



California Fair Political Practices Commission

December 21, 1988

Natalie E. West
Meyers, Nave, Riback & West
Civic Center Complex
8335 East 14th Street
San Leandro, CA 94577

Re: Your Request for Advice
Our File No. A-88-406

Dear Ms. West:

This is in response to your request for advice on behalf of Mr. Gene B. Scothorn, sole proprietor of C2G/Civil Consultants Group ("Civil Consultants"), regarding his responsibilities under the conflict-of-interest provisions of the Political Reform Act ("the Act").^{1/}

QUESTIONS

The City of Scotts Valley has entered into a contract with Civil Consultants to perform engineering services for the "Gateway South Assessment District" ("Gateway District"). Mr. Scothorn has performed engineering services for three of the eleven property owners in the Gateway District.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

1. May Civil Consultants perform the engineering services under the contract with the City of Scotts Valley?

2. Should Civil Consultants disqualify itself and terminate the contract, and the contract be awarded to another engineer, may Civil Consultants accept a subcontract from this engineer to develop the plans and specifications for the improvements for the Gateway District?

3. Would the responses to the questions differ if Mr. Scothorn had performed professional services for all of the property owners in the Gateway District instead of three of the eleven?

CONCLUSIONS

1. Mr. Scothorn should disqualify himself from performing engineering services under the terms of his contract with the City of Scotts Valley for the Gateway District.

2. Civil Consultants may accept the subcontract if it required Civil Consultants to provide design services or other discrete services without requiring day-to-day review or direction by the governmental agency.

3. Even if Mr. Scothorn had performed professional services for all of the property owners instead of for three of the eleven property owners in the Gateway District, the responses to the above questions would not have been different.

FACTS

Gene B. Scothorn is the sole proprietor of Civil Consultants. The City of Scotts Valley (the "city") has entered into a contract with Civil Consultants to perform engineering services for the Gateway District.

The Gateway District is an assessment district formed to provide water and sewer improvements to 120 acres of land in the city. The costs of these improvements are assessed against the property owners in proportion to the benefit received by each property owner.

There are eleven property owners in the Gateway District. In the past year, Mr. Scothorn has performed professional services exceeding \$250 for three of the eleven owners. For one owner, Mr. Scothorn prepared the tentative map and boundary surveys for an 80 acre parcel which will be divided into 81 lots. For another property owner he provided assistance with processing and hydrologic studies for a proposed office project within the district. He prepared a topographic map for a third property owner.

The engineer-of-work, in this case Civil Consultants, is responsible for determining how the costs will be spread among the benefited property owners. Civil consultants will prepare an engineer's report containing:

1. Plans and specifications for the improvements.
2. Estimated costs for the improvements.
3. Boundaries of the district.
4. A formula for assessing the costs among the benefitted properties.
5. A list of each parcel of land within the district and the proposed assessment.

The city council will give notice to the affected property owners and hold a public hearing before adopting the engineer's report and levying the assessment. Bonds will be sold to cover the costs and the property owners pay an annual amount to finance the debt service on the bonds.

To date, Civil Consultants has performed topographic studies preliminary to developing the plans and specifications for the improvements. They have also developed a spread formula for the preliminary design assessments. They have not prepared any assessment rules or done any work that would result in levying final assessments against the properties.

ANALYSIS

Section 87100 prohibits public officials from making, participating in, or using their official position to influence any governmental decision in which they know or have reason to know they have a financial interest.

PUBLIC OFFICIAL

Public official includes a consultant of a local government agency. (Regulation 18700(a).) Subdivision (a)(2) of Regulation 18700 defines a consultant to include:

[A]ny natural person who provides, under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

Regulation 18700(a)(2) (emphasis added).

The relevant regulation defines "consultant" as a "natural person." Thus the firm itself is not a consultant within the meaning of the Act. It is the personnel who actually perform the work who would be consultants.

In a somewhat analogous situation, the Commission in In re Maloney (1977) 3 FPPC Ops. 69 (copy enclosed), stated with respect to a contract county surveyor-engineer:

Our regulation defining the term "consultant" ... excludes a person who does no more than provide advice, information, recommendation or counsel to an agency and whose advice is provided independent of the agency's control or discretion. 2 Cal. Adm. Code Section 18700(a)(2). The preparation of surveys and engineering studies would appear to fall within this exclusion. When performing these services, the county surveyor-engineer is not involved in any official decision making. He is merely carrying out the terms of a contract just as any vendor of goods or services to the county might. He is not subject to the control or discretion of the county when he performs his work, but is governed only by the provisions of his contract.

In re Maloney, supra at 71 (emphasis added).

The contract between Civil Consultants and the city requires Civil Consultants to perform several tasks under the direction of and subject to approval of the city's staff. For example, the contract specifically directs that Civil Consultants and its personnel shall, under the direction of the city's staff, establish the amount of assessments in proportion to the estimated benefits to be received by each of the parcels

of land within the boundaries of the district. (Agreement for Engineering Services, Gateway South Assessment District, City of Scotts Valley, California and C2G/Civil Consultants Group, Task 4.4 at p.A-6.) Under these circumstances, it can hardly be claimed that Mr. Scothorn and Civil Consultants' personnel are "not subject to the control or discretion of the [city] when [they] perform [the] work, but [are] governed only by the provisions of [the] contract." (In re Maloney, supra, at 71.) Therefore, the exception provided in subdivision (a)(2)(A) of Regulation 18700 is not applicable and Mr. Scothorn and Civil Consultants' personnel are "consultants" and therefore "public officials" within the meaning of Section 87100.

PARTICIPATION IN A GOVERNMENTAL DECISION

In your letter you have stated that the engineer of work prepares an engineer's report containing (in general):

1. Plans and specifications for the improvements;
2. Estimated costs of the improvements;
3. Boundaries of the district;
4. A formula for assessing the costs among the benefitted properties;
5. A list of each parcel of land within the district and the proposed assessment.

Regulation 18700(c) provides:

A public official or designated employee "participates in the making of a governmental decision" when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

In preparing the engineer's report containing the items listed above, the engineer of work is exercising judgment and, the report will eventually influence the city's decision with respect to the assessment district. Thus, pursuant to subdivision (c)(2)(B) of Regulation 18700, the engineer of work is participating in the making of a governmental decision. (See Kaplan Advice Letter, No. A-82-108 (copy enclosed) at p. 10-11 for a discussion related to such exercise of judgment.)

Even though the city council will hold hearings before adopting the engineer's report and levying the assessment, this is not deemed a "significant intervening substantive review." (Regulation 18700(c)(2) (emphasis added).) The engineer-of-work participates in a decision, even if it is reviewed by the city council following the public hearings, if the city council relies on the data or analysis prepared by the engineer-of-work without another person checking it independently, if it relies on the engineer's professional judgment, or if the engineer in some other way may influence the final decision. (See Kaplan Advice Letter, supra.)

FINANCIAL INTEREST

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his or her immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

...

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a), (c) and (d).

The decisions involved in the preparation of the engineer's report include developing a formula for assessing the costs among the benefitted properties. This formula will reflect the costs associated with the plans and specifications prepared for the water and sewer improvements to the assessment district.

Mr. Scothorn has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on:

(1) His firm, Civil Consultants, in which Mr. Scothorn, as the sole proprietor, has a direct investment presumably of \$1,000 or more, and in which he is an officer. (Section 87103(a) and (d).)

(2) The sources of income to him, which include the real property owners for whom Mr. Scothorn has performed professional services (hereinafter referred to as the "three property owners").

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal. App. 3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest, it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

The decisions made by Mr. Scothorn and his firm are designed to improve the property in the assessment district. It is therefore foreseeable that the decisions will have an economic effect on the property owners who are sources of income to Mr. Scothorn.

