**

**FEE SCHEDULE FOR PROFESSIONAL SERVICES**

Effective January 1, 2019

**Engineers, Planners, Architects, Scientists:**

Principal	\$235.00 per hour
Specialty Principal Engineer	\$280.00 per hour
Senior Structural Engineer	\$230.00 per hour
Senior II	\$190.00 per hour
Senior I	\$165.00 per hour
Associate	\$140.00 per hour
Assistant	\$120.00 per hour
Construction Observer	\$105.00 per hour

**Technical Support Staff:**

Design/CADD Supervisor	\$150.00 per hour
Senior Designer/Design CADD Operator	\$110.00 per hour
Drafter/CADD Operator	\$100.00 per hour
Clerical/General Office	\$80.00 per hour

**Non Labor Overhead costs for travel, copying and miscellaneous expenses will be billed at 5% of direct labor costs.**

**Sub consultants will be charged at cost + 10% markup.**

**Leaf Dispensary**  
**505 E. Thousand Oaks Blvd.**  
**Thousand Oaks, CA 91360**  
**805-444-2727**

2019 APR -2 PM 2: 06

CITY CLERK DEPARTMENT  
CITY OF THOUSAND OAKS

April 2, 2019

City of Thousand Oaks  
City Council  
2100 E. Thousand Oaks Blvd.  
Thousand Oaks, CA 91362

Attention: Rob McCoy, Mayor	mccoy@toaks.org
Al Adam, Mayor Pro Tem	aadam@toaks.org
Claudia Bill-de la Pena, Councilmember	claudia4slowgrowth@roadrunner.com
Ed Jones, Councilmember	ejones@toaks.org
Bob Engler, Councilmember	bengler@toaks.org
Andrew P. Powers, City Manager	apowers@toaks.org

Reference: City of Thousand Oaks Ordinance No. 1636-NS

Subject: City Council's Obligation to Provide Medical Cannabis Dispensary

Mayor McCoy, Members of the City Council and City Manager Powers

A recent article in the Acorn newspaper (March 28, 2019) discussed the failure of Legendary Organics (hereinafter referred to as "Legendary") to open the sole Medical Cannabis Dispensary to be allowed in the City of Thousand Oaks under the City's Cannabis Ordinance.

To be specific, Legendary made a promise to the City Council (and the citizens of Thousand Oaks) that they would have their Medical Cannabis Dispensary (hereinafter referred to as "the Dispensary") open by end of year, 2018. Yet, now 8 ½ months after they were awarded the sole Permit by the City Council, they have failed to:

1. File their application for a State License with the Bureau of Cannabis Control.
2. Re-submit building plans for their Dispensary to the City for Plan Check.
3. Provide a tentative opening date for their Dispensary.

As the record shows, City Ordinance 1636-NS only allowed for one Dispensary Permit to be awarded at that July, 2018 meeting; and, the Council elected to award to Legendary.

This Acorn article contains quotes of several statements made by Ned Davis, a spokesperson for Legendary; statements which offer up purported reasons which Legendary believes justify their failure to open their Dispensary as promised.

TO COUNCIL 4-2-2019  
AGENDA ITEM NO. 7L  
MEETING DATE 4-2-2019

We are the owners of Leaf Dispensary (hereinafter referred to as "Leaf"). As the record reflects, Leaf was the only other applicant (for the City's sole Dispensary Permit) which the City Council recognized and publicly stated was qualified to operate a Medical Cannabis Dispensary in the City of Thousand Oaks.

After our review of Davis' statements, we believe that Legendary's stated reasons for their delay in opening their Dispensary do not have any merit whatsoever, do not justify the delays to date and most importantly, cannot justify any further delay. As further explanation of our position, we wish to comment on some of the quoted statements made by Ned Davis.

Claim: Legendary Needs to Have Delivery in Order to Open Dispensary

We at Leaf find Legendary's claim of needing to have Delivery Services added to their Dispensary Permit and approved by the City Council prior to opening their Dispensary to be totally without merit.

