

**PUBLIC WORKS AND UTILITIES
MEMORANDUM #09-04**

DATE: February 12, 2009

TO: Honorable Mayor Kathleen M. Novak and City Council Members

FROM: William A. Simmons, City Manager *WAS*
Raymond Reling, Acting Director of Utilities *RR*

SUBJECT: CR-17 – 2009 TZA Professional Services Agreement for Water and Water Rights Engineering

RECOMMENDATION:

Attached to this memorandum is a Resolution which, if approved, would authorize the Mayor to execute the Professional Services Agreement between the City of Northglenn and TZA Water Engineers, Inc (TZA) to provide specialized engineering consulting services during the 2009 calendar year for an amount not to exceed \$50,000. Staff recommends approval of the Resolution.

BACKGROUND:

The City of Northglenn has used TZA since 1997 to provide engineering support and assistance in administering the City's water rights. Expenditures for TZA totaled \$25,700 during 2007 and are estimated at \$27,800 for 2008. TZA's is continuing in their efforts in the pending change case application for the City's Church Ditch Inches that was submitted in 2008.

TZA will finalize the change of use analysis for the City's Farmers Irrigation and Reservoir Company (FRICO) shares during the 2009 calendar year. TZA's scope of services also includes provisions for providing expert testimony during any pending or future cases in water court that affect the City's water rights.

TZA has raised their rates for 2009. While TZA has been operating with the same standard rate schedule for the past two years, hourly rates have increased between 9-10% and mileage rates have increased by 5¢ per mile. (Example the hourly rate for an Engineer has increased from \$82 per hour to \$90 per hour.)

POTENTIAL OBJECTION:

City Staff is not aware of any specific opposition to the proposed Agreement.

BUDGET/TIME IMPLICATIONS:

There is no impact to the General Fund funds. The not to exceed cost to provide the engineering services during 2009 is \$50,000.00. There are sufficient funds from the Water and Sewer Fund in the 2009 Utilities Department Operating Budget (account number 510.65102.000.3199) to pay for the engineering services.

STAFF REFERENCE:

If Council Members have any comments or questions, they may contact Raymond Reling at (303) 450-4049 or rreling@northglenn.org.

SPONSORED BY: MAYOR NOVAK

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-17
Series of 2009

Series of 2009

A RESOLUTION APPROVING A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND TZA WATER ENGINEERS, INC. FOR WATER AND WATER RIGHTS ENGINEERING

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Professional Services Agreement between the City of Northglenn and TZA Water Engineers, Inc. in an amount not to exceed \$50,000.00, attached hereto, is hereby approved and the Mayor is authorized to execute same on behalf of the City of Northglenn.

DATED at Northglenn, Colorado, this ____ day of _____, 2009.

KATHLEEN M. NOVAK
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 2009, by and between the City of Northglenn, State of Colorado (hereinafter referred to as the "City") and TZA Water Engineers, Inc. (hereinafter referred to as "Consultant").

RECITALS:

A. The City requires professional services.

B. Consultant has held itself out to the City as having the requisite expertise and experience to perform the required work for the Project.

NOW, THEREFORE, it is hereby agreed for the consideration hereinafter set forth, that Consultant shall provide to the City, professional consulting services for the Project.

I. SCOPE OF SERVICES

A. TZA agrees to provide engineering services to the City upon the request of authorized representatives of the City. TZA is customarily engaged in the profession of providing engineering services to clients. TZA shall not be obligated to work exclusively for the City during the term of this Agreement. However, TZA will provide adequate professional time for the performance of engineering services requested by the City hereunder. TZA is responsible for providing its own offices, equipment, training and supplies for performance of the engineering services.

B. Time of Commencement and Completion of Services. The engineering services shall be provided during the year commencing on January 1, 2009, and ending on December 31, 2009.

II. THE CITY'S OBLIGATIONS/CONFIDENTIALITY

The City shall provide Consultant with reports and such other data as may be available to the City and reasonably required by Consultant to perform hereunder. No project information shall be disclosed by Consultant to third parties without prior written consent of the City or pursuant to a lawful court order directing such disclosure. All documents provided by the City to Consultant shall be returned to the City if so requested by the City. Consultant is authorized by the City to retain copies of such data and materials at Consultant's expense.

III. OWNERSHIP OF WORK PRODUCT

The City acknowledges that the Consultant's work product is an instrument of professional service. Nevertheless, the products prepared under this Agreement shall become the property of the City upon completion of the work.