We do not have sufficient facts to determine whether the decisions made by Civil Consultants in the preparation of the engineer's report would have any financial effect on Civil Consultants.

Material Financial Effect

Regulation 18702.1 provides that the effect of a decision is material if:

Any person (including a business entity) which has been a source of income . . . to the official of \$250 or more in the preceding 12 months is directly involved in a decision before the official's agency....

Regulation 18702.1(a)(1).

Subdivision (b) of Regulation 18702.1 states in relevant part:

A person or business entity is directly involved in a decision before an official's agency when that person....

Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency.

Mr. Scothorn has performed professional services for three of the eleven property owners of the 120 acre district -- the tentative map and boundary surveys for the owner of the 80 acre parcel, processing and hydrologic studies for another, and a topographic map for the third. The three property owners are the subject of the proceeding, along with the other property owners, in that the assessment district has been formed to provide water and sewer improvements to these property owners. The three property owners are thus directly involved in a decision before the official's agency and the effect of the decision is therefore material.

Regulation 18702.2 outlines the standards applicable to determine if the effect of a decision is material as to a business entity such as Civil Consultants.

Public Generally

If the effect of a decision on an official's economic interests is the same as the effect on the public generally, the public official may participate in the decision, even if the effect is a material one. (Sections 87100 and 87103.) Regulation 18703 (copy enclosed) provides in part:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public.

In the present situation, the "public" is the City of Scotts Valley. The eleven property owners in the assessment district do not constitute a significant segment of the public. Therefore, the effect of the decision on Mr. Scothorn's economic interests is distinguishable from the effect on the public generally. Accordingly, Mr. Scothorn should disqualify himself from performing engineering services under the terms of his contract with the City of Scotts Valley for the Gateway South Assessment District.

2. If Civil Consultants disqualifies itself and terminates the contract, may it accept a subcontract to develop the plans and specifications for improvements for the Gateway District?

In our analysis above, we concluded that Mr. Scothorn and Civil Consultants' personnel were "consultants" and therefore "public officials" within the meaning of Section 87100. (*Supra*, at p.7.) That conclusion was based on the fact that the contract between Civil Consultants and the city required Civil Consultants to perform several tasks under the direction of and subject to approval of the city's staff.

If Civil Consultants was to accept a subcontract for the plans and specifications for the Gateway District, it would appear that it would be working under a contract to provide design services or other discrete engineering services for a specific project. In the Criss Advice Letter, No. A-82-029 (copy enclosed), we noted that, under such circumstances, the engineer uses his expertise to render professional services according to the specifications of a contract, and his decisions are not subject to day-to-day review or direction by the governmental agency. Essentially, the engineer is being called upon to deliver a finished product - a report or a design - and not to participate in or advise the agency on general governmental decisions requiring engineering expertise. Therefore, the engineer is not a "consultant" within the meaning of Regulation 18700(a)(2) and therefore not a public official within the meaning of Section 87100. Accordingly, if the subcontract required Civil Consultants to provide design services or other discrete services without requiring day-to-day review or direction by the governmental agency it may accept the subcontract to prepare plans and specifications for the Gateway District.

Natalie E. West
December 21, 1988
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3. Would the responses to the questions differ if Mr. Scothorn had performed professional services for all of the property owners in the Gateway District instead of three of the eleven?

Even if Mr. Scothorn had performed professional services for all of the property owners in the assessment district instead of three of the eleven, the response would not be different. A public official may participate in a decision, even if the effect is material, if the effect of the decision is the same on a significant segment of the public. (Regulation 18703.) The eleven property owners do not constitute a significant segment of the public. Therefore, Mr. Scothorn would be required to disqualify himself from performing engineering services under the terms of his contract for the Gateway South Assessment District.

I trust I have provided you with the guidance necessary to determine Mr. Scothorn's responsibilities under the Act. If you have any questions, please call me at (916) 322-5901.

Very truly yours,

Diane M. Griffiths
General Counsel



By: Jeevan Ahuja
Counsel, Legal Division

DMG:JA:ld

Enclosure

MEYERS, NAVE, RIBACK & WEST

MICHAEL R. NAVE
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NATALIE E. WEST
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1202 GRANT AVE., SUITE E
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REPLY TO

San Leandro

October 24, 1988

Diane M. Griffiths, General Counsel
John G. McLean, Counsel, Legal Division
California Fair Political
Practices Commission
428 "J" Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

Re: Request for Advice: Government Code Section 83114
Letter of October 21, 1988

Dear Counsel:

This letter is in reference to the October 21, 1988 letter sent to you by this office regarding the above-entitled matter. Please note that on page three (3), paragraph four (4) of the above-mentioned letter, that paragraph should read as follows:

Civil Consultants has entered into a contract to perform engineering services and has performed topographic studies preliminary to developing the plans and specifications for the improvements. While they have developed a spread formula for preliminary design assessments, they have not prepared assessment rules or done any work that would result in levying final assessments against the properties. A copy of the contract is enclosed.

If you have any questions regarding the above, please feel free to contact me at your earliest convenience.

Very truly yours,

MEYERS, NAVE, RIBACK & WEST


Natalie E. West

NEW/dks

cc: Gene B. Scothorn, P.E.

MEYERS, NAVE, RIBACK & WEST

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OF COUNSEL
THOMAS F BERTRAND
FRANCIS J STILLMAN

REPLY TO

San Leandro

October 21, 1988

Diane M. Griffiths, General Counsel
John G. McLean, Counsel, Legal Division
California Fair Political
Practices Commission
428 "J" Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

Re: Request for Advice: Government Code Section 83114

Dear Counsel:

This letter requests advice on behalf of Gene B. Scothorn, a registered engineer who is sole proprietor of C2G/Civil Consultants Group ("Civil Consultants"). The City of Scotts Valley has entered into a contract with Civil Consultants to perform engineering services for the "Gateway South Assessment District."

QUESTIONS

Based on the facts stated herein, can Civil Consultants perform the engineering contract for the "Gateway South Assessment District"? If Civil Consultants is disqualified and the City contracts with another engineer who would be the engineer of work and develop the spread formula, could that engineer subcontract with Mr. Scothorn to develop the plans and specifications for the public improvements? Would your responses to these questions differ if Mr. Scothorn had performed professional services for all of the property owners in the district instead of three of the eleven?

FACTS AND SUMMARY OF APPLICABLE LAW

Assessment districts provide a mechanism for public entities to fund construction of public improvements. There is an excellent summary of the process in Cal.Jur at 51 Cal.Jur3d 555, entitled "Public Improvements." That note describes an assessment

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LPP/C

Diane M. Griffiths, General Counsel
John G. McLean, Counsel, Legal Division
California Fair Political
Practices Commission
October 21, 1988
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district as follows:

A special assessment proceeding is an administrative procedure provided by the legislature to enable authorized governmental entities to provide public improvements of special benefit to only a limited area and to spread the costs on the lands so benefitted in proportion to the benefits conferred.

The improvements that are constructed are public improvements, designed and built by the public entity, but the costs are paid by the property owners who benefit from the improvements, not the general public.

It is very common to use assessment district financing as a way of paying infrastructure costs for undeveloped property. In this particular instance, the Gateway South Assessment District is being formed to provide water and sewer improvements to 120 acres of land in the City of Scotts Valley. The water system will cost an estimated \$1.4 million and sewer costs are estimated at \$1.5 million. The costs of these improvements are assessed against the properties in the district according to benefit. The engineer of work is responsible for determining how the costs will be spread among the benefitted property owners. He prepares an engineers report containing (in general):

1. Plans and specifications for the improvements.
2. Estimated costs of the improvements.
3. Boundaries of the district.
4. A formula for assessing the costs among the benefitted properties.
5. A list of each parcel of land within the district and the proposed assessment.

