

Date: 12-3-2009

Fielder Technology Consulting

Sales Rep: Bart Fielder 559.2708551 [bart@esp-cc.net](mailto:bart@esp-cc.net)

Account Exec: Bart Fielder 559.270.8551 [bart@esp-cc.net](mailto:bart@esp-cc.net)

Customer: City of Coalinga

2133 S. Duke Ave  
Fresno, CA 93727  
P. 559.217.3291  
Mobile. 559.270-8551  
[bart@esp-cc.net](mailto:bart@esp-cc.net)

### Service Contract

**Company Billing Name:** City of Coalinga Administration  
**Billing Address:** 155 W. Durian Ave  
**Billing City, State, Zip:** Coalinga, CA 93210  
**Billing Contact Number:** 559-935-1533  
**Contact Name:** Bill Skinner  
**Contact Phone:** 559-935-1533  
**Contact Email:** [bskinner@coalinga.com](mailto:bskinner@coalinga.com)

### Services Summary

**Account Manager** Bart Fielder  
**Proposal Date** 12-3-2009  
**Contract Term** 1 year

### CONSULTING AGREEMENT

This Agreement is made between City of Coalinga ("Client"), with a principal place of business at 155 W. Durian Ave, Coalinga, California and Bart Fielder ("Consultant"), with a principal place of business at 2133 S. Duke Ave, Fresno, California.

#### SITES UNDER CONSULTING AGREEMENT:

- City Hall (155 W. Durian)
- Public Works Yard (135 E. Sacramento)
- Water Treatment Plant (25034 W. Palmer)
- Police Department (270 N 6<sup>th</sup> Street)
- Fire Department (300 W. Elm Ave)

**1.SERVICES PERFORMED BY FIELDER TECHNOLOGY CONSULTING.** Systems Engineering, New Account creation and setup, maintain email, maintain backup, Computer updates. Most anything related to computers or computer systems, Technology Consulting, Inventory, Disaster recovery planning, Server and workstation installs, Camera DVR, Application installs, Wireless networks, Systems Integrations. Times. Every Thursday between the hours of 9:00 a.m. and 5:00 p.m. (8 Hours)  
The date and time can be substituted based on the customer or consulting needs.

**1.2 Exclusions.** Anything related to dismantling printer hardware.

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- 2.FIELDER TECHNOLOGY CONSULTING'S PAYMENT.** To be paid \$2,560.00 monthly.  
Payment is due the 1st of every month. This includes travel time to and from the City of Coalinga from Fresno. Billing is reduced to \$80.00 an hour for any requests outside the scope of this agreement.
- 3.INVOICES.** Fielder Technology Consulting shall submit invoices and work orders for all services rendered. Client shall pay the amounts due upon the receiving each invoice but not to exceed 15 days.
- 4.RESPONSE TIME.** Normal response time is **4 hours**. Critical response time is **within 2 hours**.
- 5.LATE FEES.** Late payments by Client shall be subject to late penalty fees of 2 % per month from the due date until the amount is paid.
- 6.EXPENSES.** City of Coalinga shall be responsible for any additional hardware and/or software required to complete a project.
- 7.TERM OF AGREEMENT.** This Agreement will become effective when signed by both parties.
- 8.TERMINATING THE AGREEMENT.** Discretionary: Either party may terminate the Agreement without cause upon thirty (30) days. Fielder Technology Consulting shall be entitled to full payment for services performed prior to the effective date of termination.
- 9.FIELDER TECHNOLOGY CONSULTING AN INDEPENDENT CONTRACTOR.** Fielder Technology Consulting is an independent contractor, and neither Fielder Technology Consulting nor ESP Computer Consultant's staff is, or shall be deemed, Client's employees. In its capacity as an independent contractor, Fielder Technology Consulting agrees and represents, and Client agrees, as follows:
- (a) Fielder Technology Consulting has the right to perform services for others during the term of this Agreement subject to non-competition provisions set out in this Agreement, if any.
  - (b) Fielder Technology Consulting has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
  - (c) Fielder Technology Consulting has the right to perform the services required by this Agreement at any place or location and such times as Fielder Technology Consulting may determine.
  - (d) The services required by this Agreement shall be performed by Fielder Technology Consulting, or Fielder Technology Consulting's staff, and Client shall not be required to hire, supervise or pay any assistants to help Fielder Technology Consulting.
  - (e) Neither Fielder Technology Consulting nor Fielder Technology Consulting's staff shall be required to devote full-time to the performance of the services required by this Agreement.

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- (f) Client shall not provide insurance coverage of any kind for Fielder Technology Consulting or Fielder Technology Consulting's staff.
- (g) Client shall not withhold from Fielder Technology Consulting's compensation any amount that would normally be withheld from an employee's pay.
- (h) Client will pay the billing rate of another Fielder Technology Consulting if Fielder Technology Consulting needs to bring someone from the outside with a specific expertise.

