

## REPORT TO CITY COUNCIL

**DATE:** JULY 9, 2008

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** GREG RAMIREZ, CITY MANAGER

**BY:** MIKE KAMINO, DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT

**SUBJECT:** APPROVAL OF A CONSULTING SERVICES AGREEMENT WITH GEODYNAMICS, INC., FOR ONGOING GEOTECHNICAL REVIEW SERVICES

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The purpose of this item is to seek City Council approval for the City to enter into an agreement for consulting services with Geodynamics, Inc., to provide geotechnical review services to the City. Planning staff is requesting the approval of a one-year contract with Geodynamics.

Geodynamics has provided geotechnical review services to the City for the past three years. Under this agreement, the primary task of Geodynamics, Inc., would be to review applicants' geology reports and grading plans for adequacy per the City's guidelines, and provide comments and recommendations to City staff. The work to be performed would be on a time and materials basis, with funds being drawn from the applicants' trust accounts. Geodynamics is proposing a slight fee increase in the hourly rate for peer review from \$140 to \$145 to cover increased requirements for insurance. However, staff estimates the annual reimbursable expenses would not exceed \$40,000 based on past invoices and in anticipation of the likely amount and type of projects that would need geotechnical review in the coming year.

City staff has been pleased with the work performed by Mr. Abdel-Haq and his associates in the past, and is confident that Geodynamics, Inc., will continue to provide high quality services to the City.

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

### RECOMMENDATION

Staff respectfully recommends the City Council approve the agreement with Geodynamics, Inc., on a time-and-materials basis.

Attachment: Agreement with Exhibits A-B

AGREEMENT FOR CONSULTANT SERVICES  
WITH THE CITY OF AGOURA HILLS

NAME OF CONSULTANT:	Geodynamics, Inc.
RESPONSIBLE PRINCIPAL OF CONSULTANT:	Ali Abdel-Haq Principal Engineer
CONSULTANT'S ADDRESS:	558 Saint Charles Drive Suite 116 Thousand Oaks, CA 91360
CITY'S ADDRESS:	City of Agoura Hills 30001 Ladyface Court Agoura Hills, CA 91301 Attention: City Manager
COMMENCEMENT DATE:	July 1, 2008
TERMINATION DATE:	June 30, 2009
CONSIDERATION:	Not to exceed \$40,000

**AGREEMENT FOR CONSULTANT SERVICES BETWEEN  
THE CITY OF AGOURA HILLS AND GEODYNAMICS, INC.**

**THIS AGREEMENT** is made and effective as of July 1, 2008, between the City of Agoura Hills, a municipal corporation ("City") and Geodynamics, Inc. ("Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **TERM**. This Agreement shall commence on July 1, 2008, and shall remain and continue in effect until tasks described herein are completed, but in no event later than June 30, 2009, unless sooner terminated pursuant to the provisions of this Agreement.

2. **SERVICES**. Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. **PERFORMANCE**. Consultant shall at all time faithfully, competently and to the best of his or her ability, experience, and talent, perform all tasks described herein. Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. **PAYMENT**

A. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B other than the payment rates and schedule of payment are null and void. This amount shall not exceed \$40,000 ("Contract Price") for the initial Term of the Agreement unless additional payment is approved as provided in this Agreement.

B. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by the City Council and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

C. Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

**5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE**

A. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

B. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City pursuant to Section 4.

**6. DEFAULT OF CONSULTANT**

A. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

B. If the City Manager or his or her delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

**7. OWNERSHIP OF DOCUMENTS**

A. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

B. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files provided that Consultant has a then-existing license for such software.

**8. INDEMNIFICATION.** The Consultant agrees to defend, indemnify, protect and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City, its officers, agents and employees may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City.

**9. INSURANCE REQUIREMENTS.** Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:

1) General Liability: \$2,000,000 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.

2) Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.

3) Worker's Compensation as required by the State of California; Employer's Liability: One million dollars (\$1,000,000) per accident for bodily injury or disease.

4) Professional Liability coverage: Two million (\$2,000,000) per claim and in aggregate.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City Manager. At the option of the City Manager, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

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

4) The Consultant's 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.

5) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

F. Verification of Coverage. Consultant shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

## **10. INDEPENDENT CONSULTANT**

A. Consultant is and shall at all times remain as to the City a wholly independent consultant. 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 of its officers, employees, agents, or volunteers 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 it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

B. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

**11. LEGAL RESPONSIBILITIES.** The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

## **12. RELEASE OF INFORMATION**

A. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subcontractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order

shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

B. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

**13. NOTICES.** Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (I) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

To City: City of Agoura Hills  
30001 Ladyface Court  
Agoura Hills, California 91301  
Attention: City Manager

To Consultant: Geodynamics, Inc.  
558 Saint Charles Drive  
Suite 116  
Thousand Oaks, CA 91360  
Attention: Ali Abdel-Haq

**14. ASSIGNMENT.** The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

**15. LICENSES.** At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.



**16. GOVERNING LAW.** The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Agoura Hills. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

**17. PROHIBITED INTEREST.** No officer, or employee of the City of Agoura Hills shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's subcontractors for this project, during his/her tenure or for one year thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Agoura Hills has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of the Consultant or Consultant's subcontractors on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