IV. COMPENSATION

A. In consideration for the completion of the services specified herein by Consultant, the City shall pay Consultant an amount not to exceed fifty thousand dollars (\$50,000.00). Payment shall be made in accordance with the schedule of charges in **Exhibit A** which is attached hereto and incorporated herein by this reference. Invoices will be itemized and include hourly breakdown for all personnel and other charges. The maximum fee specified herein shall include all fees and expenses incurred by Consultant in performing all services hereunder.

B. Consultant may submit monthly or periodic statements requesting payment. Such request shall be based upon the amount and value of the work and services performed by Consultant under this Agreement except as otherwise supplemented or accompanied by such supporting data as may be required by the City.

1. All invoices, including Consultant's verified payment request, shall be submitted by Consultant to the City no later than the twenty-fourth (24th) day of each month for payment pursuant to the terms of this Agreement. In the event Consultant fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Consultant defers its right to payment pursuant to said late invoice until the twenty-fourth (24th) day of the following month.
2. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice as provided by this Agreement.

C. The City has the right to ask for clarification on any Consultant invoice after receipt of the invoice by the City.

D. In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, interest will accrue at the legal rate of interest. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Consultant may, after giving seven (7) days written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days written notice, Consultant may terminate this Agreement. Upon receipt of payment in full for services rendered, Consultant will continue with all authorized services.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the City) required by this Agreement have been turned over to and approved by the City and upon receipt by the City of Consultant's certification that services required herein by Consultant have been fully completed in accordance with this Agreement and all data and reports for the Project.

V. COMMENCEMENT AND COMPLETION OF WORK

Within seven (7) days of receipt from the City of a Notice to Proceed, Consultant shall commence work on all its obligations as set forth in the Scope of Services or that portion of such obligations as is specified in said Notice.

VI. CHANGES IN SCOPE OF SERVICES

A change in the Scope of Services shall constitute any material change or amendment of services or work which is different from or additional to the Scope of Services specified in Section I of this Agreement. No such change, including any additional compensation, shall be effective, or paid unless authorized by written amendment executed by the City. If Consultant proceeds without such written authorization, then Consultant shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the City shall have the authority to enter into any changes or modifications, either directly or implied by a course of action, relating to the terms and scope of this Agreement.

VII. PROFESSIONAL RESPONSIBILITY

A. Consultant hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

B. The work performed by Consultant shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community.

C. Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports, and other services furnished by Consultant under this Agreement. Consultant shall, without additional compensation, correct or resolve any errors or deficiencies in his designs, drawings, specifications, reports, and other services, which fall below the standard of professional practice, and reimburse the City for construction costs caused by errors and omissions which fall below the standard of professional practice.

D. Approval by the City of drawings, designs, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve Consultant of responsibility for technical adequacy of the work. Neither the City's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and Consultant shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of the City provided for under this Agreement are in addition to any other rights and remedies provided by law.

VIII. COMPLIANCE WITH LAW

The work and services to be performed by Consultant hereunder shall be done in compliance with

applicable laws, ordinances, rules and regulations.

IX. INDEMNIFICATION

Consultant agrees to indemnify and hold harmless the City, its officers, employees, and insurers, from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligent act, omission, error, professional error, mistake, negligence, or other fault of Consultant, any subconsultant of Consultant, or any officer, employee, representative, or agent of Consultant or of any subconsultant of Consultant, or which arise out of any workmen's compensation claim of any employee of Consultant or of any employee of any subconsultant of Consultant.

X. INSURANCE

Consultant shall procure and maintain in full force and effect during the term of this Agreement, and shall cause any subconsultant of Consultant to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City.

1. Workmen's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, five hundred thousand dollars (\$500,000) disease - policy limit, and five hundred thousand dollars (\$500,000) disease - each employee. Evidence of qualified self-insured status may be substituted for the workmen's compensation requirements of this paragraph.
2. Commercial general liability insurance with minimum combined single limits of six hundred thousand (\$600,000) each occurrence and one million dollars (\$1,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision.
3. Professional liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each claim and one million dollars (\$1,000,000) general aggregate.
4. The policy required by paragraph 2. above shall be endorsed to include the City and the City's officers, employees, and consultants as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the City, its officers, its employees, or its consultants shall be excess and not contributory insurance to that provided by Consultant. No additional insured endorsement to

the policy required by paragraph 1. above shall contain any exclusion for bodily injury or property damage arising from completed operations. Consultant shall be solely responsible for any deductible losses under any policy required above.

