

PROFESSIONAL SERVICES AGREEMENT

This Agreement, entered into this 15 day of September 2017, by and between the City of Reedley, hereinafter referred to as the "CITY", and Kelco Holdings, LLC dba Project Delivery Professionals hereinafter referred to as the "CONSULTANT".

WITNESSETH

WHEREAS, the CITY is authorized and empowered to employ consultants and specialists in the performance of its duties and functions, and

WHEREAS, the CITY has the desire to secure certain technical and professional services to assist in the preparation and completion of the items of work described as "Scope of Services" in Exhibit "A", for the Project Management Services hereinafter referred to as the "PROJECT"; and

WHEREAS, the CONSULTANT represents it is licensed, qualified and willing to provide such services pursuant to terms and conditions of this Agreement.

NOW, THEREFORE, CITY and CONSULTANT agree as follows:

I. SERVICES TO BE PERFORMED BY THE CONSULTANT

- A. Authorized Scope of Services: The CONSULTANT agrees to perform all services necessary to complete in a manner satisfactory to the CITY those tasks described in Exhibit "A" - Scope of Services.
- B. Task Orders: All agreed to services shall be presented to the City as a separate Task Order and paid per the rates identified in the Schedule of Fees provided in Exhibit "B". Any additional services shall also be performed upon agreed to scope of services and approved task order per the schedule of fees. Such additional services shall not be performed by CONSULTANT without the written consent of CITY.

II. TIME OF PERFORMANCE

The CONSULTANT shall commence performance of this Agreement within five (5) days following City Council approval of this Agreement and shall complete the work within the timeframes outlined in Exhibit "A", unless otherwise extended in writing by CITY, in its sole discretion.

If the CONSULTANT fails to complete the Scope of Service within the time specified, plus any extensions of time which may be granted, the CITY shall determine the percent of each work item completed and shall pay the CONSULTANT on that basis.

CONSULTANT shall not be responsible for delays which are due to causes beyond the

CONSULTANT'S reasonable control. In the case of any such delay, the time of completion shall be extended accordingly in a writing signed by both parties, but CONSULTANT shall not be entitled to additional compensation as a result of such delay.

III. COMPENSATION

- A. Total Compensation: For services performed pursuant to this Agreement, the CITY agrees to pay and the CONSULTANT agrees to accept, as payment in full on a task order basis, a combined sum not to exceed \$100,000.00 for the life of the agreement in accordance with Exhibit B. This amount shall constitute complete compensation, including document production and out-of-pocket expenses for the Scope of Services as identified in Exhibit "A".
- B. Payment of Compensation: The CONSULTANT shall be paid no later than thirty (30) days following submission of a written, verified billing to the CITY. Said billing shall include the percentage of each task completed to date and since the date of the preceding billing, if any. All billings shall be subject to verification and approval by the CITY.

IV. AUTHORIZED REPRESENTATIVE

- A. CITY: The City Manager shall represent the CITY in all matters pertaining to the services to be rendered under this Agreement, except where approval of the City Council of the City of Reedley is specifically required.
- B. CONSULTANT: Kelco Holdings, LLC dba Project Delivery Professionals shall represent and act as CONSULTANT in all matters pertaining to the services to be rendered by it under this Agreement.

V. TERMINATION

The right to terminate this Agreement, with or without cause, may be exercised by either party, without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement.

- A. Termination By Either Party Without Cause: The CITY or CONSULTANT may terminate this Agreement at any time by giving written notice to the other of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.
- B. Termination of Agreement for Cause: The CITY may by written notice to the CONSULTANT specifying the effective date thereof, immediately terminate the whole or any part of this Agreement in any of the following

circumstances:

1. If the CONSULTANT fails to perform the services called for by this Agreement within time(s) specified herein or any extension thereof; or
2. If the CONSULTANT fails to make progress under this Agreement as to endanger performance of this Agreement in accordance with its terms, and does not correct such failure within a period of ten (10) days (or longer period as the CITY may authorize in writing) after receipt of notice from the CITY specifying such failure.