See e.g., Streets and Highways Code Sections 10203, 10204 (Municipal Improvement Act of 1913).

Diane M. Griffiths, General Counsel
John G. McLean, Counsel, Legal Division
California Fair Political
Practices Commission
October 21, 1988
Page: 3

The City Council gives notice to affected property owners and holds a public hearing before adopting the engineers report and levying the assessment. If the costs of the improvements are substantial, bonds are sold and the property owners pay an annual amount to finance the debt service on the bonds. In this instance, the bonds will be sold pursuant to the Improvement Bond Act of 1915, Streets & Highways Code Sections 8500 et seq.

There are eleven property owners in the Gateway District. During the past year, Mr. Scothorn has performed professional services exceeding \$250 for three of the eleven owners. Thus, all three are "sources of income" to him.

One property owner has an interest in 80 acres. Mr. Scothorn prepared the tentative map and boundary surveys for this parcel, which will be divided into 81 lots. He provided assistance with processing and hydrologic studies for a proposed office project within the district. He prepared a topographic map for a third property owner.

Civil Consultants has entered into a contract to perform engineering services and has performed topographic studies preliminary to developing the plans and specifications for the improvements. They have not developed the spread formula or done any work that would result in levying a particular assessment against certain properties. A copy of the contract is enclosed.

Based on these facts, if Mr. Scothorn continues to serve as engineer of work, will he have a conflict of interest? I am informed that these facts are quite common and that engineers frequently prepare tentative maps for private clients and subsequently serve as engineers of work for the districts that will construct the improvements that are required as conditions of approval of the maps. See Subdivision Map Act, Government Code Sections 66410 et seq. Consequently, it would be useful to have some general guidelines that Mr. Scothorn and other engineers might follow when performing such work, See e.g., County of Mariposa v. Yosemite West Associates (1988) 202 Cal.App.3d 791, 248 Cal.Rptr. 778.

Diane M. Griffiths, General Counsel
John G. McLean, Counsel, Legal Division
California Fair Political
Practices Commission
October 21, 1988
Page: 4

Thank you for your prompt response to this inquiry. Please do not hesitate to contact me if you have any additional questions.

Very truly yours,

MEYERS, NAVE, RIBACK & WEST



Natalie E. West

NEW/dks

Enclosure

cc: Gene B. Scothorn, P.E.

Civil Consultants Group
Engineers/Planners

FPPC



4340 Scotts Valley Drive • Suite I • Scotts Valley, CA 95066 • 408 / 438-4420 • FAX 408 / 438-5829

October 26, 1988

Honorable City Council
City of Scotts Valley
City Hall
One Civic Center Drive
Scotts Valley, CA 95066

Attention: Mr. August A. Caires
City Administrator

Subject: Agreement for Engineering Services
Gateway South Assessment District

Honorable Mayor and Members of the Council:

On October 7, 1987, the City Council approved an agreement with our firm to provide engineering services associated with the Gateway South Assessment District project. During the past year, our firm has performed some preliminary phases of the work authorized by that agreement.

Recently, in the course of reviewing an unrelated matter, I became concerned that, because my firm has performed consulting services for landowners whose properties are included within the boundaries of the assessment district, the approval of that agreement may have resulted in my having a conflict of interest under Government Code Section 87100.

To clarify my responsibilities, I have consulted a private attorney who has expertise in this area of the law. She has advised me that the law is unclear, and has recommended that I seek written advice from the Fair Political Practices Commission (FPPC), the state agency that administers the applicable law. At my direction, she has written a letter to the FPPC requesting advice on my behalf.

In requesting this advice, my foremost concern was to avoid any appearance of impropriety that would, in any way, impair the interests of either the City of Scotts Valley or my private sector clients.

Preliminary discussions with the FPPC staff indicate that the question of potential conflict of interest relating to an assessment engineer's role has never been raised before. Since the practice of agencies employing engineers who also represent landowners is commonplace throughout California, it is understandable that this issue was not considered previously. Nevertheless, the FPPC's ruling could have widespread application in the award of design contracts for assessment districts.

It is my understanding that an opinion from the FPPC can be expected within about three weeks. Until this advice is received, I believe that it would be inappropriate for our firm to participate further on the Gateway South Assessment District project. Accordingly, I request that the Council consider action to temporarily suspend the City's contract with our firm pending the FPPC advice letter.

If the FPPC can issue a clear and unambiguous opinion that no conflict exists, and if the Council desires that our firm continue on this project, we would be pleased to do so. However, if the ruling is adverse or if it is in the least ambiguous, I would consider it necessary at that time to request termination of our agreement.

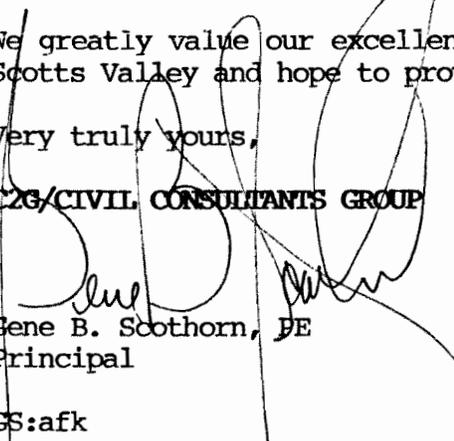
In the event that the Council considers a temporary suspension inadvisable, I would request that we be allowed to resign the assignment effective immediately.

I regret any inconvenience to the City that may have resulted from my raising of this issue. I attempt to conduct all of my business dealings with integrity, and I am sure that you can appreciate the importance to me that this matter be handled similarly.

We greatly value our excellent working relationship with the City of Scotts Valley and hope to provide our services on future projects.

Very truly yours,

C2G/CIVIL CONSULTANTS GROUP


Gene B. Scothorn, PE
Principal

GS:afk

cc: Fair Political Practices Commission
Attn: John G. McLean, Counsel, Legal Division

Raymond M. Haight, Esq.



California Fair Political Practices Commission

December 21, 1988

Extra
COPY

Natalie E. West
Meyers, Nave, Riback & W
Civic Center Complex
8335 East 14th Street
San Leandro, CA 94577

Dear Ms. West:

This is in response to
Mr. Gene B. Scothorn, sole
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under the conflict-of-int^{erests} provisions of the Political
Reform Act ("the Act").^{1/}

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Civil Consultants to perform engineering services for the
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3. Would the responses to the questions differ if Mr. Scothorn had performed professional services for all of the property owners in the Gateway District instead of three of the eleven?

CONCLUSIONS

1. Mr. Scothorn should disqualify himself from performing engineering services under the terms of his contract with the City of Scotts Valley for the Gateway District.

2. Civil Consultants may accept the subcontract if it required Civil Consultants to provide design services or other discrete services without requiring day-to-day review or direction by the governmental agency.

3. Even if Mr. Scothorn had performed professional services for all of the property owners instead of for three of the eleven property owners in the Gateway District, the responses to the above questions would not have been different.

FACTS

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ANALYSIS

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(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

Regulation 18700(a)(2) (emphasis added).

The relevant regulation defines "consultant" as a "natural person." Thus the firm itself is not a consultant within the meaning of the Act. It is the personnel who actually perform the work who would be consultants.