**18. ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

**19. AUTHORITY TO EXECUTE THIS AGREEMENT.** The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder.

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

**CITY OF AGOURA HILLS**

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John M. Edelston,  
Mayor

ATTEST:

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Kimberly M. Rodrigues, CMC  
City Clerk

APPROVED AS TO FORM:

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Craig A. Steele,  
City Attorney

**CONSULTANT**

Geodynamics, Inc.  
558 Saint Charles Drive  
Suite 116  
Thousand Oaks, CA 91360  
Attention: Ali Abdel-Haq  
(805) 496-1222

By: \_\_\_\_\_

Name: Ali Abdel-Haq  
Title: Principal Engineer

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[Signatures of Two Corporate Officers Required]**

## **EXHIBIT A**

### **SCOPE OF SERVICES**

Geodynamics shall provide professional geotechnical/soils engineering reports review for services in connection with development projects submitted to the City. The Consultant may be required to visit the project site upon notification by the City. The work in general shall include the following:

1. Perform geotechnical investigation services for the City of Agoura Hills, and provide geotechnical recommendations on as needed basis.
2. Review and evaluate the geotechnical/geological reports prepared by developers' consultants in accordance with the City's guidelines for preparation of such reports. Provide the City staff with specific recommendations as to the acceptability of such reports. Provide detailed review comments/suggestions to bring the report in compliance with City requirements.
3. Recommend modification/changes to the City guidelines to be in conformance with the latest state regulations, laws and acceptable geotechnical engineering practices.
4. Review grading plans for development projects to ensure compliance with acceptable geotechnical recommendations.
5. Review "as built" geotechnical/geological reports for adequacy/completeness.
6. Provide field observation for reviewing testing procedures if so requested by the City.
7. Provide field observation during grading operation if so requested by the City, and provide recommendations.
8. Review change orders for changes made during grading operation and review reports for acceptability.
9. Review geological/geotechnical section of various EIR and Specific Plans for adequacy, as requested by the City.

The scope of work will be billed on an hourly, time and materials basis, as noted in Exhibit B of this Agreement.

## **EXHIBIT B**

### **SCHEDULE OF PAYMENT AND RATES**

CONSULTANT shall submit monthly invoice to CITY with detailed accounting by task and amount expended per task. All reimbursable expenses shall be itemized and submitted to CITY for approval. Upon approval, CITY shall make payment to CONSULTANT within 30 days.

The work outlined in the Scope of Services, Exhibit A, shall be provided on an hourly, times-and-materials basis, as listed below, for a not-to-exceed amount of \$40,000 for the term of the Agreement.

## 2008 PROFESSIONAL FEE SCHEDULE

### MUNICIPAL/PUBLIC WORKS SERVICES

#### FEES FOR PROFESSIONAL, TECHNICAL AND SUPPORT STAFF

Geodynamics, Inc., charges our clients for professional, technical and support services for time directly related to a project. Charges are not made for ordinary secretarial services, office management, accounting, maintenance or other activities not directly related to a project. Current personnel classifications and rates are summarized below. Rates shown are adjusted for California Prevailing Wage Law as indicated.

#### PEER REVIEW SERVICES FEES

<u>Personnel Classification</u>	<u>Rate (per hour)</u>
Project Peer Review .....	145.00
Assistant Project Review .....	105.00
Assistant Project Review (Prevailing Wage—Field Inspection) .....	110.00
Project Administrator (Clerical Support).....	57.00

#### REGULAR SERVICE FEES

<u>Personnel Classification</u>	<u>Rate (per hour)</u>
Principal.....	\$150.00
Associate.....	145.00
Senior Project Professional.....	135.00
Project Professional .....	120.00
Assistant Project Professional.....	110.00
Senior Staff Professional.....	105.00
Staff Professional .....	95.00
Senior Technician <sup>(1)</sup> .....	80.00
Senior Technician <sup>(1)</sup> (Prevailing Wage).....	98.00
Technician <sup>(1)</sup> .....	70.00
Technician <sup>(1)</sup> (Prevailing Wage) .....	90.00
Draftsperson/Technical Illustrator .....	70.00
Project Administrator <sup>(1)</sup> .....	62.00
Word Processor/Typing <sup>(1)</sup> .....	60.00
Office Assistant <sup>(1)</sup> .....	55.00

<sup>(1)</sup> Overtime will be charged at 1.3 times the above listed rates for these personnel classifications. Overtime is defined as time charged to a project in excess of 8 hours per day, time worked on weekends, holidays, or night shifts.

## **PROJECT-RELATED EXPENSES**

Expenses directly related to a project will be billed as follows:

Subcontractors (drilling, trenching, surveying, testing, etc.), travel-related expenses (hotels, meals, vehicle rentals, air travel, etc.) and other project expenses (e.g., aerial photographs, outside reprographics, equipment rental, overnight shipping, project-related expendable supplies, etc.) will be charged at cost plus 10 percent.

Mileage for project-related travel will be billed at \$0.65 per mile

In-house photocopy/reproduction will be billed at \$0.25 per page.