C. Post-Termination:

1. In the event the CITY terminates this Agreement with or without cause, the CITY may procure, upon such terms and such manner as it may determine appropriate, another party to complete the services under this Agreement.
2. Except with respect to defaults of subconsultants, the CONSULTANT shall not be liable for any excess costs if the failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the CONSULTANT. Such causes include, but are not limited to, acts of God or of the public enemy, floods, epidemics, quarantine restrictions, strikes, and unusually severe weather; but in the event of the failure to perform is caused by the default of a subconsultant, the CONSULTANT shall not be liable for failure to perform, unless the services to be furnished by the subconsultant were obtainable from other sources in sufficient time and within budgeted resources to permit the CONSULTANT to meet the required delivery schedule or other performance requirements.
3. Should the Agreement be terminated with or without cause, the CONSULTANT shall provide the CITY with all finished and unfinished documents, data, studies, services, drawings, maps, models, photographs, reports, etc., prepared by the CONSULTANT pursuant to this Agreement. The use of all finished and unfinished work product shall be in accordance with Section XI, Documents and Data.
4. Upon termination, with or without cause, CONSULTANT will be compensated for the services satisfactorily performed to the date of termination according to compensation provisions contained herein; provided that, upon termination for cause, the CITY may withhold such amount as the CITY deems appropriate to compensate the

CITY for costs or damages incurred as a result of the CONSULTANT's default. In no event, shall the total compensation paid CONSULTANT exceed the total compensation agreed to herein.

5. If, after notice of termination of this Agreement for cause, as provided for in this article, it is determined for any reason that the CONSULTANT was not in default under the provisions of this article, then the rights and obligations of the parties shall be the same as if the Agreement was terminated without cause.
6. Termination of this Agreement shall not terminate any obligation to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination activities.

VI. INTEREST OF OFFICIALS AND THE CONSULTANT

- A. No officer, member, or employee of the CITY who exercises any functions or responsibilities in the review or approval of this Agreement shall:
 1. Participate in any decision relating to this Agreement which effects his personal interest or the interest of any corporation, partnership, or association in which he has, directly or indirectly, any interest; or
 2. Have any interest, direct or indirect, in this Agreement or the proceeds thereof during his tenure or for one year thereafter.
- B. The CONSULTANT hereby covenants that he has, at the time of the execution of this Agreement, no interest, and that he shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. The CONSULTANT further covenants that in the performance of this work, no person having any such interest shall be employed.

VII. NO PERSONNEL, AGENCY OR COMMISSION

The CONSULTANT warrants, by execution of this Agreement, that no personnel agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide established commercial or selling agencies maintained by the CONSULTANT for the purpose of securing business. For breach or violation of this warranty, the CITY shall have the right to annul this Agreement without liability or, in its discretion, to deduct from this Agreement price or consideration, or otherwise recover, the full amount of

such fee, commission, percentage, brokerage fee, gift, or contingent fee.

VIII. SUBCONTRACTING

- A. The CONSULTANT shall not subcontract or otherwise assign any portion of the services to be performed under this Agreement without the prior written approval of the CITY.
- B. Without limiting Paragraph A, in no event shall the CONSULTANT subcontract services in excess of 50% of the contract amount, excluding specialized services. Specialized services are those items not ordinarily furnished by a consultant performing the particular type of project described in this Agreement.

IX. INDEPENDENT CONTRACTOR

In the performance of the services herein provided for, the CONSULTANT shall be, and is, an independent contractor and is not an agent or employee of the CITY. The CONSULTANT has and shall retain the right to exercise full control and supervision of all persons assisting the CONSULTANT in the performance of said services hereunder. The CONSULTANT shall be solely responsible for all matters relating to the payment of its employees including compliance with social security and income tax withholding and all other regulations governing such matters.

X. SPECIFICATIONS

All specifications, manuals, standards, etc., either attached to this Agreement or incorporated by reference, are binding as to the performance of the services specified in this Agreement unless they are changed by written amendment to this Agreement modified in writing to incorporate such changes.

XI. DOCUMENTS/DATA

- A. Ownership of Documents: All original papers and documents, produced as a result of this Agreement, shall become the property of the CITY. In addition, CITY shall be provided with access and use of any other papers and documents consistent with the purpose and scope of services covered by this Agreement. Any additional copies, not otherwise provided for herein, shall be the responsibility of the CITY.