In a somewhat analogous situation, the Commission in In re Maloney (1977) 3 FPPC Ops. 69 (copy enclosed), stated with respect to a contract county surveyor-engineer:

Our regulation defining the term "consultant" ... excludes a person who does no more than provide advice, information, recommendation or counsel to an agency and whose advice is provided independent of the agency's control or discretion. 2 Cal. Adm. Code Section 18700(a)(2). The preparation of surveys and engineering studies would appear to fall within this exclusion. When performing these services, the county surveyor-engineer is not involved in any official decision making. He is merely carrying out the terms of a contract just as any vendor of goods or services to the county might. He is not subject to the control or discretion of the county when he performs his work, but is governed only by the provisions of his contract.

In re Maloney, supra at 71
(emphasis added).

The contract between Civil Consultants and the city requires Civil Consultants to perform several tasks under the direction of and subject to approval of the city's staff. For example, the contract specifically directs that Civil Consultants and its personnel shall, under the direction of the city's staff, establish the amount of assessments in proportion to the estimated benefits to be received by each of the parcels

of land within the boundaries of the district. (Agreement for Engineering Services, Gateway South Assessment District, City of Scotts Valley, California and C2G/Civil Consultants Group, Task 4.4 at p.A-6.) Under these circumstances, it can hardly be claimed that Mr. Scothorn and Civil Consultants' personnel are "not subject to the control or discretion of the [city] when [they] perform [the] work, but [are] governed only by the provisions of [the] contract." (In re Maloney, supra, at 71.) Therefore, the exception provided in subdivision (a)(2)(A) of Regulation 18700 is not applicable and Mr. Scothorn and Civil Consultants' personnel are "consultants" and therefore "public officials" within the meaning of Section 87100.

PARTICIPATION IN A GOVERNMENTAL DECISION

In your letter you have stated that the engineer of work prepares an engineer's report containing (in general):

1. Plans and specifications for the improvements;
2. Estimated costs of the improvements;
3. Boundaries of the district;
4. A formula for assessing the costs among the benefitted properties;
5. A list of each parcel of land within the district and the proposed assessment.

Regulation 18700(c) provides:

A public official or designated employee "participates in the making of a governmental decision" when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

In preparing the engineer's report containing the items listed above, the engineer of work is exercising judgment and, the report will eventually influence the city's decision with respect to the assessment district. Thus, pursuant to subdivision (c)(2)(B) of Regulation 18700, the engineer of work is participating in the making of a governmental decision. (See Kaplan Advice Letter, No. A-82-108 (copy enclosed) at p. 10-11 for a discussion related to such exercise of judgment.)

Even though the city council will hold hearings before adopting the engineer's report and levying the assessment, this is not deemed a "significant intervening substantive review." (Regulation 18700(c)(2) (emphasis added).) The engineer-of-work participates in a decision, even if it is reviewed by the city council following the public hearings, if the city council relies on the data or analysis prepared by the engineer-of-work without another person checking it independently, if it relies on the engineer's professional judgment, or if the engineer in some other way may influence the final decision. (See Kaplan Advice Letter, supra.)

FINANCIAL INTEREST

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or any member of his or her immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

...

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a), (c) and (d).

The decisions involved in the preparation of the engineer's report include developing a formula for assessing the costs among the benefitted properties. This formula will reflect the costs associated with the plans and specifications prepared for the water and sewer improvements to the assessment district.

Mr. Scothorn has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on:

(1) His firm, Civil Consultants, in which Mr. Scothorn, as the sole proprietor, has a direct investment presumably of \$1,000 or more, and in which he is an officer. (Section 87103(a) and (d).)

(2) The sources of income to him, which include the real property owners for whom Mr. Scothorn has performed professional services (hereinafter referred to as the "three property owners").

Foreseeability

The effects of a decision are reasonably foreseeable if there is a substantial likelihood that they will occur. To be foreseeable, the effects of a decision must be more than a mere possibility; however certainty is not required. (Downey Cares v. Downey Development Com. (1987) 196 Cal. App. 3d 983, 989-991; Witt v. Morrow (1977) 70 Cal. App. 3d 817, 822; In re Thorner (1975) 1 FPPC Ops. 198 (copy enclosed).) The Act seeks to prevent more than actual conflicts of interest, it seeks to prevent even the appearance of a possible conflict of interest. (Witt v. Morrow, supra at 823.)

The decisions made by Mr. Scothorn and his firm are designed to improve the property in the assessment district. It is therefore foreseeable that the decisions will have an economic effect on the property owners who are sources of income to Mr. Scothorn.

We do not have sufficient facts to determine whether the decisions made by Civil Consultants in the preparation of the engineer's report would have any financial effect on Civil Consultants.

Material Financial Effect

Regulation 18702.1 provides that the effect of a decision is material if:

Any person (including a business entity) which has been a source of income . . . to the official of \$250 or more in the preceding 12 months is directly involved in a decision before the official's agency....

Regulation 18702.1(a)(1).

Subdivision (b) of Regulation 18702.1 states in relevant part:

A person or business entity is directly involved in a decision before an official's agency when that person....

Is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official's agency.

Mr. Scothorn has performed professional services for three of the eleven property owners of the 120 acre district -- the tentative map and boundary surveys for the owner of the 80 acre parcel, processing and hydrologic studies for another, and a topographic map for the third. The three property owners are the subject of the proceeding, along with the other property owners, in that the assessment district has been formed to provide water and sewer improvements to these property owners. The three property owners are thus directly involved in a decision before the official's agency and the effect of the decision is therefore material.

Regulation 18702.2 outlines the standards applicable to determine if the effect of a decision is material as to a business entity such as Civil Consultants.

Public Generally

If the effect of a decision on an official's economic interests is the same as the effect on the public generally, the public official may participate in the decision, even if the effect is a material one. (Sections 87100 and 87103.) Regulation 18703 (copy enclosed) provides in part:

A material financial effect of a governmental decision on an official's interests, as described in Government Code Section 87103, is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public.

In the present situation, the "public" is the City of Scotts Valley. The eleven property owners in the assessment district do not constitute a significant segment of the public. Therefore, the effect of the decision on Mr. Scothorn's economic interests is distinguishable from the effect on the public generally. Accordingly, Mr. Scothorn should disqualify himself from performing engineering services under the terms of his contract with the City of Scotts Valley for the Gateway South Assessment District.

2. If Civil Consultants disqualifies itself and terminates the contract, may it accept a subcontract to develop the plans and specifications for improvements for the Gateway District?

In our analysis above, we concluded that Mr. Scothorn and Civil Consultants' personnel were "consultants" and therefore "public officials" within the meaning of Section 87100. (Supra, at p.7.) That conclusion was based on the fact that the contract between Civil Consultants and the city required Civil Consultants to perform several tasks under the direction of and subject to approval of the city's staff.

If Civil Consultants was to accept a subcontract for the plans and specifications for the Gateway District, it would appear that it would be working under a contract to provide design services or other discrete engineering services for a specific project. In the Criss Advice Letter, No. A-82-029 (copy enclosed), we noted that, under such circumstances, the engineer uses his expertise to render professional services according to the specifications of a contract, and his decisions are not subject to day-to-day review or direction by the governmental agency. Essentially, the engineer is being called upon to deliver a finished product - a report or a design - and not to participate in or advise the agency on general governmental decisions requiring engineering expertise. Therefore, the engineer is not a "consultant" within the meaning of Regulation 18700(a)(2) and therefore not a public official within the meaning of Section 87100. Accordingly, if the subcontract required Civil Consultants to provide design services or other discrete services without requiring day-to-day review or direction by the governmental agency it may accept the subcontract to prepare plans and specifications for the Gateway District.

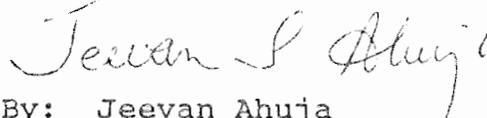
3. Would the responses to the questions differ if Mr. Scothorn had performed professional services for all of the property owners in the Gateway District instead of three of the eleven?

