

RESOLUTION NO. 06-064

A RESOLUTION OF THE CITY COUNCIL OF EL PASO DE ROBLES
APPROVING AND AUTHORIZING THE EXECUTION OF AN
AGREEMENT WITH HILTON, FARNKOPF & HOBSON TO
UPDATE SEWER AND WATER DEVELOPMENT IMPACT FEES

WHEREAS, it is the Council's policy to review various City fees every two years; and

WHEREAS, sewer and water development impact (connection) fees were last reviewed and updated in fiscal year 2004; and

WHEREAS, the current budget provides an appropriation to review sewer and water development impact fees in the amount of \$25,000; and

WHEREAS, Hilton, Farnkopf & Hobson has submitted a proposal to undertake the review and potential update of said fees for a not to exceed fee of \$7,500; and

WHEREAS, Hilton, Farnkopf and Hobson is fully capable of undertaking the review and is familiar with the City's fee structure given their prior work effort.

THEREFORE BE IT HEREBY RESOLVED by the City Council of the City of El Paso de Robles that the contract attached herewith as Exhibit "A" is hereby approved and the City Manager is authorized to execute said Agreement.

APPROVED AND ADOPTED by the City Council of the City of El Paso de Robles this 2nd day of May 2006.

AYES: Heggarty, Nemeth, Picanco, Strong, and Mecham
NOES:
ABSENT:
ABSTAIN:

Frank Mecham, Mayor

Attest:

Cathy M. David, Deputy City Clerk

CONSULTANT'S SERVICES AGREEMENT

THIS AGREEMENT, made this 2nd day of May 2006, by and between the CITY OF PASO ROBLES, a political subdivision and municipal corporation (hereinafter referred to as "CITY"), and Hilton, Farnkopf & Hobson, a LLC, California Corporation having a corporate office at Walnut Creek, California, (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, CITY desires to retain a qualified individual, firm or business entity to provide professional services for sewer and water development impact fee update; and

WHEREAS, CITY desires to engage CONSULTANT to provide services by reason of its qualifications and experience for performing such services, and CONSULTANT has offered to provide the required services on the terms and in the manner set forth herein.

NOW, THEREFORE, in consideration of their mutual covenants contained herein, the parties hereto agree as follows:

1. CONTRACT COORDINATION

- a. CITY. The Director of Administrative Services shall be the representative of CITY for all purposes under this Agreement. The Director, or his designated representative, hereby is designated as the Contract Manager for the CITY. He shall supervise the progress and execution of this Agreement.
- b. CONSULTANT. CONSULTANT shall assign a single Contract Manager to have overall responsibility for the progress and execution of this Agreement for CONSULTANT. John Farnkopf is hereby designated as the Contract Manager for CONSULTANT. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute Contract Manager for any reason, the Contract Manager designee shall be subject to the prior written acceptance and approval of the City's Contract Manager.

2. NOTICES

Any notice or consent required or permitted to be given under this agreement to be given under this Agreement shall be given to the respective parties in writing, by first-class mail, postage prepaid, by facsimile or otherwise delivered as follows:

CITY: Michael J. Compton
City of Paso Robles
Department of Administrative Services
1000 Spring Street
Paso Robles, CA 93446
FAX (805) 237-6565

CONSULTANT: John Farnkopf
Hilton, Farnkopf & Hobson, LLC
2175 N. California Blvd., Suite 990
Walnut Creek, California 94596
FAX (925) 977-6955

or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. mail.

3. TERM

The term of this Agreement shall be for four months beginning May 15, 2006 unless otherwise terminated and/or suspended in accordance with Sections 7 or 8 of this Agreement.

4. ATTACHMENTS

Attached to this Agreement as Exhibit "A" is the Consultant's proposal dated April 19, 2006 which shall be made a part of this contract.

5. SCOPE OF SERVICES

CONSULTANT shall provide all specified services and tasks as set forth in Exhibit "A" attached hereto and incorporated herein by this reference.

6. DUTIES OF CITY

CITY agrees to cooperate with CONSULTANT in the performance of Consultant's work as described in Exhibit "A".

7. COMPENSATION

- a. The CONSULTANT will be paid for services rendered in accordance with the standard fee schedule set forth in Exhibit "A".
- b. Should the CITY require more meetings than originally anticipated or require major changes in assumptions and/or methodology that require the CONSULTANT to expend more hours than originally contemplated, the CITY and CONSULTANT, together, shall develop an increased cost impact for City Council consideration and approval prior to proceeding with said work.

- c. Fees will be invoiced based upon the progress of each task as identified in the attached Exhibit "A". Out-of-pocket expenses, if any, shall be itemized on each invoice.
- d. Payment of undisputed amounts are due within 30 days of receipt of invoices. Out-of-pocket expenses may include overnight delivery expense, pre-approved travel, and any other work provided within of the scope of services contained within this Agreement.
- e. The City's failure to discover or object to any unsatisfactory work or billing prior to payment will not constitute a waiver of City's right to:
 - (1) Require CONSULTANT to correct such work or billings; or
 - (2) Seek any other legal remedy.