Documents, including drawings and specifications, prepared by CONSULTANT pursuant to this Agreement, are not intended or represented to be suitable for reuse by CITY or others on extensions of the PROJECT or on any other project. Any use of the completed documents for other projects and any use of incomplete documents without the specific written authorization from CONSULTANT will be at

CITY's sole risk and without liability to CONSULTANT. Further, any and all liability arising out of changes made to CONSULTANT's deliverables under this Agreement by CITY or persons other than CONSULTANT is waived as against CONSULTANT, and the CITY assumes full responsibility for such changes made by the CITY or its agents unless the CITY has given CONSULTANT prior notice and has received from CONSULTANT written consent for such changes.

- B. Publication: No report, information, or other data given or prepared or assembled by the CONSULTANT pursuant to this Agreement, shall be made available to any individual or organization by the CONSULTANT without the prior written approval of the CITY. Notwithstanding the foregoing, however, the CONSULTANT shall not be required to protect or hold in confidence and confidential information which (1) is or becomes available to the public with the prior written consent of the CITY; (2) must be disclosed to comply with law; or (3) must be disclosed in connection with any legal proceedings.
- C. Copyrights: The CONSULTANT shall be free to copyright material developed under this Agreement with the provision that the CITY be given a nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use the material for government or public purposes.

XII. INDEMNIFICATION AND INSURANCE

- A. As respects acts, errors, or omissions in the performance of services, CONSULTANT shall indemnify and hold harmless CITY, its elected and appointed officers, employees, and CITY designated volunteers from and against any and all claims, demands, losses, defense costs, liability or damages arising directly out of CONSULTANT's negligent acts, errors or omissions in the performance of his/her services under the terms of this Agreement; except to the extent those arise out of the negligent acts of CITY.
- B. As respects all acts or omissions which do not arise directly out of the performance of services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, CONSULTANT shall indemnify, defend (at CITY's option), and hold harmless CITY, its elected and appointed officers, agents, employees, representatives, and designated volunteers from and against any and all claims, demands, defense costs, liability, or damages of any kind or nature arising out of or in connection with CONSULTANT (or CONSULTANT's subcontractors, if any) performance or failure to perform, under the terms of this Agreement; except to the extent those which arise

out of the negligent acts of CITY.

- C. Without limiting CITY's right to indemnification, it is agreed that CONSULTANT shall secure prior to commencing any activities under this Agreement, and maintain during the term of this Agreement, insurance coverage as follows:

1. Workers' Compensation insurance as required by California statutes, and Employer's Liability Insurance in an amount not less than One Million Dollars (\$1,000,000).
2. Commercial general liability insurance with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for Premises and Operations, Contractual Liability, Personal Injury Liability, Products and Completed Operations Liability, Broad Form Property Damage (if applicable), Independent Contractor's Liability (if applicable).
3. Professional liability insurance coverage, in an amount not less than One Million Dollars (1,000,000).
4. Comprehensive automobile liability insurance coverage, in an amount not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for owned, hired, and non-owned automobiles and shall be provided by a business automobile policy.

- D. The City Manager is authorized to reduce or modify the requirements set forth above in the event he/she determines that such reduction is in the CITY's best interest.

- E. Each insurance policy required by this Agreement shall contain the following clause:

"This insurance shall not be canceled, any change in scope or coverage, or non-renewed until after thirty (30) days prior written notice has been given to the City Clerk, City of Reedley, 845 G Street, Reedley, CA 93654." The clause shall not contain "shall endeavor," best efforts or similar qualifiers.

In addition, the Commercial general liability and comprehensive automobile liability policies required by this Agreement shall contain the following clauses:

"It is agreed that any insurance maintained by the City of Reedley shall

apply in excess of and not contribute with insurance provided by this policy.”

For the general liability and automobile policies only, the City of Reedley, its officers, agents, employees, representatives and designated volunteers are added as additional insured's as respects operations and activities of, or on behalf of the named insured, performed under contract with the City of Reedley.

- F. Prior to commencing any work under this Agreement, CONSULTANT shall deliver to CITY insurance certificates confirming the existence of the insurance required by this Agreement, and including the applicable clauses referenced above. Within thirty (30) days of the execution date of this Agreement, CONSULTANT shall provide to CITY endorsements to the above-required policies, which add to these policies the applicable clauses referenced above. Said endorsements shall be signed by an authorized representative of the insurance company and shall include the signatory's company affiliation and title. Should it be deemed necessary by CITY, it shall be CONSULTANT's responsibility to see that CITY receives documentation acceptable to CITY which sustains that the individual signing said endorsements is indeed authorized to do so by the insurance company. CITY has the right to demand and to receive within a reasonable time period, copies of any insurance policies required under this Agreement.
- G. In addition to any other remedies CITY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY, may, at its sole option:
1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; or
 2. Order CONSULTANT to stop work under this Agreement and/or withhold any payment(s) which become due to CONSULTANT hereunder until CONSULTANT demonstrates compliance with the requirements hereof; or
 3. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies CITY may have and is not the exclusive remedy for CONSULTANT's failure to maintain insurance or secure appropriate endorsements.

