

**CONSULTING AGREEMENT**  
**CITY OF COALINGA**  
**AND**  
**PRECISION CIVIL ENGINEERING, INC.**

This Agreement is made and entered into this 18<sup>th</sup> day of February, 2010, by and between the CITY OF COALINGA, a municipal corporation, hereinafter "City", and PRECISION CIVIL ENGINEERING, INC., a California Corporation, hereinafter "Consultant".

**WITNESSETH**

WHEREAS, City has a requirement for City Engineer services and for other consulting civil engineering services.

WHEREAS, Consultant is a corporate organization consisting of persons specially trained and experiences in civil engineering who are competent to perform the civil engineering services required by the City.

NOW, THEREFORE, City and Consultant, for the consideration hereinafter set forth, agree as follows:

**A. SERVICES BY CONSULTANT**

Consultant shall employ engineers, draftsmen, technicians, clerical staff and professional consultants, all properly skilled in the various aspects of the services to be furnished under this Agreement. Services to be performed by Consultant shall be consistent with its Statement of Qualifications dated January 26, 2010, attached as Exhibit "A" and incorporated herein by reference, and shall fall under one of the following three categories:

1. City Engineer Services

The following tasks are hereby defined as City Engineer Services and shall be provided on an on-call basis upon reasonable notice to Consultant:

- a. Attendance at Council meetings as requested;
- b. Attendance at Planning Commission meetings as requested;
- c. Consultation with City Manager as requested;
- d. Consultation with the Community Development Coordinator as requested;
- e. Consultation with the Field Services Manager as requested;
- f. Consultation with the Building Official as requested;
- g. Provide field surveys as requested;
- h. Review Tentative Subdivision Maps, Parcel Maps, and Subdivision Maps for compliance with Subdivision Map Act and the Coalinga Municipal Code;

- i. Review Subdivision Improvement Plans for general compliance with the City of Coalinga Improvement Standards;
- j. Review developers' site plans and drainage plans;
- k. Maintain files of City maps;
- l. Update and correct City base maps for zoning, planning, sewer and storm drainage and water systems;
- m. Provide maps and mapping services as requested by various City departments;
- n. Preparation and review of legal descriptions for easements and rights-of-way;
- o. Maintain City Improvement Standards and Specifications as requested; and
- p. Review and provide comments on environmental documents for proposed projects submitted to the City in accordance with the California Environmental Quality Act.

2. Consulting Engineering Services

Consulting Engineering services require a supplemental project agreement and include services such as:

- a. Grant applications and grant monitoring;
- b. Design and preparation of plans and specifications for public works construction;
- c. Construction observation;
- d. Preparation of plans for infrastructure expansion; and
- e. Other similar activities.

3. Intermittent Construction Observation

It is recognized that the City may require services of Consultant for purposes of providing occasional construction observation on work for which no supplemental agreement pursuant to paragraph A.2 has been executed. Any project-specific supplemental agreement shall be signed by the City Manager prior to the commencement of the work.

In providing such services, City agrees that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction, including safety of all persons and property, and that this requirement shall be made to apply continuously and not be limited to normal working hours. Consultant shall not have control over or charge of, and shall not be responsible for, constructions means, methods, techniques, sequences or procedures, as these are solely the responsibility of the construction contractor. Consultant shall not have the authority to stop or reject the work of the construction contractor and is not responsible for the acts or omissions of the

contractor, subcontractors or other persons performing the work, or for the failure of them to carry out the work in accordance with the plans and specifications.

City will defend, indemnify, and hold Consultant harmless from any and all claims arising from or resulting from the performance of such services by others and City except claims caused by the negligence of Consultant.

**B. CITY ENGINEER DESIGNEE**

Nick Bruno is hereby designated as City Engineer for the City of Coalinga.

**C. COMPENSATION FOR CITY ENGINEER SERVICES AND INTERMITTENT CONSTRUCTION OBSERVATION**

Compensation for City Engineer services described in Section A.1 and Intermittent Construction Observation services described in Section A.3, shall be on a time and expense reimbursement basis. Reimbursable expenses, except mileage, shall be reimbursed at cost.

