

CONTRACT FOR CONSULTING ENGINEER SERVICES

The following is an agreement between the City of Coalinga, California, herein referred to as “City” and MKN & Associates, Inc. hereinafter referred to as “Consulting Engineer”.

WHEREAS Consulting Engineer is a duly licensed and qualified engineer and is experienced as a consulting engineer in matters connected therewith, and has offered services for the purposes specified in this agreement; and

WHEREAS in the judgment of the City Council of said City, it is necessary and advisable to employ said Consulting Engineer to provide consulting engineering services.

NOW, THEREFORE, in consideration of the promises hereinafter made and exchanged, the parties hereto agree as follows:

1. *Employment of Consulting Engineer:* Effective on February 25, 2021, City agrees to employ Consulting Engineer and Consulting Engineer agrees to perform engineering services for City in accordance with the provisions hereinafter contained in this Agreement.

Consulting Engineer shall serve as a consulting engineer and as a professional engineering representative in engineering matters to which this Agreement applies and will give consultation and advice to City during the performance of said services.

Consulting Engineer may employ the services of outside consultants and subcontractors as is deemed necessary to complete work under this Agreement upon approval of the Assistant City Manager.

2. *Scope of Services and Fees:* The Consulting Engineer shall provide engineering services on a task order basis at a rate described in Appendix A, “Rate Schedule”. This rate is to be reviewed on an annual basis.

Additionally, MKN & Associates, Inc. shall provide on-call services at the option of the City which shall also be compensated for as provided in the attached Appendix A.

On-call planning services shall include reviews of proposed projects and preparation of staff reports if requested, in addition to preparing or aiding with planning documents as needed or requested. Such planning documents may include General Plans, Specific Plans, Flow Models, and required notices and technical studies that may be necessary to comply with State laws and regulations.

Consulting Engineer shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or listed in Exhibit “A” unless such additional services are

authorized in advance and in writing by the City Council or Assistant City Manager of City. Consulting Engineer shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or Assistant City Manager.

3. *Progress Payments:* Consulting Engineer shall submit monthly invoices to the City for work done in accordance with this Agreement.

Except as to any charges for work performed or expenses incurred by Consulting Engineer which are disputed by City, City will use its best efforts to cause Consulting Engineer to be paid within thirty (30) days of receipt of Consulting Engineer's invoice. Bills shall be itemized to show type of work, personnel classification, hours worked and billing rate.

4. *Time of Performance:* Consulting Engineer shall perform all work in a timely manner.

5. *Documents:* All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files, and other documents prepared, developed or discovered by Consulting Engineer in the course of providing any services pursuant to this Agreement shall become the sole property of City and may be used, reused, or otherwise disposed of by City without the permission of the Consulting Engineer. Any reuse of Documents by the City without the prior written approval of the Consultant will be at the sole risk of the City reusing such work product and without liability or legal exposure to Consulting Engineer. Consulting Engineer shall retain reproducible copies of all drawings for future reference purposes. Upon completion, expiration or termination of this Agreement, Consulting Engineer shall turn over to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

6. *Consulting Engineer's Books and Records:* Consulting Engineer shall maintain any and all documents and records demonstrating or relating to Consulting Engineer's performance of services pursuant to this Agreement. Consulting Engineer shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures, and disbursements charged to City pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consulting Engineer pursuant to this Agreement. Any and all such documents or records shall be maintained for three years from the date of execution of this Agreement and to the extent required by laws relating to the audits of public agencies and their expenditures.

Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by City or its designated representative. Copies of such documents or records shall be provided directly to the City for inspection, audit

and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents Agreement.

Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Consulting Engineer's business, City may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

7. *Project Representation:* Consulting Engineer and City shall each designate in writing within ten (10) days from the date of execution of this agreement a representative who shall be responsible for coordinating the efforts of their respective party with regard to the performance of the work as set forth under this Agreement Representation may be changed upon the mutual agreement of the City and Consulting Engineer.

