

REPORT TO CITY COUNCIL

DATE: FEBRUARY 27, 2008

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: RAMIRO ADEVA, CITY ENGINEER

SUBJECT: REQUEST FOR APPROVAL OF A PROFESSIONAL WATER QUALITY SERVICES AGREEMENT WITH WILLDAN

Since incorporation in 1982, the City has contracted with Willdan for a variety of engineering services. This particular contract is needed in order to ensure City compliance with current and future water quality regulations which include, among other things, a new NPDES permit and TMDL's. A detailed list of the services required of this contract can be found as Exhibit 'A' on the attached contract agreement. Since Willdan has already been performing these services to the City's satisfaction, the City did not feel the need to go through the formal proposal solicitation process to bring a new firm aboard. Willdan provides competent personnel with the expertise needed in dealing with the highly complex and technical issues surrounding the watershed.

The new contract is scheduled to begin on March 1, 2008, will terminate at the end of this fiscal year, and can be extended annually upon mutual consent of both parties each year. Ending the contract at the end of the fiscal year, allows for the renewal of the contract under FY 08-09, and at that point, the beginning and ending dates of this contract will be consistent with other City contracts.

Per the previous direction of the City Manager, the City has been proactive in setting aside funds to address water quality issues, and thus has enough money in the general fund to cover the services of this contract.

The proposed agreement has been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff respectfully recommends the City Council:

1. Approve the professional water quality services agreement with Willdan; and
2. Authorize the Mayor to sign the agreement on behalf of the City Council.

Attachment: Professional Water Quality Services Agreement

AGREEMENT FOR CONSULTING SERVICES
WITH THE CITY OF AGOURA HILLS

NAME OF CONSULTANT:	Willdan
RESPONSIBLE PRINCIPAL OF CONSULTANT:	Roxanne Hughes Principal in Charge
CONSULTANT'S ADDRESS:	374 Poli Street Suite 101 Ventura, CA 93001-2605
CITY'S ADDRESS:	City of Agoura Hills Ramiro S. Adeva III, City Engineer 30001 Ladyface Court Agoura Hills, CA 91301
COMMENCEMENT DATE:	March 1, 2008
TERMINATION DATE:	June 30, 2008
CONSIDERATION:	Varies

**AGREEMENT FOR CONSULTING SERVICES
BETWEEN THE CITY OF AGOURA HILLS AND WILLDAN
FOR PROFESSIONAL WATER QUALITY SERVICES**

THIS AGREEMENT, is made and entered into in the City of Agoura Hills on this 27th day of February, 2008, by and between the CITY OF AGOURA HILLS, a municipal corporation, herein after referred to as CITY, and Willdan, hereinafter referred to as "CONSULTANT."

W I T N E S S E T H:

WHEREAS, CITY desires to obtain the services of a competent and experienced CONSULTANT to perform related professional duties as set forth in Exhibit "A" attached and made a part of this agreement; and

WHEREAS, CONSULTANT possesses the required competence and experience and is available to provide the required services for the period of this Agreement.

NOW, THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. TERM. The term of this Agreement shall be from March 1, 2008 through June 30, 2008. This Agreement may be extended annually upon mutual consent of the parties for a maximum of 2 one-year extensions.

2. CITY'S OBLIGATIONS. For City to pay CONSULTANT as specified in this Agreement, CONSULTANT must submit a detailed invoice to the City which lists the personnel used to complete the task, hours worked, and hourly rates for each personnel category (All as set forth in Exhibit "B").

Payments to the CONSULTANT shall be made within 30 days after receipt of an original invoice from the CONSULTANT and acceptance of the services.

3. CONSULTANT'S OBLIGATIONS. For and in consideration of the payments and agreements hereinbefore mentioned to be made and performed by CITY, CONSULTANT agrees with CITY to furnish the services and to do everything required by this AGREEMENT, as outlined in the scope of work attached hereto as Exhibit "A". Without limiting the generality of the foregoing, CONSULTANT represents on behalf of itself and all subcontractors engaged for the performance of this Agreement that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

4. HOLD HARMLESS, INDEMNIFICATION AND DEFENSE. To the full extent permitted by law, the CONSULTANT shall indemnify, hold harmless and defend, with counsel reasonably approved by CITY, the CITY, its officials, officers, employees, representatives, and agents, from and against all claims, lawsuits, liabilities or damages of whatsoever nature arising out of or in connection with any intentional misconduct or negligent act or omission of the CONSULTANT, its agents, employees, and subcontractors of any tier and employees thereof in connection with the performance or non-performance of this Agreement. The CONSULTANT shall thoroughly investigate any and all claims and indemnify the CITY and do whatever is necessary to protect the CITY, its officials, officers, employees, agents, and representatives as to any such claims, lawsuits, liabilities, expenses, or damages. The CITY shall promptly notify the CONSULTANT of the existence of any such claims, although the CITY's failure to do so shall not excuse the CONSULTANT from compliance with this Section 4. The requirements of this Section 4 shall survive any termination of this Agreement.