Even if Mr. Scothorn had performed professional services for all of the property owners in the assessment district instead of three of the eleven, the response would not be different. A public official may participate in a decision, even if the effect is material, if the effect of the decision is the same on a significant segment of the public. (Regulation 18703.) The eleven property owners do not constitute a significant segment of the public. Therefore, Mr. Scothorn would be required to disqualify himself from performing engineering services under the terms of his contract for the Gateway South Assessment District.

I trust I have provided you with the guidance necessary to determine Mr. Scothorn's responsibilities under the Act. If you have any questions, please call me at (916) 322-5901.

Very truly yours,

Diane M. Griffiths
General Counsel



By: Jeevan Ahuja
Counsel, Legal Division

DMG:JA:ld

Enclosure

MEYERS, NAVE, RIBACK & WEST

MICHAEL R. NAVE
STEVEN R. MEYERS
NATALIE E. WEST
ELIZABETH H. SILVER
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(415) 892-8878

OF COUNSEL
THOMAS F. BERTRAND
FRANCIS J. STILLMAN

REPLY TO:

San Leandro

October 24, 1988

Diane M. Griffiths, General Counsel
John G. McLean, Counsel, Legal Division
California Fair Political
Practices Commission
428 "J" Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

Re: Request for Advice: Government Code Section 83114
Letter of October 21, 1988

Dear Counsel:

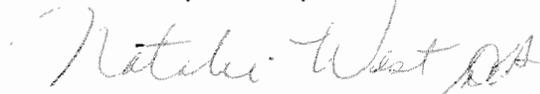
This letter is in reference to the October 21, 1988 letter sent to you by this office regarding the above-entitled matter. Please note that on page three (3), paragraph four (4) of the above-mentioned letter, that paragraph should read as follows:

Civil Consultants has entered into a contract to perform engineering services and has performed topographic studies preliminary to developing the plans and specifications for the improvements. While they have developed a spread formula for preliminary design assessments, they have not prepared assessment rules or done any work that would result in levying final assessments against the properties. A copy of the contract is enclosed.

If you have any questions regarding the above, please feel free to contact me at your earliest convenience.

Very truly yours,

MEYERS, NAVE, RIBACK & WEST



Natalie E. West

NEW/dks

cc: Gene B. Scothorn, P.E.

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MEYERS, NAVE, RIBACK & WEST

MICHAEL R NAVE
STEVEN R MEYERS
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OF COUNSEL
THOMAS F. BERTRAND
FRANCIS J. STILLMAN

REPLY TO:

San Leandro

October 21, 1988

Diane M. Griffiths, General Counsel
John G. McLean, Counsel, Legal Division
California Fair Political
Practices Commission
428 "J" Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

Oct 25 8 38 AM '88
FPPC

Re: Request for Advice: Government Code Section 83114

Dear Counsel:

This letter requests advice on behalf of Gene B. Scothorn, a registered engineer who is sole proprietor of C2G/Civil Consultants Group ("Civil Consultants"). The City of Scotts Valley has entered into a contract with Civil Consultants to perform engineering services for the "Gateway South Assessment District."

QUESTIONS

Based on the facts stated herein, can Civil Consultants perform the engineering contract for the "Gateway South Assessment District"? If Civil Consultants is disqualified and the City contracts with another engineer who would be the engineer of work and develop the spread formula, could that engineer subcontract with Mr. Scothorn to develop the plans and specifications for the public improvements? Would your responses to these questions differ if Mr. Scothorn had performed professional services for all of the property owners in the district instead of three of the eleven?

FACTS AND SUMMARY OF APPLICABLE LAW

Assessment districts provide a mechanism for public entities to fund construction of public improvements. There is an excellent summary of the process in Cal.Jur at 51 Cal.Jur3d 555, entitled "Public Improvements." That note describes an assessment

Diane M. Griffiths, General Counsel
John G. McLean, Counsel, Legal Division
California Fair Political
Practices Commission
October 21, 1988
Page: 2

district as follows:

A special assessment proceeding is an administrative procedure provided by the legislature to enable authorized governmental entities to provide public improvements of special benefit to only a limited area and to spread the costs on the lands so benefitted in proportion to the benefits conferred.

The improvements that are constructed are public improvements, designed and built by the public entity, but the costs are paid by the property owners who benefit from the improvements, not the general public.

It is very common to use assessment district financing as a way of paying infrastructure costs for undeveloped property. In this particular instance, the Gateway South Assessment District is being formed to provide water and sewer improvements to 120 acres of land in the City of Scotts Valley. The water system will cost an estimated \$1.4 million and sewer costs are estimated at \$1.5 million. The costs of these improvements are assessed against the properties in the district according to benefit. The engineer of work is responsible for determining how the costs will be spread among the benefitted property owners. He prepares an engineers report containing (in general):

1. Plans and specifications for the improvements.
2. Estimated costs of the improvements.
3. Boundaries of the district.
4. A formula for assessing the costs among the benefitted properties.
5. A list of each parcel of land within the district and the proposed assessment.

See e.g., Streets and Highways Code Sections 10203, 10204 (Municipal Improvement Act of 1913).

Diane M. Griffiths, General Counsel
John G. McLean, Counsel, Legal Division
California Fair Political
Practices Commission
October 21, 1988
Page: 3

The City Council gives notice to affected property owners and holds a public hearing before adopting the engineers report and levying the assessment. If the costs of the improvements are substantial, bonds are sold and the property owners pay an annual amount to finance the debt service on the bonds. In this instance, the bonds will be sold pursuant to the Improvement Bond Act of 1915, Streets & Highways Code Sections 8500 et seq.

There are eleven property owners in the Gateway District. During the past year, Mr. Scothorn has performed professional services exceeding \$250 for three of the eleven owners. Thus, all three are "sources of income" to him.

One property owner has an interest in 80 acres. Mr. Scothorn prepared the tentative map and boundary surveys for this parcel, which will be divided into 81 lots. He provided assistance with processing and hydrologic studies for a proposed office project within the district. He prepared a topographic map for a third property owner.

Civil Consultants has entered into a contract to perform engineering services and has performed topographic studies preliminary to developing the plans and specifications for the improvements. They have not developed the spread formula or done any work that would result in levying a particular assessment against certain properties. A copy of the contract is enclosed.

Based on these facts, if Mr. Scothorn continues to serve as engineer of work, will he have a conflict of interest? I am informed that these facts are quite common and that engineers frequently prepare tentative maps for private clients and subsequently serve as engineers of work for the districts that will construct the improvements that are required as conditions of approval of the maps. See Subdivision Map Act, Government Code Sections 66410 et seq. Consequently, it would be useful to have some general guidelines that Mr. Scothorn and other engineers might follow when performing such work, See e.g., County of Mariposa v. Yosemite West Associates (1988) 202 Cal.App.3d 791, 248 Cal.Rptr. 778.

Diane M. Griffiths, General Counsel
John G. McLean, Counsel, Legal Division
California Fair Political
Practices Commission
October 21, 1988
Page: 4

Thank you for your prompt response to this inquiry. Please do not hesitate to contact me if you have any additional questions.

Very truly yours,

MEYERS, NAVE, RIBACK & WEST

A handwritten signature in cursive script that reads "Natalie West".

Natalie E. West

NEW/dks

Enclosure

cc: Gene B. Scothorn, P.E.