8. INDEPENDENT CONTRACTOR

CONSULTANT, its agents and contractors, are independent contractors, responsible for all methods and means used in performing the CONSULTANT'S services under this agreement, and are not employees, agents, or partners of the CITY.

9. PERFORMANCE STANDARDS

- a. CONSULTANT shall (and shall cause its agents and employees), at its sole cost and expense, comply with all the City, County, State and Federal ordinances, regulations and statutes now in force or which may hereafter be in force with regard to the services provided under this Agreement. Should these requirements change during the term of this Agreement, CONSULTANT shall be responsible for notifying the CITY of such change in requirements. Any corrections to CONSULTANT'S instruments of professional service which become necessary as a result of the CONSULTANT'S failure to comply with these requirements shall be made at the CONSULTANT'S expense.
- b. Should these requirements change during the engagement, CONSULTANT shall be responsible for notifying the CITY of such change in requirements.
- c. CONSULTANT represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, CONSULTANT shall perform all such services in the manner and according to the standards observed by a competent person or firm of the same profession in which the CONSULTANT is engaged. All products of whatsoever nature that CONSULTANT delivers to the CITY pursuant to this Agreement shall conform to the standards of quality normally observed by a person practicing in CONSULTANT'S profession. Permits and/or licenses shall be obtained and maintained by CONSULTANT without additional compensation throughout the term of this Agreement.

10. TAXES

CONSULTANT shall pay all taxes, assessments and premiums under the federal Social Security Act, any applicable unemployment insurance contributions, workers' compensation insurance premiums, sales taxes, use taxes, personal property taxes or other taxes or assessments now or hereafter in effect and payable by reason of or in connection with the services to be performed by CONSULTANT.

11. CONFLICT OF INTEREST

CONSULTANT covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONSULTANT further covenants that, in the performance of this Agreement, no sub-contractor or person having such an interest shall be employed. CONSULTANT certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of CITY. It is expressly agreed that, in the performance of the services hereunder, CONSULTANT shall at all times be deemed an independent contractor and not an agent or employee of CITY.

12. OWNERSHIP OF DOCUMENTS

All original drawings, videotapes and other materials prepared by or in possession of CONSULTANT pursuant to this Agreement shall become the permanent property of CITY, and shall be delivered to the CITY upon demand.

13. RECORD KEEPING

CONSULTANT shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of CONSULTANT'S profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting practices. The CITY shall have the right to audit and review all such documents and records at any time during CONSULTANT'S regular business hours or upon reasonable notice.

14. INDEMNIFICATION

CONSULTANT hereby agrees to indemnify and save harmless CITY, its officers, designated agents, employees, volunteers of and from:

- a. Any and all claims and demands which may be made against CITY, its officers, designated agents, or employees by reason of any injury or death of or damage to any person or corporation caused by any negligent act or omission of CONSULTANT under this Agreement or of CONSULTANT'S employees or agents;
- b. Any and all damage to or destruction of the property of CITY, its officers, designated agents or employees occupied or used by or in the

care custody, or control of CONSULTANT, or in proximity to the site of CONSULTANT's work, caused by any negligent act or omission of CONSULTANT under this Agreement or of CONSULTANT's employees or agents;

- c. Any and all claims and demands which may be made against CITY, its officers, designated agents, or employees by reason of any injury to or death of or damage suffered or sustained by any employee or agent of CONSULTANT under this Agreement, however caused, excepting, however, any such claims and demands which are the result of the active negligence or willful misconduct if CITY, its officers, agents, or employees;
- d. Any and all claims and demands which may be made against CITY, its officers, designated agents, or employees by reason of any infringement or alleged infringement of any patent rights or copyrights or claims caused by the use of apparatus, appliance, or materials produced or furnished by CONSULTANT under this Agreement; and
- e. Any and all penalties imposed or damages sought on account of the violation of any law or regulation or if any term or condition of any permit, when said violation of any law or regulation or of any term or condition of any permit is due to negligence on the part of the CONSULTANT.

15. WORKERS COMPENSATION

CONSULTANT certifies that it is aware of the provisions of the Labor Code of the State of California, 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 it certified that it will comply with such provisions before commencing the performance of the work of this Agreement.

16. INSURANCE

- a. CONSULTANT shall provide proof of comprehensive general liability insurance with limits of not less than one million (\$1,000,000) per occurrence satisfactory to the CITY. The CITY shall be named as an "additional insured" with respects to said insurance.
- b. CONSULTANT shall provide proof of automobile liability insurance with limits of not less than one million (\$1,000,000) per occurrence satisfactory to the CITY. The CITY shall be named as an "additional insured" with respects to said insurance.
- c. CONSULTANT shall provide proof of special insurance of the types (such as "errors and omissions" or professional liability or environmental liability) and in the amounts as may be set forth on Exhibit "A".
- d. Each insurance policy required by this section shall be endorsed to state that coverage shall not be canceled except after thirty (30) days prior to written notice by mail has been given to the CITY.