It is understood and agreed that as Consulting Engineer, MKN & Associates, Inc., shall not undertake work for private clients, except for services that have no relationship to any area of the City's jurisdiction or discretionary authority, within the corporate limits or immediate area of influence of the City of Coalinga throughout the duration of this Agreement. Should any of MKN & Associates, Inc. clients for projects in other geographic areas undertake work within the City's jurisdiction or discretionary authority, MKN & Associates, Inc. shall advise the City. In such cases, at the City's sole election, City may obtain replacement engineering services to review, inspect and approve such developments in order to avoid an actual or the appearance of conflict. If desired by City, MKN & Associates, Inc. will assist City in such replacement effort.

8. *Independent Contractor:* Consulting Engineer shall serve as an independent contractor to City. Consulting Engineer shall at all times maintain workers' compensation and liability insurance on its employees and shall be responsible for any federal or state taxes imposed on such employees. All persons employed by Consulting Engineer shall be considered as employees of Consulting Engineer, not of City. Neither Consulting Engineer, nor any of Consulting Engineer'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. Consulting Engineer expressly waives any claim Consulting Engineer may have to any such rights.
9. *Standard of Care:* Consulting Engineer represents that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner. Consulting Engineer shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all services described herein. Services provided by the Consulting Engineer under this agreement will, at a minimum, be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

Consulting Engineer shall keep itself informed of and comply with applicable federal, state, and local laws, statutes, codes, ordinances, regulations, and rules in effect during the term of this Agreement. Consulting Engineer shall obtain any and all licenses, permits and authorizations necessary to perform Consulting Engineer's services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees, or agents of City, shall be liable at law or in equity as a result of any failure of Consulting Engineer to comply with this section.

10. *Responsibilities of City:* The City shall:
 - a. Provide full information as to requirements for work performed under this Agreement
 - b. Assist Consulting Engineer by placing at his disposal available information pertinent to the work performed including previous reports and other data; all of which Consulting Engineer may rely upon in performing the services agreed upon.
 - c. Guarantee access to and make all provisions for Consulting Engineer to enter upon public and private property as required for Consulting Engineer to perform services.
 - d. Except when determined not to be in the City's best interest, utilize the services of the Consulting Engineer for all of those professional services described in Appendix A hereto.
11. *Term and Termination of Agreement:* either party, upon thirty (30) days written notice, may terminate this Agreement.

If this Agreement is terminated for any reason, Consulting Engineer shall be paid for the reasonable value of services performed by him up to the time of such termination. Said reasonable value to be determined by the actual number of hours worked multiplied by the applicable charge rate listed in Appendix A or otherwise agreed to in accordance with said Appendix.

The term of this Agreement shall be until written notice of termination is given by the City or by the Consulting Engineer.

12. *Non-Assignability:* Consulting Engineer shall not assign or transfer this contract or any interest or obligation therein without the prior written consent of the City, and then only upon such terms and conditions as City may set forth in writing.
13. *Waiver:* In the event that either City or Consulting Engineer shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or

any other covenant, condition, or obligation.

14. *Hold Harmless and Insurance:*

- a. Consulting Engineer shall indemnify and hold the City and its elected and appointed boards, officials, officers, agenda, and employees (individually and collectively, "Indemnitees") harmless from any and all claims, demands, costs, liability, or actions, resulting from or attributable to the negligent or deliberately wrongful acts, errors, or omissions of Consulting Engineer in the performance of its duties hereunder.
- b. Pursuant to Civil Code Section 2782.8, if any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consulting Engineer has agreed to indemnify Indemnitees as provided above, Consulting Engineer, upon notice from City, shall defend Indemnitees at Consulting Engineer's 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 Consulting Engineer under Section 16 shall ensure Consulting Engineer's obligations under this section, but the limits of such insurance shall not limit the liability of Consulting Engineer hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.
- c. Consulting Engineer shall obtain and keep in force and effect during the term of this Agreement personal injury, bodily injury, and property damage liability insurance, including contractual liability, with a combined single limit in the minimum amount of one million dollars (\$1,000,000) per occurrence, which policy shall name the city, its officers, employees, and agents, as additional insureds.
- d. Consulting Engineer shall also obtain and keep in force and effect during the term of this Agreement automobile liability insurance in the minimum amount of one million dollars (\$1,000,000) per accident for bodily injury and property damage.
- e. Consulting Engineer shall also obtain and keep in force and effect during the term of this Agreement Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.
- f. Consulting Engineer shall also obtain and keep in force and effect during the term of this Agreement professional liability insurance covering any loss arising out of or related in any manner to any negligent errors, omissions, or acts of Consulting Engineer, its employees, and agents, in the minimum amount of one million dollars (\$1,000,000) per claim and two million dollars

(\$2,000,000) annual aggregate.

