

*****MODEL LETTER AGREEMENT FOR NON-PUBLIC WORKS PROJECTS*****
*****REMOVE THIS TITLE WHEN USED*****

*****TO BE INSERTED ON CITY OF COLTON LETTERHEAD*****

INSERT DATE

INSERT NAME
INSERT ADDRESS

Re: Letter Agreement for ***INSERT TYPE OF SERVICES***

Dear ***INSERT NAME***:

Parties: This letter shall be our agreement ("Letter Agreement") regarding the ***INSERT TYPE OF SERVICES*** described below ("Services") to be provided by ***INSERT NAME OF PERSON OR FIRM AND INDICATE IF IT IS A CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY*** ("Contractor") as an independent contractor to the City of Colton ("City") for the City's ***INSERT NAME OF PROJECT*** ("Project"). Contractor is retained as an independent contractor and is not an employee of the City.

Services; Schedule/Performance: The Services to be provided include the following: [***INSERT DETAILED DESCRIPTION OF SERVICES - IF THE CONTRACTOR HAS A SEPARATE SCOPE OF SERVICES DOCUMENT, MAKE SURE IT IS NOT INCONSISTENT, ATTACH IT, MARK IT AS EXHIBIT "A" AND REPLACE THIS PARAGRAPH WITH THE FOLLOWING: The Services to be provided are more particularly described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein by reference.***] Services on the Project shall begin immediately and be completed by [***INSERT DATE***], unless extended by the City in writing.

Standard of Care: Contractor shall perform all Services under this Letter Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California, and consistent with all applicable laws. Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications, and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Letter Agreement.

Substitution of Personnel: Contractor has represented to City that certain key personnel will perform and coordinate the Services under this Letter Agreement. Should one or more of such personnel become unavailable, Contractor may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Contractor cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Letter Agreement for cause. The key personnel for performance of this Letter Agreement are as follows: [***INSERT NAMES***].

Compensation: Compensation for the above services shall be based on the actual amount of time spent in adequately performing the Services, and shall be billed at the hourly rate(s) of \$[***INSERT RT RATES FOR EACH TYPE OF EMPLOYEE TO BE USED, OR IF THE CONTRACTOR HAS A RATE SHEET ATTACH/MARK IT AS EXHIBIT (INSERT LETTER) AND REPLACE THIS SENTENCE WITH THE FOLLOWING: Compensation for the above services shall be based on the actual amount of time spent in adequately performing the Services, and shall be billed at the hourly rate(s) described in the Contractor's rate sheet attached hereto as Exhibit "[***INSERT LETTER***]" and incorporated herein by reference.***]. The total compensation shall not exceed [***INSERT WRITTEN

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DOLLAR AMOUNT***] (\$***INSERT NUMERICAL DOLLAR AMOUNT***]) without written approval of City's ***INSERT TITLE***]. Contractor's invoice shall include a detailed description of the Services performed. Invoices shall be submitted to the City monthly as performance of the Services progresses. City shall review and pay the approved charges on such invoices in a timely manner.

Prevailing Wages: Contractor is aware of the requirements of California Labor Code Section 1720, *et seq.*, and 1770, *et seq.*, as well as California Code of Regulations, Title 8, Section 1600 0, *et seq.*, ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. ***INSERT "IF" OR "SINCE" AS APPLICABLE***] the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and ***INSERT "IF" OR "SINCE" AS APPLICABLE***] the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Letter Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

Insurance: Contractor shall provide proof of commercial general liability and automobile insurance to the City in amounts and with policies, endorsements and conditions required by the City for the Services. If Contractor is an employer or otherwise hires one or more employees during the term of this Project, Contractor shall also provide proof of workers' compensation coverage for such employees which meets all requirements of state law. ***IF CONTRACTOR IS AN ENGINEER, DESIGNER OR OTHER TYPE OF PROFESSIONAL FOR WHICH PROFESSIONAL ERRORS AND OMISSIONS INSURANCE IS APPROPRIATE, YOU MAY INCLUDE THE FOLLOWING SENTENCE: Contractor shall also provide errors and omissions professional liability insurance appropriate to its profession in an amount, with conditions and for a term acceptable to the City.***]

Termination: **Colton Utility Authority**: The City may terminate this Letter Agreement at any time with or without cause. If the City finds it necessary to terminate this Letter Agreement without cause before Project completion, Contractor shall be entitled to be paid in full for those Services adequately completed prior to the notification of termination. Contractor may terminate this Letter Agreement only upon 30 calendar days' written notice to the City only in the event of City's failure to perform in accordance with the terms of this Letter Agreement through no fault of Contractor. ***INCLUDE THE REMAINING 3 SENTENCES ONLY IF AGREEMENT INVOLVES WATER OR WASTEWATER UTILITIES – DELETE OTHERWISE; ALSO DELETE "COLTON UTILITY AUTHORITY FROM TITLE OF SECTION***] Contractor understands that the City has entered into a Utility System Management Agreement, dated as of September 1, 2000, with the Colton Utility Authority ("CUA") for the maintenance, management and operation of its Water Enterprise and Wastewater Enterprise ("CUA Management Agreement"). To the extent that this Letter Agreement is deemed to be a "material contract" under the CUA Management Agreement, the following provisions shall apply: (1) City enters into this Letter Agreement on behalf of the CUA and subject to the terms of the CUA Management Agreement; and (2) Contractor has no right to terminate this Letter Agreement, either with or without cause, based upon the existence or non-existence of the CUA Management Agreement. Therefore, if the CUA Management Agreement expires or terminates for any reason, Contractor shall remain fully obligated to perform under this Letter Agreement on behalf of the CUA or another third party contracted by the CUA for the maintenance, management and operation of the Water Enterprise

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and/or Wastewater Enterprise.