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PW

COPY

AGREEMENT
FOR
ENGINEERING SERVICES

GATEWAY SOUTH ASSESSMENT DISTRICT

CITY OF SCOTTS VALLEY, CALIFORNIA

and

C2G/CIVIL CONSULTANTS GROUP

Approved by Resolution No. 1124-GS-09
of the Scotts Valley City Council
October 7, 1987

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City of Scotts Valley

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**AGREEMENT
for
ENGINEERING SERVICES**

GATEWAY SOUTH ASSESSMENT DISTRICT

This Agreement, is made and entered into as of this _____ day of _____, 1987, by and between the CITY OF SCOTTS VALLEY, hereinafter referred to as "CITY", AND C2G/CIVIL CONSULTANTS GROUP, a sole proprietorship, hereinafter referred to as "CONSULTANT".

WITNESSETH

WHEREAS, CITY proposes an acquisition and construction program entitled "Gateway South Assessment District City of Scotts Valley California" as set forth in Resolution 1124-GS-04, a Resolution of Intention to Acquire and Construct Improvements, adopted September 17, 1986, and in the judgement of the City Council of said City, it is necessary and advisable to employ the services of said CONSULTANT for said purposes; and

WHEREAS, CONSULTANT is a duly registered and qualified engineer experienced in the design of all types of street improvements, water and sewerage facilities, and other facilities related thereto, and in the preparation of plans and specifications therefor, and in estimating costs therefor, and in the distribution of benefit assessments and matters connected therewith, and has offered consulting services for the purposes specified in this agreement;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE 1 - EMPLOYMENT OF CONSULTANT

City agrees to employ CONSULTANT, and CONSULTANT agrees to perform the duties of Engineer of Work in special assessment district proceedings which are to be conducted for the accomplishment of certain acquisition and improvement work hereinabove referred to, and CONSULTANT will perform engineering services for CITY in accordance with the provisions hereinafter contained in this agreement.

ARTICLE 2 - Scope of Services

CONSULTANT shall perform all work necessary to complete, in a manner consistent with generally accepted professional engineering practice, the services set forth in Exhibit "A", entitled "Scope of Services", attached hereto and by reference incorporated herein and made a part hereof.

ARTICLE 3 - Compensation for Services

In consideration of the faithful performance of this Agreement by CONSULTANT, CITY agrees to pay CONSULTANT compensation in accordance with the schedules set forth in Exhibit "B", entitled "Compensation for Services", attached hereto and by reference incorporated herein and made a part hereof.

The parties agree that compensation due CONSULTANT under this Agreement shall be payable from the proceeds of assessments levied and bonds sold, and/or from Federal and State grants. CITY shall not be liable for payment of fees prior to collection of assessments, the sale of bonds or the receipt of grant funds, and

then only to the extent assessments are collected, bonds are sold, and/or grant funds are received. It is specifically recognized that CITY shall have no liability whatsoever for payment of said compensation in the event assessments are not levied or bonds are not sold. In this regard, it is specifically recognized that, absent a majority protest of affected landowners, CITY retains sole and absolute discretion to determine whether to levy assessments and/or to sell bonds, which discretion remains unfettered by anything to the contrary herein notwithstanding, save and except as hereinafter provided in this Article 3 with respect to engineering services associated with the planning and design of water supply and sewerage facilities (for which assessments have already been approved by majority vote of affected landowners in a special mail-ballot election).

CONSULTANT shall be entitled to monthly progress payments for fees earned on those portions of the assignment for which CITY has collected assessments or has received bond or grant proceeds. CITY may, as a surety for faithful performance, withhold from said progress payments an amount not to exceed ten percent (10%) of the compensation amount otherwise due CONSULTANT. Upon approval of the plans and specifications by the City Council of CITY, the amount of retained compensation shall be reduced to an amount not to exceed five percent (5%) of the amount due CONSULTANT and the corresponding portion of retained fees shall be paid CONSULTANT. Upon award of a construction contract for the project, the total of CONSULTANT's fees, including any and all retained amounts, shall be immediately payable.

In the event that the project is funded and/or constructed in phases or segments, all compensation due CONSULTANT for work within any given phase or segment of the project shall be payable to CONSULTANT as otherwise provided herein. Progress billings shall be payable within thirty (30) days from the date of submittal. Billings not paid within said period shall be subject to interest compounded at the rate of one percent (1.00%) per month.

Engineering services associated with the planning and design of water supply and sewerage facilities shall be payable from the proceeds of assessments levied and bonds sold for that purpose, said assessment having been approved by a majority of the owners of property within the boundaries of the Gateway South Assessment District in a special mail-ballot election held June 2, 1987.

ARTICLE 4 - Responsibility of Consultant

CONSULTANT shall be responsible for the professional quality, technical accuracy, coordination and timely completion of all designs, specifications, reports, and other services to be furnished by CONSULTANT under this Agreement.

- (a) CONSULTANT is employed to render a professional service only and any payment made to CONSULTANT is compensation solely for such services as he may render and recommendations he may make in carrying out the work.
- (b) CONSULTANT, in performing work hereunder shall exercise the due care of a reasonably prudent engineer under the circumstances and be subject to accepted standards of the engineering profession.
- (c) CONSULTANT makes no representation concerning the estimated quantities and cost figures made in connection with maps, plans, specifications, drawings or contract documents, other than that all such quantities and figures are estimates only and CONSULTANT shall not be responsible for fluctuations in cost factors.

- (d) CONSULTANT does not guarantee the completion or quality of performance of contracts by the construction contractor or contractors, or other third parties, nor is CONSULTANT responsible for their acts or omissions.
- (e) CONSULTANT makes no warranty, either express or implied, as to his findings, opinions, recommendations, factual presentations or professional advice, other than they were promulgated after following a practice usual to the engineering profession.
- (f) CONSULTANT shall contact the owners of franchised utilities to ascertain the location and nature of their facilities within public rights-of-way, and shall coordinate any relocation and/or adjustment of such facilities that may be required to accommodate the construction of the improvements contemplated by the project.

ARTICLE 5 - Responsibility of City

CITY shall make available all data in its possession which may reasonably relate to the performance of this contract and shall provide all necessary information regarding its requirements for the project.

- (a) CITY shall furnish information required of it as expeditiously as necessary for the orderly progress of the work. Such information shall include all relevant data on the planning, design and construction of facilities adjoining the project limits which have been, or are being done, by others.
- (b) CITY shall designate a representative to act, where such acts are not contrary to law of City ordinance or written policy, in its behalf with respect to the project.
- (c) CITY shall examine documents submitted by CONSULTANT and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONSULTANT's services. For the purposes of this paragraph prompt response shall be considered as ten (10) working days or less for routine

submittals, and thirty (30) calendar days or less for submittal of construction plans and related documents or for other complex materials.

- (d) CITY shall furnish the services of a traffic engineer, geotechnical consultant and other consultants when such services are deemed necessary by CITY's City Engineer in consultation with CONSULTANT. Such services shall include, but not necessarily be limited to, studies, reports, tests, calculations, and other operations necessary for the gathering of essential data or for establishing criteria for project designs.
- (e) CITY shall furnish the services of right-of-way agents, legal counsel real estate appraisers, relocation specialists and other consultants necessary to evaluate, negotiate, purchase or otherwise obtain for CITY the necessary rights-of-way and easements as determined and described by CONSULTANT.
- (f) CITY shall exercise its powers as utility franchisor when necessary to enable CONSULTANT to perform his responsibilities in providing coordination for moving and/or adjusting existing franchised facilities in public rights-of-way or easements. Such franchise facilities shall include, but not necessarily be limited to, those of Pacific Gas & Electric Company, Pacific Bell Telephone Company, the Scotts Valley Water District, the Manana Woods Mutual Water Company and Santa Cruz Cable Television Company.
- (g) CITY shall furnish such legal, accounting, and insurance counseling services as may be necessary for the project, and such auditing services as may be required to ascertain how, or for what purposes, the construction contractor has used the monies paid the contractor under the construction contract. Such services, information surveys and reports are a necessary part of the project and the assessment district proceedings and shall be furnished by CITY and paid for by CITY from the proceeds of assessments levied and/or bonds sold. Such services,

information, surveys and reports shall be sufficiently complete and accurate to justify CONSULTANT's reliance thereon and as deemed reasonable by CITY.