5. The certificate of insurance provided for the City shall be completed by Consultant's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be reviewed and approved by the City prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. The completed certificate of insurance shall be sent to:

City of Northglenn
11701 Community Center Drive
Northglenn, Colorado 80233-8061
Attn: Sharon Palmer

6. Failure on the part of Consultant to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of agreement upon which the City may immediately terminate this Agreement, or at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Consultant to the City upon demand, or the City may offset the cost of the premiums against any monies due to Consultant from the City.
7. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.
8. The parties hereto understand and agree that the City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-101 et seq., 10 Colo. Rev. Stat., as from time to time amended, or otherwise available to the City, its officers, or its employees.

XI. NON-ASSIGNABILITY

Neither this Agreement, nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.

XII. TERMINATION

This Agreement shall terminate at such time as the work in Section I is completed and the

requirements of this Agreement are satisfied, or upon the City's providing Consultant with seven (7) days advance written notice, whichever occurs first. In the event the Agreement is terminated by the City's issuance of said written notice of intent to terminate, the City shall pay Consultant for all work previously authorized and completed prior to the date of termination. If, however, Consultant has substantially or materially breached the standards and terms of this Agreement, the City shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the City thereafter shall be at the City's sole risk, unless otherwise consented to by Consultant.

XIII. CONFLICT OF INTEREST

The Consultant shall disclose any personal or private interest related to property or business within the City. Upon disclosure of any such personal or private interest, the City shall determine if the interest constitutes a conflict of interest. If the City determines that a conflict of interest exists, the City may treat such conflict of interest as a default and terminate this Agreement.

XIV. VENUE

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Adams, State of Colorado.

XV. INDEPENDENT CONTRACTOR

Consultant is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Consultant to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Consultant for all purposes. Consultant shall make no representation that it is the employee of the City for any purposes.

XVI. NO WAIVER

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligation of this Agreement.

XVII. ENTIRE AGREEMENT

This Agreement and the attached Exhibits A is the entire Agreement between Consultant and the City, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified, or changed, except as specified herein.

XVIII. NOTICE

Any notice or communication between Consultant and the City which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States Mail, addressed as follows:

The City: City of Northglenn

**11701 Community Center Drive
Northglenn, Colorado 80233-8061**

Consultant:

TZA Water Engineers, Inc.

12596 W. Bayaud Ave., Suite 330

Lakewood, Colorado 80228

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

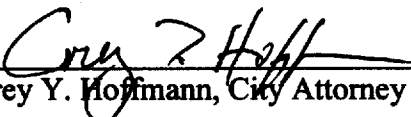
CITY OF NORTHGLENN, COLORADO

By: _____
Kathleen M. Novak, Mayor

ATTEST:

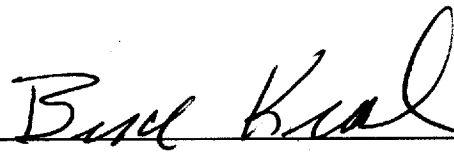
Johanna Small, City Clerk

APPROVED AS TO FORM:



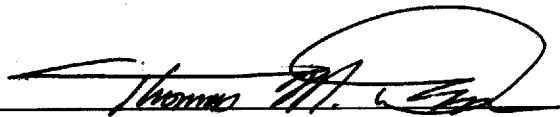
Corey Y. Hoffmann, City Attorney

CONSULTANT

By: 

President 1/5/09
Title Date

ATTEST:



Vice President 1-5-09
Title Date

Exhibit A
TZA Water Engineers, Inc.
Rate Schedule

| Professional Services | Hourly Rate |
|------------------------------|-----------------------------------|
| Clerical | \$50.00 |
| Draftsman/Technician | \$66.00 |
| Assistant Engineer | \$90.00 |
| Engineer | \$108.00 |
| Project Engineer | \$120.00 |
| Senior Engineer | \$132.00 |
| Principal Engineer | \$170.00 |
| PMWM Well Testing | At Quoted Rate |
| Expert Testimony | Hourly rate plus \$30.00 per hour |

Reimbursable Expenses

| | |
|---|--------------|
| Mileage: | |
| Automobile | \$ 0.55/mile |
| Off-road vehicle | \$ 0.65/mile |
| Direct costs including subsistence, telephone, transportation, equipment rental, and other miscellaneous job-related expenses | Actual Cost |
| Subcontract Expense | Cost + 10% |
| In-house computer time | \$10.00/hour |
| FAX | \$0.50/page |
| In-house reproduction charges | \$0.20/page |

Terms

Invoices will be submitted monthly. Payment is due within thirty days of the invoice date. A late charge of 1 percent per month may be charged to accounts with balances overdue in excess of 45 days. Services may be discontinued if payment for any previous invoice is not received within 45 days of the invoice date, unless prior arrangements have been made.

Effective 1-09