SUBJECT: AUTHORIZATION TO NEGOTIATE A CONTRACT - SCENIC HEIGHTS RESERVOIR PROJECT INSPECTION SERVICES

SOURCE: Engineering and Building Department

COMMENT: On July 2, 2002, staff was authorized to negotiate a contract for inspection services on the 300,000 gallon Scenic Heights Reservoir Project. Staff was unable to negotiate a contract with the 1st ranked contractor, Heil & Associates because their qualified inspector left the firm. Council also authorized staff to negotiate a contract with the 2nd ranked contractor, Twinning Laboratories. This negotiation was successful, but resulted in a higher total fee.

The Water Replacement Fund contains $2,925,011 that is unappropriated. Therefore, the allocation of additional funds for this project will not affect other projects.

RECOMMENDATION: That City Council:

1. Approve additional funding in the amount of $7,000 to be added to the funds carried over from the 2000/2001 Capital Improvement, Enterprise, and Internal Service Fund Budget;

2. Authorize the Mayor to execute a contract with Twinning Laboratories for inspection services for the Scenic Heights Reservoir Project in the amount of $21,000; and

3. Authorize Staff to make payments up to 100% upon satisfactory completion of work.

ATTACHMENT: Service Agreement
SERVICE AGREEMENT

DATE: August 6, 2002

PARTIES: City of Porterville, a California municipal corporation, hereinafter referred to as "CITY"; and The Twinning Laboratories, Inc., hereinafter referred to as "CONSULTANT".

RECITALS: CITY has undertaken a project on which it is seeking assistance from CONSULTANT. Said project which will hereinafter be referred to as "project" is described as follows:
Project Name: Scenic Heights 300,000-Gallon Reservoir
Description of Project: Construction and coating of a welded steel reservoir

AGREEMENTS: IN CONSIDERATION OF MUTUAL COVENANTS AND AGREEMENTS HEREINAFTER set forth the parties hereto do contract and agree as follows:

SECTION 1. CONTRACT SERVICES: CONSULTANT hereby agrees to provide the following services and materials, in a timely manner as described in Exhibit "A", Scope of Services, in connection with the above described project.

SECTION 2. PAYMENT: In consideration for said services and materials, CITY shall pay CONSULTANT on a hourly rate basis, not to exceed Twenty-One Thousand Dollars ($21,000) for the specified work as follows:

<table>
<thead>
<tr>
<th>Item</th>
<th>Service</th>
<th>Hourly Rate</th>
<th>Total Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tank Erection Inspection</td>
<td>$59.00</td>
<td>$14,000</td>
</tr>
<tr>
<td>2</td>
<td>Tank Painting Inspection</td>
<td>$59.00</td>
<td>$7,000</td>
</tr>
</tbody>
</table>

It is understood that if CITY asks CONSULTANT to do work beyond the scope of this agreement, that said work will be paid for at CONSULTANT’S hourly rate on its published rate schedule.
TIME OF PAYMENT: Progress payment requests shall be submitted by the 25th of each month. CONSULTANT should receive payment within 30 days of the date the bill is received.

SECTION 3. COMPLETION DATE: The services to be performed by CONSULTANT will be commenced August 12, 2002 and be completed when the construction is finished.

SECTION 4. FAMILIARITY WITH PROJECT: CONSULTANT certifies and agrees that it is fully familiar with all of the details of the project required to perform its services. CONSULTANT agrees it will not rely upon any opinions and representations of CITY unless CITY is the only available source of said information.

SECTION 5. INDEPENDENT CONTRACTOR: It is expressly understood that CONSULTANT is entering into this contract and will provide all services and materials required hereunder as an independent contractor and not as an employee of CITY. CONSULTANT specifically warrants that it will have in full force and effect, valid insurance covering:

1. Full liability under worker’s compensation laws of the State of California; and

   (ii) Bodily injury and property damage insurance in the amount not less than Five Hundred Thousand Dollars ($500,000) per occurrence; and

   (iii) Automotive liability in the amount not less than Five Hundred Thousand Dollars ($500,000) per occurrence;
fully protecting CITY, its elected and appointed officers, employees, agents and assigns, against all claims arising from the negligence of CONSULTANT and any injuries to third parties, including employees of CITY and CONSULTANT. CONSULTANT agrees to indemnify, defend (at CITY’S election), and hold harmless the CITY against any claims, actions or demands against CITY, and against any damages, liabilities for personal injury or death or for loss or damage to property, or any of them arising out of negligence of CONSULTANT or any of its employees or agents.

SECTION 6. WORKMANSHP AND MATERIALS: Every part of the inspection herein described shall be executed in a professional manner with competent, experienced personnel. Finished or unfinished material (e.g., Daily reports, etc.) prepared under the agreement, prepared by CONSULTANT, shall become property of CITY. CONSULTANT hereby warrants that any materials prepared under this agreement shall be fit for the intended use contemplated by the parties.

SECTION 7. ASSIGNMENT OF CONTRACT: It is acknowledged by the parties that CITY has entered into this contract with the express understanding that all work will be performed by CONSULTANT. CONSULTANT shall not, without the written consent of CITY, assign, transfer or sublet any portion or part of this work, nor assign any payments to others.

SECTION 8. AFFIRMATIVE ACTION. CONSULTANT will not discriminate against any employee, or applicant for employment because of race, color, religion, gender, marital status, or national origin.
SECTION 9. CONFLICT TO INTEREST CODE: CONSULTANT agrees to comply with the regulations of CITY’S “Conflict of Interest Code”. Said code is in accordance with the requirements of the Political Reform Act of 1974.

CONSULTANT covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of service required hereunder. The term “conflict” shall include, as a minimum, the definition of a "conflict of interest" under the California Fair Political Practices Act and the City of Porterville Conflict of Interest Code, as that term is applied to consultants.

SECTION 10. TERMINATION: This contract may be terminated by either party for just cause by giving seven (7) days written notice to the other party. Upon termination by CITY, CITY shall be relieved of any obligation to pay for work not completed including profit and overhead. CONSULTANT may be entitled to just and equitable compensation for satisfactory work completed, except CITY can withhold damages incurred as a result of the termination.

SECTION 11. ENTIRE CONTRACT: It is understood and agreed that this Service Agreement represents the entire Agreement between the parties. Should it be necessary to institute legal proceedings to enforce any and all of the covenants and conditions of this Agreement, the prevailing party shall be entitled to recover attorneys’ fees and costs.

SECTION 12. DISPUTES; VENUE: If either party initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that the venue thereof shall be the County of Tulare, State of California. CONSULTANT hereby
waives any rights it might have to remove any such action pursuant to California Code of Civil Procedure Section 394.

IN WITNESS WHEREOF, the parties have executed this Service Agreement on the date and year first above written.

CITY OF PORTERVILLE                CONSULTANT

By_________________________        By_________________________

Gordon T. Woods, Mayor

Date_________________________        Date_________________________