- e. All insurance required by this section shall be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the CITY.
- f. Termination of this Agreement shall not release CONSULTANT from its obligations referenced in Section 14, above, as to any claims, so long as the event upon which such claim is predicated shall have occurred prior to the effective dates of any such termination and arose out of or was in any way connected with performance or operations under this Agreement by CONSULTANT, its employees, agents or contractors, or the employee, agent or contractor of any one of them.
- g. Submission of insurance certificates or submission of other proof of compliance with the insurance requirements in the Agreement does not relieve CONSULTANT from liability referenced in subsection a, above. The obligations of this article shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

17. PERSONNEL

The CONSULTANT represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. All of the services required hereunder will be performed by the CONSULTANT or under CONSULTANT'S supervision, and all personnel engaged in the work shall be qualified to perform such services.

18. INSPECTION

CONSULTANT shall furnish CITY with every reasonable opportunity for CITY to ascertain that the services of CONSULTANT are being performed in accordance with the requirements and intentions of this Agreement. All work done and all materials furnished, if any, shall be subject to the CITY's Contract Manager's inspection and approval. The inspection of such work shall not relieve CONSULTANT of any of its obligations to fulfill its Agreement as prescribed.

19. ASSIGNMENT

This Agreement is for the performance of planning services of the CONSULTANT and is not assignable by the CONSULTANT without prior consent of the CITY in writing. The CONSULTANT may employ other specialists to perform services as required with prior approval by the CITY.

20. TEMPORARY SUSPENSION

The CITY's Contract Manager shall have the authority to suspend this Agreement wholly or in part, for such period as he deems necessary due to unfavorable conditions or to the failure on the part of the CONSULTANT to perform any provision of this Agreement. CONSULTANT will be paid the compensation due and payable to the date of temporary suspension.

21. SUSPENSION: TERMINATION

- a. Right to suspend or terminate. The CITY reserves the right to terminate this Agreement for any reason by notifying CONSULTANT in writing seven (7) days prior to termination and by paying the compensation due and payable to the date of termination; provided, however, if this Agreement is terminated for fault of CONSULTANT, CITY shall be obligated to compensate CONSULTANT only for that portion of CONSULTANT services which are of benefit to CITY. Said compensation is to be arrived at by mutual Agreement of the CITY and CONSULTANT and should they fail to agree, then an independent arbitrator is to be appointed and his decision shall be binding upon the parties.
- b. Return of materials. Upon such termination, CONSULTANT shall turn over to the CITY immediately any and all copies of videotapes, studies, sketches, drawings, computations, and other data, whether or not completed, prepared by CONSULTANT, and for which CONSULTANT has received reasonable compensation, or given to CONSULTANT in connection with this Agreement. Such materials shall become the permanent property of CITY. CONSULTANT, however, shall not be liable for CITY's use of incomplete materials nor for CITY's use of complete documents if used for other than the project or scope of services contemplated by this Agreement.

22. AGREEMENT BINDING

The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns, and subcontractors of both parties.

23. CITY NOT OBLIGATED TO THIRD PARTIES

The CITY shall not be obligated or liable for payment hereunder to any party other than the CONSULTANT.

24. COSTS AND ATTORNEY'S FEES

The prevailing party in any action between the parties to this Agreement brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

25. SECTION HEADINGS

The headings of the sections, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

26. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

27. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to the CITY is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

28. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

29. WAIVERS

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

30. AGREEMENT CONTAINS ALL UNDERSTANDINGS

This document (including all exhibits referred to above and attached hereto) represents the entire and integrated Agreement between CITY and CONSULTANT and supersedes all prior negotiations, representations, or Agreements, either written or oral. This document may be amended only by written instrument, signed by both CITY and CONSULTANT. All provisions of this Agreement are expressly made conditions. This Agreement shall be governed by the laws of the State of California.

31. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

32. CALIFORNIA LAW

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of San Luis Obispo, if in state court, or in the federal court nearest to San Luis Obispo County, if in federal court.

33. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

34. AUTHORITY

All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles, and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

35. FORCE MAJEURE

Neither party shall hold the other responsible for damages or delays in performance caused by force majeure (acts of nature) or other events beyond the reasonable control of either party.

IN WITNESS WHEREOF, CITY and CONSULTANT have executed this Agreement the day and year first above written.

Hilton, Farnkopf & Hobson, LLC

CITY OF PASO ROBLES

By _____
John Farnkopf,
Senior Vice President

By _____
James L. App,
City Manager