Reimbursable expenses include auto travel for construction related and surveying services, meals and lodging while traveling, special equipment rental, and services of professional consultants or subcontractors.

Consultant shall use the Rate Schedule contained in Exhibit "A" and shall notify the City forty-five (45) days in advance of any proposed changes in the Rate Schedule. The Rate Schedule shall be changed no more than once in any calendar year, however shall not be changed until after June 30, 2011, and upon approval of the City Manager.

Consultant shall submit to City monthly itemized invoices for the services rendered. If the work is satisfactorily completed, City shall pay such invoice within thirty (30) days of its receipt. Should City dispute any portion of any invoice, City shall pay the undisputed portion within the time stated above, and at the same time advise Consultant in writing of the disputed portion.

**D. COMPLIANCE WITH LAWS**

Consultant agrees that it shall conduct its work and perform its services in compliance with all applicable laws and regulations of Fresno County, California, and any office, department or agency thereof, as well as other laws and regulations as may be applicable thereto.

**E. INSURANCE**

Consultant shall maintain insurance and shall submit certificates of insurance evidencing that insurance meeting the following requirements is being provided:

1. Errors and Omissions Insurance. Consultant shall have such errors and omissions insurance as shall protect City, its officers, directors, employees and agents from claims based on errors or negligent acts or omissions which may arise from Consultant's operations or performance under this Agreement, whether claims be made during or subsequent to the term of this Agreement, and whether such operations or performance be by Consultant or its employees, consultants, agents or anyone else directly or indirectly employed by any of the foregoing. The amount of this insurance shall not be less than \$1,000,000.

Said policy shall be continued in full force and effect during the term of this Agreement. In the event of termination of said policy, new coverage shall be obtained for the required period to insure for the prior acts of Consultant during the course of performing services under the terms of this Agreement.

2. Workers Compensation. Consultant shall carry such insurance as will protect City and Consultant from claims under Workers Compensation and Employer's Liability Acts; such insurance to be maintained as to the type and amount in strict compliance with State statutes.
3. General Liability. Consultant shall obtain and keep in full force and effect general liability insurance including provisions for contractual liability, personal injury, independent consultants and broad form property damage coverages. This insurance shall be on a comprehensive occurrence basis form with a stand cross liability clause or endorsement. The limit for this insurance shall be no less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
4. Automobile Liability. Consultant shall maintain automobile liability insurance with coverage for any vehicle including those owned, leased, rented or borrowed. This insurance shall have a standard cross liability clause or endorsement. The limit amount for this insurance shall be no less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
5. Within thirty (30) days of the date of this Agreement, the Consultant shall provide the City with Certificates of Insurance demonstrating compliance with provisions 1 through 4 above. Said certificates shall specify or endorse to provide that ten (10) days notice shall be given in writing to the City of any cancellations.

#### **F. INFORMATION FURNISHED BY CITY**

Consistent with the professional standard of care and unless specifically provided herein, Consultant shall be entitled to rely upon the accuracy of data and information provided by City or others without independent review or evaluation.

## **G. INDEMNIFICATION AND HOLD HARMLESS**

Consultant shall protect, indemnify, hold harmless and defend City, its directors, officers, employees and agents, from any and all claims, fines, demands, costs, expenses (including but not limited to attorney fees and costs of litigation or arbitration), liability, losses, penalties, causes of action, awards, suits or judgments for damages of any nature whatsoever (hereinafter collectively referred to as Claims) to the extent arising out of the breach of this Agreement in whole or in part by willful or fraudulent misconduct or negligent acts, by Consultant, its employees, agents or consultants, or the agent, employee or consultant of any one of them in the performance of their duties or in their operations under this Agreement.