Indemnification: To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its directors, officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's Services, the Project or this Letter Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys fees and other related costs and expenses. Notwithstanding the foregoing, to the extent Contractor's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor. Contractor's obligation to indemnify shall survive expiration or termination of this Letter Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials officers, employees, agents, or volunteers.

Laws & Regulations; Employment Certifications: Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements; all emissions limits and permitting requirements imposed by the South Coast Air Quality Management District (SCAQMD), the California Air Resources Board (CARB) or other governmental agencies; and all water quality laws, rules and regulations of the Environmental Protection Agency, the State Water Resources Control Board, the Santa Ana Regional Water Quality Control Board and the City. By executing this Letter Agreement, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time. Contractor shall maintain records of its compliance, including its verification of each employee, and shall make them available to the City or its representatives for inspection and copy at any time during normal business hours. The City shall not be responsible for any costs or expenses related to Contractor's compliance with the requirements. To the same extent and under the same conditions as Contractor, Contractor shall require all of its subcontractors, sub-subcontractors and consultants performing any work relating to the Project or this Letter Agreement to make the same verifications and comply with all requirements and restrictions provided herein. Contractor's failure to comply or any material misrepresentations or omissions relating thereto shall be grounds for terminating this Letter Agreement for cause. By its signature hereunder, Contractor certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services. Finally, Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subconsultant, employee or applicant for employment in violation of state or federal law. As provided for in the indemnity obligations of this Letter Agreement, Contractor shall indemnify City against any alleged violations of this paragraph, including, but not limited to, any fines or penalties imposed by any governmental agency.

Governing Law; Venue; Government Code Claim Compliance Provisions: This Letter Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Letter Agreement, the action shall be brought in a state or federal court situated in San Bernardino County, State of California. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed

(BB&K: 2-12)

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work, claims and/or changed conditions, Consultant must comply with the claim procedures set forth in Government Code sections 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, claims, and/or changed conditions have been followed by Consultant. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Consultant shall be barred from bringing and maintaining a valid lawsuit against the City. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Letter Agreement, the prevailing party shall be entitled to recover all reasonable fees and costs incurred, including reasonable attorney's fees, as determined by the court.

Assignment; Amendment: Contractor shall not assign, sublet, or transfer this Letter Agreement or any rights under or interest in this Letter Agreement without the written consent of the City, which may be withheld for any reason. This Letter Agreement may not be modified or altered except in writing signed by both parties. Except to the extent expressly provided for in the termination paragraph, there are no intended third party beneficiaries of any right or obligation of the Parties.

Entire Agreement; Construction/Captions: This is an integrated Letter Agreement representing the entire understanding of the parties as to those matters contained herein, and supersedes and cancels any prior oral or written understanding or representations with respect to matters covered hereunder. Since the Parties or their agents have participated fully in the preparation of this Letter Agreement, the language of this Letter Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. The captions of the various paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content or intent of this Letter Agreement.

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If you agree with the terms of this Letter Agreement, please indicate by signing and dating where indicated below. An original, executed copy is enclosed for your records.

CITY OF COLTON

Approved by:

Attest:

INSERT NAME
INSERT TITLE

INSERT NAME
INSERT TITLE

***INCLUDE FOLLOWING SIGNATURE
BLOCK ONLY IF AGREEMENT INVOLVES
WATER OR WASTEWATER UTILITIES –
DELETE OTHERWISE ***]

Recommended for Approval:

Executive Director
Colton Utility Authority

CONTRACTOR

Reviewed and Accepted by Contractor

Signature

Signature

Name

Name

Title

Title

Date

Date

[*NOTE (READ AND DELETE THIS BLOCK BEFORE USING MODEL): SIGNATURE BLOCKS CAN VARY DEPENDING UPON THE CONTRACTOR'S TYPE OF LEGAL ENTITY (E.G. CORPORATION; GENERAL PARTNERSHIP; LIMITED PARTNERSHIP; LIMITED LIABILITY PARTNERSHIP OR COMPANY; OR AN INDIVIDUAL). THIS MODEL CONTAINS A GENERAL FRAMEWORK WHICH WILL WORK FOR MOST CORPORATIONS, INDIVIDUAL (NON-CORPORATE) PARTNERSHIPS AND INDIVIDUAL SOLE PROPRIETORSHIPS. PLEASE REFER TO THE CITY CLERK'S "SIGNATURE REQUIREMENT" MEMO ON THE CITY OF COLTON INFO WEB FOR COMPLETE INFORMATION***]**