All policies shall be endorsed and contain a provision indicating that said policy shall not be cancelled, suspended, voided, or reduced in coverage or limits except upon thirty (30) days written notice by certified mail, return receipt requested, to the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Consulting Engineer shall furnish certificates and endorsements from each subcontractor identical to those Consulting Engineer provides. 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 Consulting Engineer shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The procuring of such required policy or policies of insurance shall not be construed to limit Consulting Engineer's liability hereunder or to fulfill the indemnification provisions and requirements of this Agreement.

- g. Certificates of insurance, as required by subparagraphs "b" and "c" hereinabove, shall be filed with the City within ten (10) days of execution of this Agreement
- h. City and their respective elected and appointed officers, officials, employees are to be covered as additional insured as respects: liability arising out of activities Consulting Engineer performs; products and completed operations of Consulting Engineer; premises owned, occupied, or used by Consulting Engineer; or automobiles owned, leased, hired or borrowed by Consulting Engineer. 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.
- i. Consulting Engineer's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed officers, officials, employees. 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, Consulting Engineer's insurance.
- j. Consulting Engineer'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.
- k. 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.

1. Unless the Assistant 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 Consulting Engineer.
15. *Notices:* All notices hereinafter shall be in writing and shall be sent by certified or registered mail, postage prepaid, addressed as follows:

TO CITY: CITY OF COALINGA
ATTN: Assistant City Manager
155 West Duran Avenue
Coalinga, CA 93210

TO CONSULTING ENGINEER: MKN & Associates, Inc.
ATTN: Henry Liang, PE
8405 N. Fresno St. Suite 120
Fresno, CA 93720

16. *Non-Discrimination:* No discrimination shall be made by Consulting Engineer in the employment of persons to work under this contract because of race, color, national origin, ancestry, sex, or religion of such person.
17. *Workers' Compensation:* Consulting Engineer, by executing this contract, certifies that Consulting Engineer is aware of the provisions of Section 3700 *et seq.* of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and certifies that Consulting Engineer will comply with such provisions before commencing the performance of the work of this contract.
18. *Agreement Contains All Understandings:* This document, together with the attached Appendix A, represents the entire and integrated agreement for city engineering services between the City and Consulting Engineer and supersedes all prior negotiations, representations, or agreements, either written or oral. This document may be amended only by written instrument, signed by both the City and Consulting Engineer. All provisions of this Agreement are expressly made conditions. This Agreement shall be governed by the laws of the State of California.

Michael Nunley
President
MKN & Associates, Inc.

Sean Brewer
Assistant City Manager
City of Coalinga

Date: _____

Date: _____

Appendix A

RATE SCHEDULE



FEE SCHEDULE FOR PROFESSIONAL SERVICES

ENGINEERS AND TECHNICAL SUPPORT STAFF

Project Director	\$225/HR
Operations Manager	\$212/HR
Principal Engineer	\$197/HR
Senior Project Engineer	\$186/HR
Project Engineer/ Senior Scientist	\$164/HR
Senior Water Resource Planner	\$164/HR
Water Resource Planner	\$150/HR
GIS Specialist	\$144/HR
Assistant Engineer II	\$141/HR
Assistant Engineer I	\$120/HR
GIS Technician	\$120/HR
Supervising Drafter	\$145/HR
Drafting/Design Technician II	\$135/HR
Drafting/Design Technician I	\$110/HR
Administrative Assistant	\$80/HR
Engineering Intern	\$65/HR

Routine office expenses such as computer usage, software licenses and fees, telephone charges, office equipment and supplies, incidental postage, copying, and faxes are included as a 3% fee on labor cost.

DIRECT PROJECT EXPENSES

Outside Reproduction	Cost + 10%
Subcontracted or Subconsultant Services	Cost + 10%
Travel & Subsistence (other than mileage)	Cost
Auto Mileage	Current IRS Rate - \$.56/mi.