**10. INTELLECTUAL PROPERTY OWNERSHIP.** Fielder Technology Consulting assigns to Client its entire right, title and interest in anything created or developed by Fielder Technology Consulting for Client under this Agreement ("Work Product") including all patents, copyrights, trade secrets and other proprietary rights. This assignment is conditioned upon full payment of the compensation due Fielder Technology Consulting under this Agreement.

Fielder Technology Consulting shall, at no charge to Client, execute and aid in the preparation of any papers that client may consider necessary or helpful to obtain or maintain--at Client's expense--any patents, copyrights, trademarks or other proprietary rights. Client shall reimburse Fielder Technology Consulting for reasonable out-of-pocket expenses incurred under this provision.

**11. FIELDER TECHNOLOGY CONSULTING'S MATERIALS.** Fielder Technology Consulting owns or holds a license to use and sub-license various materials in existence before the start date of this Agreement ("Fielder Technology Consulting's Materials"). Fielder Technology Consulting may, at it's option, include Fielder Technology Consulting's Materials in the work performed under this Agreement.

Fielder Technology Consulting retains all right, title and interest, including all copyright, patent rights and trade secret rights to Fielder Technology Consulting's Materials. Subject to full payment of the consulting fees due under this Agreement, Fielder Technology Consulting grants Client a non-exclusive worldwide license to use and sub-license the use of Fielder Technology Consulting's Materials for the purpose of developing and marketing its products, but not for the purpose of marketing Background Technology separate from its products. The license shall have a perpetual term and may not be transferred by Client. Client shall make no other commercial use of the Background Technology without Fielder Technology Consulting's written consent.

**12. CONFIDENTIALITY.** During the term of the Agreement and for 1 month afterward, Fielder Technology Consulting will use reasonable care to prevent the unauthorized use or dissemination of Client's confidential information. Reasonable care means at lease the same degree of care Fielder Technology Consulting uses to protect its own confidential information from unauthorized disclosure.

Confidential information is limited to information clearly marked as confidential, or disclosed orally and summarized and identified as confidential in a writing delivered to Fielder Technology Consulting within 15 days of disclosure.

Confidential information does not include information that:

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- Fielder Technology Consulting knew before Client disclosed it
- Is or becomes public knowledge through no fault of Fielder Technology Consulting
- Fielder Technology Consulting obtains from sources other than Client who owe no duty of confidentiality to Client, or Fielder Technology Consulting independently develops.

**13. WARRANTIES.** Fielder Technology Consulting warrants that all services performed under this Agreement shall be performed consistent with generally prevailing professional or industry standards. Client must report any deficiencies in Fielder Technology Consulting's services to Fielder Technology Consulting in writing within 15 days of performance to receive warranty remedies.

Client's exclusive remedy for any breach of the above warranty shall be the re-performance of Fielder Technology Consulting's services. If Fielder Technology Consulting is unable to re-perform the services, Client shall be entitled to recover the fees paid to Fielder Technology Consulting for the deficient services.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE PRIOR TO THIS AGREEMENT.

#### **14. INDEMNIFICATION**

Consultant agrees to indemnify and hold harmless the City and its elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") from any and all claims, demands, costs or liability determined by a court of competent jurisdiction to have arisen from or to be connected with Consultant's negligent, or deliberately wrongful act, errors, or omissions in connection with the performance of this Agreement. Likewise, City agrees to indemnify and hold harmless Consultant and its officers, employees, and sub consultants from any and all claims, demands, costs or liability determined by a court of competent jurisdiction to have arisen from or to be connected with the City's negligent, or deliberately wrongful acts, errors, or omissions in connection with the performance of this Agreement.

If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultants expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by Consultant under Section 16 shall ensure Consultants obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

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Date: 12-3-2009

Fielder Technology Consulting

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THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE PRIOR TO THIS AGREEMENT.

#### **14. INDEMNIFICATION**

Consultant agrees to indemnify and hold harmless the City and its elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") from any and all claims, demands, costs or liability determined by a court of competent jurisdiction to have arisen from or to be connected with Consultant's negligent, or deliberately wrongful act, errors, or omissions in connection with the performance of this Agreement. Likewise, City agrees to indemnify and hold harmless Consultant and its officers, employees, and sub consultants from any and all claims, demands, costs or liability determined by a court of competent jurisdiction to have arisen from or to be connected with the City's negligent, or deliberately wrongful acts, errors, or omissions in connection with the performance of this Agreement.

If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultants expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by Consultant under Section 16 shall ensure Consultants obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

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## 15. INSURANCE

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement insurance, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work provided by Consultant, its agents, representatives or employees in performance of this Agreement. Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by City Manager. Consultant agrees to provide City with copies of required policies upon request.

Consultant shall provide the following scope and limits of insurance:

(a) Minimum Scope of Insurance: Coverage shall be at least as broad as:

- (1) Insurance Services Office Form Commercial General Liability coverage (Occurrence Form CG 0001).
- (2) Insurance Services Office form number CA 0001 covering Automobile Liability, including code 1, Any auto@ and endorsement CA 0025, or equivalent forms subject to written approval of City.
- (3) Workers Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance and covering all persons providing services on behalf of the Consultant and all risks to such persons under this Agreement.