City shall protect, indemnify, hold harmless and defend the Consultant, its officers, directors, employees and subcontractors from any and all claims, fines, costs, demands, expenses (including but not limited to attorney fees and costs of litigation or arbitration), liability, losses, penalties, causes of action, awards, suite or judgments for damages of any nature whatsoever (hereinafter collectively referred to as "Claims") to the extent arising out of the breach of this Agreement in whole or in part by willful or fraudulent misconduct or negligent acts, by City, its employees, agents or consultants, or the agent, employee or consultant of any one of them in the performance of their duties or in the operations under this Agreement.

Neither termination of this Agreement nor completion of the acts to be performed under this Agreement shall release either party from its obligations to indemnify as to any Claims so long as the event upon which such Claims is predicted shall have occurred prior to the effective date of any such termination or completion and arose out of or was in any way connected with performance or operations under this Agreement by either party, its employees, agents or consultants, or the employee, agent or consultant of any one of them.

Submission of insurance certificates or other proof of compliance with the insurance requirements in this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. The obligation of this indemnity 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.

## **H. EMPLOYMENT OF CONSULTANTS BY CONSULTANT**

It is recognized that Consultant is not fully qualified in certain specialties such as electrical and geotechnical engineering. In the event that engineering services are required that fall in such similar fields, Consultant may employ qualified consultants to assist them.

**I. RECORDS OF CONSULTANT**

Records of Consultant's direct personnel and reimbursable expenses pertaining to the service hereunder shall be kept on a generally recognized accounting basis, and shall be available for inspection by City or its designees at reasonable times.

**J. TERMINATION**

Either party may terminate this Agreement by giving thirty (30) days prior written notice to the other. Upon termination, Consultant shall be paid for services performed to date of termination.

**K. ASSIGNMENT**

Consultant shall not assign this Agreement, nor any part thereof, nor any monies due hereunder, without the prior written consent of City.

**L. OWNERSHIP OF DOCUMENTS**

1. Originals of drawings, specifications, estimates, field notes and calculations prepared by Consultant shall be and remain in the property of Consultant.
2. Reproduces of such documents, and models, prints, and photographs shall be and remain the property of the City. Such materials shall be kept by Consultant for City and shall be delivered to the City on request or termination. Such documents are not intended or represented to be suitable for reuse by City or others on extensions of the project or any other project. Any use of completed documents for other projects and any use of incomplete documents without specific written authorization from Consultant will be at City's sole risk and without liability to Consultant. City assumes full responsibility for such changes unless City has given Consultant prior notice and has received from Consultant written consent for such changes. Electronic data delivered to City is for City's convenience and shall not include the professional stamp or signature of an engineer or architect. City agrees that Consultant shall not be liable for claims, liabilities or losses arising out of, or connected with the decline of accuracy or readability of electronic data due to inappropriate storage conditions or duration.

**M. NON-DISCRIMINATION**

In connection with the performance of Consultant pursuant to this Agreement, Consultant will not willfully discriminate against any employee or applicant for employment because of race, color, religion, sex, ancestry, or national origin. Consultant will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, ancestry or national origin. Such action shall include, but not limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates

of pay or other forms of compensation, and selection for training, including apprenticeship.

**N. NOTICES**

All notices, statements, reports, approvals, or requests or other communications, that are required either expressly, or by implication, to be given by either party to the other under this Agreement shall be in writing and signed for each party by such officers as each may, from time to time, authorize in writing to so act. All such notices shall be deemed to have been received on the date of delivery if delivered personally or three (3) days after mailing if enclosed in a properly addressed and stamped envelope and deposited in the U.S. Post Office for delivery. Unless, and until formally notified otherwise, all notices shall be addressed to the parties at their address shown below:

CITY

CITY OF COALINGA  
155 W. Durian Avenue  
Coalinga, California 93210

CONSULTANT

PRECISION CIVIL ENGINEERING, INC.  
653 W. Fallbrook, Suite 101  
Fresno, California 93711

**O. ATTORNEY FEES**

In the event of any arbitration, litigation, or other action or proceeding of any nature, between City and Consultant becomes necessary to enforce or interpret all or any portion of this Agreement, or because of an alleged breach by either party of any of the terms hereof, it is mutually agreed that the losing or defaulting party shall pay the prevailing party reasonable attorney fees, costs and expenses incurred in connection with the prosecution or defense of such action or proceeding.