- (h) If CITY becomes aware of any fault or defect in the project or any nonconformance with the maps, plans, specifications, drawings or contract documents, CITY shall give prompt written notice thereof to CONSULTANT.

ARTICLE 6 - Independent Contractor Status

The parties hereby agree that CONSULTANT is an independent contractor and not acting hereunder in any manner as an employee of CITY; and CITY shall not, except through negligence of CITY or its employees, be liable to CONSULTANT, or any person or persons acting for or under his employ, for any death or injuries received or claimed in connection with the work performed under this Agreement.

ARTICLE 7 - Termination of Contract

Either party may terminate this Agreement, in whole or in part, if the other party fails to fulfill its obligations under this Agreement through no fault of the terminating party. However, no such termination may be effected unless the other party is given: (1) not less than ten (10) calendar days written notice (delivered by certified mail) of intent to terminate, and; (2) an opportunity for consultation with the terminating party prior to the effective date of termination.

CITY may terminate this Agreement in whole or in part for its convenience; provided, however, that CONSULTANT is given ten (10) calendar days written notice (delivered by certified mail) of CITY's intent to terminate.

In the event of termination for any reason, CITY agrees to pay CONSULTANT for any compensation due within thirty (30) days after the effective date of termination. CITY agrees to pay CONSULTANT for any portion or portions of CONSULTANT's work for which CONSULTANT was not previously compensated when such work is utilized by CITY, or by third parties acting as agents of CITY, to undertake construction of improvements at a future date. Such payment shall be due CONSULTANT regardless of the sources then utilized to fund the project.

ARTICLE 8 - Subcontracts

CONSULTANT shall be entitled to subcontract any portion of the work to be performed under this Agreement. Provided, however, that any addition, deletion or substitution of subcontractors from those listed in Exhibit "D" hereto, which involve subcontract amounts of two thousand dollars (\$2,000.00) or more shall be subject to review and approval of CITY's City Engineer. CONSULTANT shall be responsible to CITY for the performance of his subcontractors and shall keep the work under his control at all times.

ARTICLE 9 - Ownership of Documents

All maps, plans, designs, detailed drawings, work data, and all other documents prepared or prescribed by CONSULTANT in the performance of this Agreement shall become the property of the CITY upon payment in full of CONSULTANT's earned compensation. If, for any reason, the bond sale does not proceed, all such documents will become the property of CITY upon full payment to CONSULTANT for the work performed.

All original papers, documents, drawings, and other work product of CONSULTANT, and copies thereof, for which no payment has been made shall remain the property of CONSULTANT and may be used by CONSULTANT without consent of CITY. CITY shall not release copies of CONSULTANT's documents or allow duplication thereof, or allow construction of facilities based on CONSULTANT's documents without written consent of CONSULTANT.

CONSULTANT shall print, stamp or otherwise conspicuously mark each set of documents with a statement indicating their proprietary nature and describing the restrictions on their use.

ARTICLE 10 - Notices

Notices transmitted pursuant to the terms of this Agreement to be sent to the parties shall be as follows:

CITY: City of Scotts Valley
One Civic Center Drive
Scotts Valley, CA 95066
Attention: City Administrator

CONSULTANT: C2G/Civil Consultants Group
10 Suzanne Lane
Scotts Valley, CA 95066
Attention: Gene B. Scothorn

ARTICLE 11 - Assignability

This Agreement shall be binding on the successors and assigns of the parties. CONSULTANT shall not assign any interest in this Agreement, and shall not transfer any interest in same (whether by assignment or novation) without the prior written consent of CITY thereto: Provided, however, that claims for compensation by CONSULTANT from CITY under Article 3 of this Agreement can be

assigned to a bank trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to CITY.

ARTICLE 12 - Adjudication

If any action at law or equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, which fees may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

ARTICLE 13 - Indemnification

CONSULTANT agrees to defend, indemnify and hold harmless, CITY, its officers, agents and employees from and against all claims, demands, damages or costs arising from CONSULTANT's negligence with respect to CONSULTANT's work performed pursuant to this Agreement. CITY agrees to defend, indemnify and hold harmless CONSULTANT, its officers, agents and employees from and against all claims, demands, damages or costs arising from CITY's negligence with respect to CITY's work performed pursuant to this Agreement.

ARTICLE 14 - Responsibility of Construction Contractor

CITY agrees that in accordance with generally accepted construction practices, CITY's construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the

project, including safety of all persons and property; that this requirement shall be made to apply continuously and not be limited to normal working hours.

ARTICLE 15 - Professional Liability Insurance

CONSULTANT shall within forty-five (45) working days after the effective date of this Agreement, submit to CITY adequate proof of insurance for professional liability according to a standard form covering errors, omissions and negligence in an amount of at least One Hundred Thousand dollars (\$100,000). Said insurance shall cover all work performed under this Agreement.

ARTICLE 16 - Consultant's Project Manager

CONSULTANT has designated Gene B. Scothorn as its Project Manager. Mr. Scothorn shall be the principal liaison with CITY and the person authorized to effect changes to this contract on behalf of CONSULTANT. No change in CONSULTANT's designated Project Manager shall be made without the prior written consent of CITY's City Engineer.

ARTICLE 17 - Separability

Should any term, condition or covenant of this Agreement be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall be valid and binding on both parties.

The waiver of any term, condition, or covenant, or the breach of any term, condition or covenant, by either party, shall not constitute a waiver of any other term, condition or covenant or the breach of any other term, condition or covenant.

ARTICLE 18 - Scope of Agreement

This writing and attached Exhibit "A", entitled "Scope of Services"; Exhibit "B", entitled "Compensation for Services; Exhibit "C", entitled "Schedule of Hourly Rates"; and Exhibit "D", entitled "List of Subcontractors"; constitute the entire Agreement between the parties relating to the provision of services thereto, and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Agreement.

ARTICLE 19 - Additional Services

CITY may, at its option, employ CONSULTANT to provide additional services during the construction phase of the project that are beyond the Scope of Services described in Exhibit "A". Since the precise scope of said additional services cannot be presently defined, CITY and CONSULTANT agree that any construction phase engineering services shall be the subject of a separate agreement.

ARTICLE 20 - Non-Discrimination in Employment

During the performance of this Agreement, CONSULTANT shall not discriminate against any employee of applicant for employment because of race, religion, creed, color, national origin, sex or age. CONSULTANT will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, creed, color, national origin, sex or age.

ARTICLE 21 - Worker's Compensation Insurance

CONSULTANT shall comply with the provisions of the Worker's Compensation and Insurance Law of the State of California.

ARTICLE 22 - Compliance with Laws

CONSULTANT shall use reasonable care and diligence to comply with applicable federal, state and local laws in the performance of work under this Agreement.

IN WITNESS WHEREOF, CITY has caused its corporation name to be affixed hereto by the Mayor and attested by the City Clerk, thereof, and CONSULTANT has hereunto set his hand, the day and year first above written.