The City Council must remember and reflect the simple fact that "Delivery" was not a part of the Dispensary operations that were bid upon by Legendary and all other bidders for the sole Dispensary Permit in the City of Thousand Oaks. In fact, Ordinance No. 1636-NS clearly prohibits Delivery operations. As such, Legendary cannot now claim, 8 ½ months after having been awarded the sole Dispensary Permit, that they must now have Delivery included in their Dispensary operations in order to profitably open their retail Dispensary. The Council members should remember that as a part of their application package, Legendary had to submit a business plan that detailed that their Dispensary would be financially sound ... financially sound without Delivery!

The fact that the State has now allowed Cannabis Delivery Services the legal right to deliver Cannabis anywhere in the State does not alter the fact that Legendary made a commitment to the City Council to open their Dispensary without Delivery Services.

Concern About Availability of Cannabis Products is Invalid

Davis stated that "Legendary's owners don't want to move forward without knowing they have a continuous legal supply of cannabis purchased from licensed vendors." He also made reference to the fact that the BCC has issued "temporary licenses" to vendors and that those licenses expire in 120 days.

What Davis fails to mention is the fact that the BCC is issuing extensions to those temporary license holders when their temporary licenses are about to expire. And, there is no limit on how many extensions the BCC can give. This fact can be confirmed by contacting the BCC.

So, the truth of the matter is that there is no problem for licensed retail cannabis stores, whether Medical or Recreational, with getting cannabis products. This is simply another delay tactic being used by Legendary.

City Council Has Authority to Move To Allow a 2nd Medical Dispensary

When Ordinance No. 1636-NS was drafted and subsequently voted into law, the City Council had no way of knowing that the firm they awarded the sole Dispensary Permit to would essentially default on their promise to the City Council and fail to open the needed Dispensary within a reasonable period of time.

Ordinance No. 1636-NS does not contain any language by which this City Council can motivate Legendary to complete all of the items necessary to open their Dispensary. I am referring to them obtaining a State License from the BCC, getting their building plans re-submitted to the City staff for review and subsequent approval, getting trained and certified in the State required system of logging all Cannabis purchases and sales and establishing accounts with State licensed distributors of legal Cannabis products.

However, Ordinance No. 1636-NS does have the following language in it which this City Council can use to immediately move forward and start the process to allow for a 2<sup>nd</sup> Medical Dispensary in the City of Thousand Oaks.

Section 5-29.08      The following clause is in this section:

“Each year following the City Council’s initial award of permits, if any, **or at any time in the City Council’s discretion**, the City Council may reassess the number of commercial cannabis business permits which are authorized for issuance,”  
(emphasis added with bold print)

Award 2<sup>nd</sup> Medical Cannabis Dispensary Permit to Leaf Dispensary

Leaf is asking the City Council to recognize that the unforeseen and continuing delays of Legendary to the opening of their Dispensary is such that this City Council must now use its discretion and vote to have City Staff immediately draft a change to Ordinance No. 1636-NS to allow for a second Medical Cannabis Dispensary in the City of Thousand Oaks.

Leaf is also asking that this City Council recognize Leaf as having already been certified as being fully qualified to open and operate a Dispensary by the City Council in July, 2018; and, that upon Ordinance 1636-NS being amended, we ask that the City Council award a Permit to Leaf Dispensary to open a Dispensary in their approved location.

Leaf makes this promise to the City Council. If the City Council will use your discretion as allowed under Ordinance 1636-NS, Section 5-29.08 and take the appropriate action to amend the Ordinance to allow a 2<sup>nd</sup> Dispensary in the City of Thousand Oaks; and, award the Permit for said 2<sup>nd</sup> Dispensary to Leaf, Leaf Dispensary will have its Dispensary open and serving the citizens of Thousand Oaks within 90 days of receipt of the City approved Building Permit for our Dispensary.

Leaf is already operating in Goleta and Lompoc. We already have State Licenses from the BCC, we are certified in the State required Cannabis accounting system, we have open accounts with legal Cannabis distributors and we have 14 years of experience in operating a Medical Cannabis Dispensary.

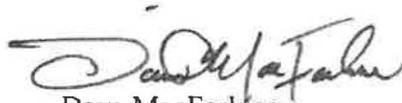
We sincerely believe and promise that Leaf will be a true benefit to the Community and to the City of Thousand Oaks. We hope that Mayor McCoy and all Council Members will agree and act accordingly.

Respectfully,

Leaf Dispensary



Paul D. Burns  
Chief Executive Officer



Dave MacFarlane  
Chief Operating Officer