**P. ENTIRE AGREEMENT**

This writing constitutes the entire Agreement between the parties relative to the services specified herein, and no modifications hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Agreement. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement except those contained or referenced to in this writing.

**Q. AGENT OF CITY**

In performing the services required under this Agreement, Engineer is acting as an agent of City, subject to the general supervision and control of its governing body. As such, Engineer shall be entitled to the same immunities and protections as any other governmental employee exercising discretion under all applicable statutes, regulations, and judicial and administrative precedent, subject to City's rights of action against Engineer for any professional errors or omissions of Engineer.

**R. STATUS OF CONSULTANT**

1. Consultant is and shall at all times during the terms of this Agreement remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is conferred under this Agreement or is otherwise expressly conferred in writing by City.
2. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, 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 not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City.
3. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

**S. SEVERABILITY**

If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall be severable and not affected thereby.

**T. WAIVER OF RIGHTS**

Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default or matter.

**U. REMEDIES NOT EXCLUSIVE**

The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of any remedy provided by law.

**V. DISPUTE RESOLUTION**

If a dispute arises under this Agreement, the parties agree to first try to resolve the dispute with the help of a mutually agreed upon mediator. Any costs and fees other than attorney fees associated with the mediation shall be shared equally by the parties.

If it proves impossible to arrive at a mutually satisfactory solution through mediation, the parties agree to submit the dispute to binding arbitration in Fresno County. The parties agree that the binding arbitration will be conducted by an arbitrator the parties shall mutually select and under the rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court with jurisdiction to do so.

**W. CONFLICTS OF INTEREST**

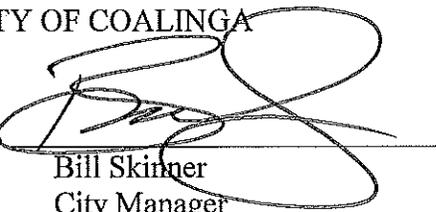
Consultant shall not accept any work from any party for engineering services for any project in the City of Coalinga, following the execution of this Agreement and during the term hereof.

**X. MISCELLANEOUS PROVISIONS**

City will include in the general conditions of any construction contract, language which states that the construction contractor is required to hold harmless and defend the City, Consultant, and their agents, employees and consultants, from all suits and actions, including attorneys' fees, and all costs of litigation and judgments of any nature and description arising out of or incidental to the performance of the construction contract or work performed thereunder, and which are caused by the negligence or intentional act of the contractor. The City, Consultant, their agents, employees and consultants shall also be named as additional insureds in any construction contractor's insurance policies.

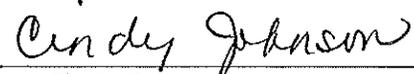
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF COALINGA

By, 

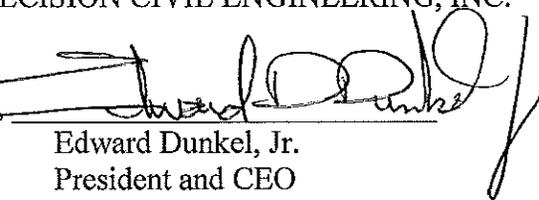
Bill Skinner  
City Manager

ATTEST:

By, 

Cindy Johnson  
Deputy City Clerk

PRECISION CIVIL ENGINEERING, INC.

By, 

Edward Dunkel, Jr.  
President and CEO

**EXHIBIT A**

## 2010 SCHEDULE OF CONDITIONS

The Firm (Precision Civil Engineering, Inc.) shall perform the services outlined in this agreement for the stated fee arrangement.

### Access To Site:

Unless otherwise stated, the Firm will have access to the site for activities necessary for the performance of the services. The firm will take precautions to minimize damage due to these activities, but have not included in the fee the cost of restoration of any resulting damage.