Nothing herein contained shall be construed as limiting in any way the extent to which CONSULTANT may be held responsible for payments of damages to persons or property resulting from CONSULTANT's or its subcontractor's performance of the work covered under this Agreement.

XIII. NON-DISCRIMINATION

CONSULTANT and all subcontractors shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 CFR part 26 in the award and administration of Caltrans-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement.

XIV. MISCELLANEOUS PROVISIONS

- A. Asbestos and Hazardous Materials: In providing its services hereunder, CONSULTANT shall not be responsible for identification, handling, containment, abatement, or in any other respect, for any asbestos or hazardous material if such is present in connection with the PROJECT. In the event the CITY becomes aware of the presence of asbestos or hazardous material at the jobsite, CITY shall be responsible for complying with all applicable federal and state rules and regulations, and shall immediately notify CONSULTANT, who shall then be entitled to cease any of its services that may be affected by such presence, without liability to CONSULTANT arising therefrom.
- B. Successors and Assigns: This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.
- C. Prohibition of Assignment: Neither the CITY nor CONSULTANT shall assign, delegate or transfer their rights and duties of this Agreement without the written consent of the other party.
- D. Dispute/Governing Law: Any dispute not resolvable by informal arbitration between the parties to this Agreement shall be adjudicated in a Court of Law under the laws of the State of California.
- E. Notices: Notice shall be sufficient hereunder if personally served upon the City Clerk of the CITY or an officer or principal of the CONSULTANT, or if sent via the United State Postal Service, postage prepaid, addressed as follows:

CITY OF REEDLEY
1733 Ninth Street
Reedley, CA 93654
Attn: City Clerk

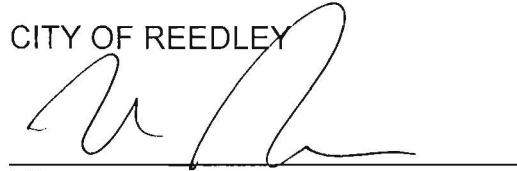
Kelco Holdings, LLC
7415 N. Palm Ave, Ste100
Fresno, CA 93711
Attn: Kelly S. Riddle

- F. Jurisdiction/Venue/Waiver of Removal: This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in that State. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Fresno County, California. The CONSULTANT hereby expressly waives any right to move any action to a county other than Fresno County as permitted pursuant to Section 394 of the California Code of Civil Procedure.
- G. Integration/Modification: This Agreement and each of the exhibits referenced herein, which are incorporated by reference, represents the entire understanding of the CITY and the CONSULTANT as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the CITY and the CONSULTANT.
- H. Conflict with Law: If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder of the Agreement shall be in full force and effect.
- I. Attorney's Fees: In the event either party commences any action, arbitration or legal proceedings for the enforcement of this Agreement, the prevailing party, as determined by the court or arbitrator, shall be entitled to recovery of its reasonable attorney's fees and court costs incurred in the action brought thereon.
- J. Construction: This Agreement is the product of negotiation and compromise on the part of each party and the parties agree, notwithstanding Civil Code Section 1654, that in the event of uncertainty the language will not be construed against the party causing the uncertainty to exist.
- K. Authority: Each signatory to this Agreement represents that it is authorized to enter into this Agreement and to bind the party to which its signature represents.
- L. Headings: Section headings are provided for organizational purposes only

and do not in any manner affect the scope or intent of the provisions thereunder.


IN WITNESS WHEREOF, this Agreement is executed on the day and year first above written.

CITY OF REEDLEY



Nicole Zieba
City Manager

CONSULTANT


Kelly S. Riddle
Owner

Attachments:

Exhibit "A": Scope of Services

Exhibit "B": Schedule of Fees



5.