5. INSURANCE. CONSULTANT shall furnish CITY with proof of the following minimum insurance coverages prior to the execution hereof:

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|----|--|-------------|-----------------------|
| a) | General Comprehensive Liability
(must be written on a general aggregate occurrence form and include bodily injury, property damage) | \$2,000,000 | Combined single limit |
| b) | Automobile Liability for owned autos and unowned/hired autos (must be written on an occurrence form) | \$1,000,000 | |
| c) | Professional Liability/Errors & Omissions | \$2,000,000 | |
| d) | Worker's Compensation | \$250,000 | Statutory |

Coverage 5.a) and b) shall also include a City approved endorsement form or a copy of insurance policies providing an additional insured endorsement covering the CITY, its agents and employees, and all of the foregoing insurance shall include an unequivocal clause stating that none of the required insurance shall be canceled without 30 days prior written notice to the CITY. For coverage 5.a) and b) a City approved endorsement or certified copy of insurance policies providing coverage shall be submitted to and approved prior to commencement of any work.

6. AMENDMENTS. Any amendment, modification, or variation from the terms of this Agreement shall be in writing and shall be effective only upon approval by the City Engineer of the CITY.

7. TERMINATION. CONSULTANT may not terminate this Agreement except upon 30 days written notice and upon receiving the prior written consent of CITY, which shall not unreasonably be withheld. CITY may terminate this Agreement without cause, upon thirty (30) days written notice to CONSULTANT in which case CONSULTANT shall be entitled to receive compensation for the reasonable value of CONSULTANT'S services performed through the termination date. Furthermore, if, during the term of this Agreement, CITY determines that CONSULTANT is not faithfully abiding by any term or condition contained herein, CITY may notify CONSULTANT in writing of such defect or failure to perform; which notice must give CONSULTANT a 24-hour notice of time thereafter in which to perform said work or cure the deficiency. If CONSULTANT has not performed the work or cured the deficiency within the time specified in the notice, or if a similar failure to perform or deficiency is repeated, such shall constitute a breach of this Agreement and CITY may terminate this Agreement immediately by written notice to CONSULTANT to said effect. In said event, CONSULTANT shall be entitled to the reasonable value of its services performed up to the day it received CITY'S Notice of Termination, minus any offset from such payment representing the City's damages from such breach. Failure of CONSULTANT to provide CITY staff reports, exhibits, charts, graphs, and other written material which meets or exceeds reasonable professional standards shall cause damages which are unascertainable at the inception hereof, entitling CITY to offset any payments due on the agreement in the form of liquidated damages not exceeding the balance due on the agreement, and not as a penalty. In addition, all finished and unfinished documents, which shall include but not be limited to: data, studies, surveys, drawings, maps, reports, and other materials prepared by CONSULTANT will, at CITY's option, become CITY's property. CITY reserves the right to delay any post-termination payment until completion or confirmed abandonment of the project, as may be determined in the CITY's sole discretion, so as to permit a full and complete accounting of costs.

8. ASSIGNMENT/SUCCESSORS. Neither party hereto shall assign any of the benefits or burdens hereunder without the prior written consent of the other party hereto. Assigns and successors to the parties hereto shall be bound by the provisions hereof.

9. COMPLETE AGREEMENT. This written Agreement, including all writings specifically incorporated herein by reference, shall constitute the complete agreement between the parties hereto. No oral agreement, understanding, or representation not reduced to writing and specifically incorporated herein shall be of any force or effect, nor shall any such oral agreement, understanding, or representation be binding upon the parties hereto.

10. TIME OF PERFORMANCE. Time is of the essence in this Agreement.

11. ANTI-DISCRIMINATION. In the performance of the terms of this Agreement, CONSULTANT agrees that it will not engage in, nor permit such subcontractors as it may employ, to engage in discrimination in employment of persons

because of the age, race, color, religious creed, sex, sexual orientation, national origin, ancestry, physical disability, mental disability, medical condition, or marital status of such persons. Violation of this provision may result in the imposition of penalties referred to Labor Code Section 1735.