### Fee:

The total fee, if stated, shall be understood to be an estimate, and shall not be exceeded by more than ten percent without written approval of the client. Where the fee arrangement is to be an hourly basis, the rates shall be those that prevail at the time services are rendered. The 2010 rates are provided below. Reimbursable expenses are to be billed separately, if applicable.

Senior Principal/Principal	\$ 130.00/Hr.	High-Definition Scanner	\$ 300.00/Hr.
Senior Designer/Professional Engineer	\$ 120.00/Hr.	GPS w/Virtual Reference Survey	\$ 200.00/Hr.
Senior Entitlement Manager	\$ 120.00/Hr.	Scanner Registration/Fly-Through	\$ 125.00/Hr.
Project Manager/Licensed Civil Engineer	\$ 110.00/Hr.	Professional Licensed Surveyor	\$ 120.00/Hr.
Project Engineer	\$ 90.00/Hr.	3-Man Survey Crew or GPS	\$ 160.00/Hr.
Senior CAD Technician	\$ 80.00/Hr.	2-Man Survey Crew or Robotic	\$ 150.00/Hr.
CAD Technician	\$ 70.00/Hr.	1-Man Survey Crew	\$ 110.00/Hr.
Project Surveyor	\$ 90.00/Hr.	Landscape Architect	\$ 110.00/Hr.
GIS Technician	\$ 100.00/Hr.	Biologist	\$ 90.00/Hr.
Clerical	\$ 50.00/Hr.	Mileage	\$ 0.50/Mile

### Billings/Payments:

Invoices for the Firm's services shall be submitted at the Firm's option, either upon completion of such services or on a monthly basis. Invoices shall be payable within 30 days of the invoice date. If the invoice is not paid within 30 days, the Firm may, without waiving any claim or right against the Client, and without liability whatsoever to the Client, terminate the performance of the service. Retainers shall be credited on the final invoice.

### Late Payment:

Accounts unpaid 60 days after the invoice date may be subject to a monthly service charge of 1.5% on the then unpaid balance (18.0% true annual rate), at the sole election of the Firm. In the event any portion or all of an account remains unpaid 90 days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

### Indemnification:

The Client shall indemnify and hold harmless the Firm and all of its personnel from and against any and all claims, damages, losses and expenses (including reasonable attorney's fees) arising out of or resulting from the performance of the services, provided that any such claim, damage, loss or expense is caused in whole or in part by the negligent act, omission, and/or strict liability of the Client, anyone directly or indirectly employed by the Client (except the Firm), or anyone for whose acts any of them may be liable.

The Client shall make no claim for professional negligence, either directly or in a third party claim, against Consultant unless the Client has first provided Consultant with a written certification executed by an independent design professional currently practicing in the same discipline as Consultant and licensed in the State of California. This certification shall: a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of a Design Professional performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to Consultant not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding.

### Risk Allocation:

In recognition of the relative risks, rewards and benefits of the project to both the Client and the Firm, the risks have been allocated such that the Client agrees that, to the fullest extent permitted by law, the Firm's total liability to the Client for any and all injuries, claims, losses, expenses, damages or claim expenses arising out of this agreement from any course or causes, shall not exceed ten times our fee or \$50,000, whichever is less. Such causes include, but are not limited to, the Firm's negligence, errors, omissions, strict liability, and breach of contract or breach of warranty.

### Termination of Services:

This agreement may be terminated by the Client or the Firm should the other fail to perform its obligations hereunder. In the event of termination, the Client shall pay the Firm for all services rendered to the date of termination, all reimbursable expenses, and reimbursable termination expenses.

### Ownership of Documents:

All documents produced by the Firm under this agreement shall remain the property of the Firm and the Client.

### Applicable Laws:

Unless otherwise specified, the laws of the State of California shall govern this agreement.

### Confidentiality:

This document shall not be read, copied, disclosed or used by any person other than the intended recipient.