Hourly Fee Schedule

Hourly Rates

Program/Project Manager

\$130.00/hr

Clerical Support

\$ 90.00/hr



REEDLEY CITY COUNCIL

- ☒ **Consent Item**
- ☐ **Regular Item**
- ☐ **Workshop**
- ☐ **Closed Session**
- ☐ **Public Hearing**

ITEM NO: 4

DATE: September 12, 2017

TITLE: ADOPT RESOLUTION NO. 2017-082 OF THE CITY COUNCIL OF THE CITY OF REEDLEY GRANTING AUTHORITY TO THE CITY MANAGER TO NEGOTIATE AND ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH KELCO HOLDINGS LLC DBA PROJECT DELIVERY PROFESSIONALS FOR PROGRAM AND PROJECT MANAGEMENT SERVICES FOR A PERIOD OF TWO YEARS

SUBMITTED: John S. Robertson, P.E.
City Engineer

APPROVED: Nicole R. Zieba
City Manager

RECOMMENDATION

Staff recommends that the City Council through Resolution No. 2017-082 take the following action:

1. Adopt Resolution No. 2017-082 granting authority to the City Manager to negotiate and enter into a professional services agreement with Kelco Holdings, LLC dba Project Delivery Professionals for program and project management services for the period of two years.

BACKGROUND

During the 2017-2018 Budget hearings, the Engineering Department stated that the hiring of consultants would be required to supplement full-time staff to meet the delivery goals of the capital project program. The timing of these decisions is dependent on the size of the projects and staff availability. Sometimes it is necessary to contract out all tasks of a project or smaller sections of the project to meet City schedules and contracted expectations. This allows the Department the ability to maximize current staffing levels while still delivering necessary projects. At this time the Engineering Department is requesting the outsourcing of project delivery services including project management.

In August, the Engineering Department issued a request for qualifications (RFQ) to obtain the services of a consultant specializing in program and project management services. Kelco Holdings dba Project Delivery Professionals (PDP) was the only firm to respond to the RFQ.

Staff is requesting that Council grant authority to the City Manager to negotiate and enter into a contract with PDP.

The terms of the agreement will be for a period of two (2) years. Work will be assigned to the consultant per task order on an as needed basis. The task orders will be submitted to the consultant for scope finalization and agreement of the associated fees of the individual task prior to starting the work.

FISCAL IMPACT

The project and program management services to be performed by PDP are eligible for reimbursement from the various federally funded programs. Measure C and/or Development Impact Fees will be used to pay for the required matching portion of the services and any items that are non-participating within the federal fund requirements.

ATTACHMENTS

1. Resolution No. 2017-082
2. Draft Professional Services Agreement

Motion: _____

Second: _____

RESOLUTION NO. 2017-082

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF REEDLEY GRANTING AUTHORITY TO THE CITY MANAGER TO NEGOTIATE AND ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH KELCO HOLDINGS, LLC DBA PROJECT DELIVERY PROFESSIONALS FOR PROGRAM AND PROJECT MANAGEMENT SERVICES FOR THE PERIOD OF TWO YEARS

WHEREAS, the City of Reedley issued a request for qualifications proposal in August of 2017 and received one response from the multiple firms that received the request for qualifications; and

WHEREAS, City staff reviewed the submitted qualifications of the interested firm and determined that the experience and availability of the firms staff met the required qualifications to meet the City's needs related to the described services; and

WHEREAS, the City Manager will negotiate in good faith on behalf of the City with the selected firm to finalize the scope of services and method of payment; and

NOW, THEREFORE, BE IT RESOLVED that the City of Reedley City Council using their independent judgment approve this resolution based on the following:

1. That the above recitals are true and correct.
2. That the City Council grants authority to the City Manager to sign and execute a professional services agreement with committee selected firm and any addendums thereto.
3. This professional services agreement entered into shall be effective from the date of execution by the City Manager until the close out of the subject project.
4. This resolution is effective immediately upon adoption.

This foregoing resolution is hereby approved this 12th day of September, 2017, by the following vote:

AYES: Soleno, Fast, Pinon, Betancourt.

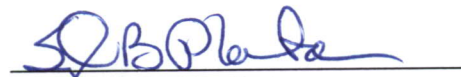
NOES: None.

ABSTAIN: None.

ABSENT: Beck.


Anita Betancourt, Mayor

ATTEST:


Sylvia B. Plata, City Clerk

Z:\EngDept\DeptFiles\Consulting Project Manager