12. AUDIT. CITY shall have the option of inspecting and/or auditing all records and other written materials used by CONSULTANT in preparing its statements to CITY as a condition precedent to any payment to CONSULTANT. The Consultant shall maintain all records of its performance under this Agreement including, without limitation: notes, invoices, timesheets, payroll records, reports, correspondence, and testing results, for a period of not less than five (5) calendar years following the final payment date of the Agreement in a location and form accessible to the City upon reasonable written notice to the Consultant.

13. NOTICE. All written notices to the parties hereto shall be sent by United States mail, postage prepaid by registered or certified mail addressed as follows:

CITY Ramiro S. Adeva III, City Engineer
City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301

CONSULTANT Roxanne Hughes
Willdan
374 Poli Street, Suite 101
Ventura, CA 93001-2605

14. AUTHORITY TO EXECUTE AGREEMENT. Both CITY and CONSULTANT do covenant that each individual executing this Agreement on behalf of each party is a person duly authorized and empowered to execute Agreement for such party.

15. CONFLICT OF INTEREST. Neither CONSULTANT nor any employees, agents, or subcontractors of CONSULTANT who will be assigned to this project, to the best of CONSULTANT'S knowledge, own any property or interest in properties, business relationships, or sources of income which may be affected by the performance of this Agreement. Should either party hereto learn of any such interest, income source, or business relationship, such fact shall immediately be brought to the attention of the other party hereto. If the parties thereupon cannot mutually agree upon a means to eliminate the conflict CITY may terminate the agreement immediately on the same conditions applicable when CONSULTANT fails to provide to CITY staff reports, exhibits, charts, etc. (See Section 7 hereof).

16. JURISDICTION, LAWS, ATTORNEYS FEES. This Agreement shall be interpreted and enforced according to the local laws of the State of California. The parties hereto agree that the venue for any lawsuit arising out of either party's performance

or obligations hereunder shall be the State courts in Los Angeles County, California. Should either party be forced to initiate litigation to enforce any provision of this Agreement, the prevailing party therein, as adjudged by a court of competent jurisdiction, shall be entitled to recover its costs of such litigation including, without limitation, reasonable attorneys' fees.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

ATTEST:

CITY OF AGOURA HILLS,
a Municipal Corporation

By: _____
Kimberly Rodrigues, City Clerk

By: _____
John Edelston
Mayor, City of Agoura Hills

APPROVED AS TO FORM:

By: _____
Craig Steele, City Attorney

CONSULTANT:

By: _____
Roxanne Hughes
Principal in Charge

EXHIBIT 'A'

Scope of Services

1. Storm Water Services

Act as the City's representative and assist the Engineering Division in implementing the City's Storm Water Program for full compliance with the Los Angeles County National Pollutant Discharge Elimination System (NPDES) Permit, Total Maximum Daily Loads (TMDLs), and related regulations. Services to be provided shall include, but not be limited to, the following tasks:

- a) Attend various Stormwater-related meetings and committees on behalf of the City. Participate in the discussions of such meetings and deliver the City's position in a professional and effective manner. Prepare reports, summaries, presentations, etc. to update the City following the meetings.
- b) Keep City informed of new developments in the NPDES permit, the Watershed Management Plans, TMDL-related issues, and any and all related information regarding water quality. Review all comments, proposed changes and modifications to the aforementioned items, which would affect the City and future implementation plans. Provide recommendations to City staff based on thorough research and analysis that best utilizes City resources.
- c) Coordinate with City departments for the proper implementation of the provisions of the Standard Urban Stormwater Mitigation Plan. Update the SUSMP as directed by the Regional Water Quality Board and implement amendments accordingly.
- d) Review the City's current stormwater ordinance and policy and recommend modifications if needed to ensure its consistency with the NPDES permit.
- e) Assist the City in preparing cost estimates relating to the NPDES/Stormwater Program for the City's annual budget.
- f) Provide assistance with development of standard NPDES conditions of approval for routine development proposals. Assist City staff with specific project conditioning as requested.
- g) Keep City staff updated on the status of the preparation of the Sewer System Management Plan (SSMP), as well as the deadlines associated with the plan. Keep City staff informed of costs associated with such a plan, prepare any special reports and presentations as needed to ensure the timely completion of the plan.

2. Other Services

On an as needed basis, and when the need arises for other services not specifically listed in Section 1 – Stormwater Services, for which the consultant has necessary experience and capabilities to provide such as, but not limited to: real property services, environmental planning, municipal planning, engineering services, construction management, development review, capital projects, grantsmanship, and related work.