(b) Minimum Limits of Insurance: Consultant shall maintain limits of insurance no less than:

- (1) General Liability: \$1,000,000 general aggregate for bodily injury, personal injury and property damage.
- (2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- (3) Workers Compensation and Employers Liability: Workers Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

(c) Other provisions: Insurance policies required by this Agreement shall contain the following provisions:

- (1) All Policies: Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, canceled by the insurer or other party to this Agreement, reduced in coverage or in limits except after 30 days prior written notice by certified mail, return receipt requested has been given to City .
- (2) General Liability and Automobile Liability Coverage:

(i) City and their respective elected and appointed officers, officials, employees and volunteers are to be covered as additional insured as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and its respective elected and appointed officers, officials or employees.

(ii) Consultants insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed officers, officials, employees and volunteers. Any insurance or self insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Consultant's insurance.

(iii) Consultants insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(iv) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

(3) Employers Liability Coverage: Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Consultant.

(d) Other Requirements: Consultant agrees to deposit with City, at or before the effective date of this Agreement, certificates of insurance necessary to satisfy City that the insurance provisions of this Agreement have been met. The City Attorney may require that Consultant furnish City with copies of original endorsements effecting coverage required by this section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies at any time.

(1) Consultant shall furnish certificates and endorsements from each subcontractor identical to those Consultant provides.

(2) Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

(3) The procuring of such required policy or policies of insurance shall not be construed to limit Consultants liability hereunder or to fulfill the indemnification

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provisions and requirements of this Agreement.

**15. FORCE MAJEURE.** Fielder Technology Consulting shall not be liable for and is excused from any failure to deliver or perform or delay in delivery or performance, due to causes beyond its reasonable control or due to failure of Client to provide sufficient information, resources, cooperation or personnel to support the project. The period of performance shall be extended to such extent as may be appropriate after the cause of the delay or non-performance has been removed.

**14. TAXES.** The charges included here do not include taxes. If Fielder Technology Consulting is required to pay any federal, state or local sales, use, property or value added taxes based on the services provided under this Agreement, the taxes shall be separately billed to Client. Fielder Technology Consulting shall not pay any interest or penalties incurred due to late payment or nonpayment of such taxes by Client.

**16. CONTRACT CHANGES.** Client and Fielder Technology Consulting recognize that:

- Fielder Technology Consulting's original cost and time estimates may be too low due to unforeseen events, or to factors unknown to Fielder Technology Consulting when this Agreement was made
- Client may desire a mid-project change in Fielder Technology Consulting's services that would add time and cost to the project and possibly inconvenience Fielder Technology Consulting, or
- Other provisions of this Agreement may be difficult to carry out due to unforeseen circumstances.
- If any intended changes or any other events beyond the parties' control require adjustments to this Agreement, the parties shall make a good faith effort to agree on all necessary particulars. Such agreements shall be put in writing, signed by the parties and added to this Agreement.

**17. 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 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.

**18. ATTORNEY FEES.** If any litigation or arbitration is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses.

#### **19. Exclusions**

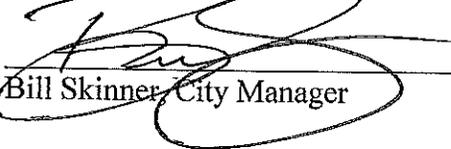
Maintaining the wireless infrastructure, printer repair, and coordinating with ATT or 01 communications (T1 and Phone lines).

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**20. GENERAL PROVISIONS.**

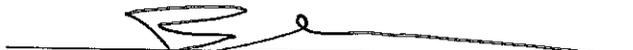
- (a) Sole agreement: This is the entire Agreement between Fielder Technology Consulting and Client.
- (b) Severability: If any part of this Agreement is held unenforceable, the rest of the Agreement will continue in full force and effect.
- (c) Applicable law: This Agreement will be governed by the laws of the State of California.
- (d) Notices: All notices and other communications given in connection with this Agreement shall be in writing and shall be deemed given as follows:
  - i. When delivered personally to the recipient's address as appearing in the introductory paragraph in this Agreement.
  - ii. Three days after being deposited in the United States mails, postage prepaid to the recipient's address as appearing in the introductory paragraph to this Agreement, or
  - iii. When sent by fax or telex to the last fax or telex number of the recipient known to the party giving notice.
  - iv. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first-class or certified mail, or the recipient delivers a written confirmation of receipt.
  - v. Any party may change its address appearing in the introductory paragraph to this Agreement by giving notice of the change in accordance with this paragraph.
- (e) No Partnership: This Agreement does not create a partnership relationship. Fielder Technology Consulting does not have authority to enter into contracts on Client's behalf.

Client: ~~City of Coalinga Administration~~

  
\_\_\_\_\_  
Bill Skinner, City Manager

12-3-09  
Date

Service Provider: Fielder Technology Consulting

  
\_\_\_\_\_  
Bart Fielder, Fielder Technology Consulting

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