RECOMMENDED FOR APPROVAL:

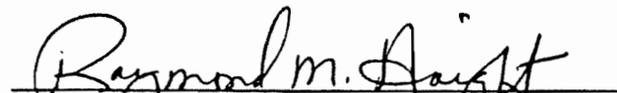
CITY OF SCOTTS VALLEY
California

Norman D. Ploss
Director of Public Works/City Engineer



Raymond F. Carl
Mayor

APPROVED AS TO FORM:



Raymond M. Haight
City Attorney

ATTEST:



August A. Cairas
City Clerk

C2G/CIVIL CONSULTANTS GROUP


Gene B. Scothorn
Owner

SCOPE OF SERVICES

GATEWAY SOUTH ASSESSMENT DISTRICT

1. DESCRIPTION OF PROJECT

The acquisitions and improvements proposed for the Gateway South Assessment District are generally as follows:

- (a) Street improvements associated with the widening and improvement of Mount Hermon Road between State Highway 17 and Glen Canyon Road and the possible reconstruction of the following intersections:
- Mt. Hermon Road and Glen Canyon Road
 - Mt. Hermon Road and La Cuesta Drive
 - Mt. Hermon Road and Highway 17 on/off ramps

The extent of intersection reconstruction will be dependent on the results of traffic engineering analyses and conceptual design studies to be conducted by DKS Associates under separate contract with the City of Scotts Valley.

Said street improvements are expected to include clearing, grubbing, excavation, grading, construction of base, pavement, retaining walls, curbs, gutters, sidewalks, driveways, paving conforms, street signs, traffic signals, traffic signs, striping, monuments, lighting, surface and subsurface storm drainage facilities and related facilities and work appurtenant to the widening and improvement of the described streets.

- (b) Street improvements associated with the widening and improvement of La Madrona Drive between the Highway 17 frontage road and the southerly City limits together with possible reconstruction of the intersection of Mount Hermon Road and La Madrona Drive.

These street improvements are expected to include clearing, grubbing, excavation, grading, construction of base, pavement, curbs, gutters, sidewalks, driveways, paving conforms, street signs, traffic signs, striping, surface and subsurface storm drainage facilities and related facilities and work appurtenant to the widening and improvement of the described streets.

- (c) The extension of gravity sewers along Mount Hermon Road from Glen Canyon Road and along La Madrona Drive from Mount Hermon Road to the southerly city limits.

Sewer improvements are expected to include clearing, grubbing, trenching, backfill, compaction, sewer pipe, manholes, cleanouts, laterals, resurfacing and related facilities and work appurtenant to the extension of sanitary sewers.

- (d) Water system improvements, including construction of a 1.6-million gallon reservoir (steel tank) to be located at an elevation of approximately 800-feet on property owned by the J. & P. Scott Company (APN 021-141-03), and extension of a 12-inch diameter transmission pipeline from its present terminus near the intersection of Mount Hermon Road and Glen Canyon Road, along Mount Hermon Road, the Highway 17 frontage road and La Madrona Drive, then across the previously identified Scott parcel to the proposed reservoir.

Water system improvements are expected to include clearing, grubbing, excavation, grading, trenching, backfill, compaction, pavement, water pipe, valves, fire hydrants, steel tank reservoir, controls, power and signal conduit and other facilities and work appurtenant to extension of water supply facilities.

- (e) Acquisition of rights-of-way and easements necessary to construct the proposed improvements.

2. DUTIES OF CONSULTANT

CONSULTANT shall provide necessary engineering services in conjunction with the assessment district including preparation of the Engineer's Report and assessment spread. CONSULTANT shall prepare plans and specifications adequate and sufficient for the acquisition and construction of the street, sewer and water improvements described in Paragraph 1, above. In connection therewith, CONSULTANT shall provide consultation services, interpret plans and specifications, and prepare needed modifications of the plans and specifications, as more specifically described hereinafter.

CONSULTANT shall prepare construction documents in a manner that will permit, at the CITY's option, the construction of the project in not more than three (3) phases, as follows:

- (a) The street improvements associated with the widening of Mount Hermon Road as described in Paragraph 1(a), above;
- (b) The street improvements associated with the widening and realignment of La Madrona Drive as described in Paragraph 1(b), above; and

- (c) The water and sewer improvements described in Paragraphs 1(c) and 1(d), above.

3. SCOPE OF SERVICES

The services to be provided by CONSULTANT under this Agreement shall be as follows:

Design Phase

Task 1.0 - Design Investigations and Surveys

Prior to commencement of detailed design, CONSULTANT shall initiate necessary design investigations and field surveys. The work effort under this task shall consist of the following:

Task 1.1 - Research of Record Data

CONSULTANT shall conduct a complete search of available record data. The search shall include collection and assembly of tract, parcel and record of survey maps, title reports, deeds, right-of-way documents, public utility easements, Assessor's maps and similar documents relating to land ownership. CITY shall assist CONSULTANT by providing access to records in CITY's possession.

Task 1.2 - Design Surveys

Field surveys of the project route and/or site shall be conducted. The purpose of these surveys is to establish a data base for detailed design and for control of future construction staking. Design surveys shall be accomplished utilizing a combination of field survey crews and aerial photogrammetric methods.

Deliverable products of this task shall include topographic maps of the project area and copies of all appropriate field notes. Topographic mapping produced by aerial photogrammetric methods shall conform to the following minimum standards:

Scale:	1-inch = 20-feet
Cross sections:	Digitized a 50-foot intervals
Contours:	1-foot intervals (slopes < 10%)
	2-foot intervals (slopes > 10% < 30%)
Culture:	Planimetric mapping practice

Ground survey methods shall be used to supplement aerial mapping at critical locations and in areas unobservable by aerial photogrammetric techniques. Ground control for aerial mapping shall be conducted by field survey methods and shall be tied to existing monumentation.

Task 1.3 - Soils Investigations

CONSULTANT shall advise CITY with respect to investigations necessary to establish subsurface conditions and design values associate with existing soils and road pavement sections. While CITY shall contract separately for geotechnical studies and testing, CONSULTANT shall offer assistance to CITY in the selection of qualified geotechnical consultants, the establishment of the work scope for soils investigations, and in coordination of testing and design activities.

Task 1.4 - Utilities Investigation

CONSULTANT shall conduct a utilities search involving the review of available public records, communication with utility companies and field verification of visible utility facilities. Where excavation is necessary to verify the location of existing utilities, CONSULTANT shall assist CITY in arranging for the equipment and personnel required to expose the facilities in question.

Task 2.0 - Preparation of Plans, Contract Documents and Cost Estimates

CONSULTANT shall prepare all necessary plans, specifications, contract documents, and cost estimates for the improvements contemplated by the assessment district. The construction documents shall be in conformance with standard requirements of CITY and in a form suitable for distribution for construction bids. The following shall comprise the intended work effort:

Task 2.1 - Preparation of Construction Drawings

Construction drawings shall include all necessary plans, profiles, cross sections, details, and other information reasonably required for construction of the project as designed. Where appropriate, references to existing standards and other data shall be incorporated. Three (3) sets of preliminary plans shall be provided CITY for review.

Task 2.2 - Construction Specifications and Contract Documents

CONSULTANT shall prepare special conditions sections for incorporation with CITY's Standard Specifications. Particular attention shall be given to items at variance with normal standards or otherwise of special interest to prospective bidders.

CONSULTANT shall, in cooperation with CITY's staff and legal counsel, prepare the construction documents, including necessary bid forms, quantity estimates, general provisions, and related elements of the contract documents. Where appropriate, construction specifications shall provide for the use of alternative materials and/or equipment, and shall, if requested by CITY, provide for partial bidding and/or construction phasing of the proposed improvements. Three (3) sets of preliminary construction specifications shall be provided CITY for review.

Task 2.3 - Construction Cost Estimates

Upon completion of engineering plans and specifications, CONSULTANT shall prepare final quantity and construction cost estimates for the proposed project improvements. The quantity and cost estimates shall be sufficiently detailed to permit evaluation of the total project cost, and shall be at least as detailed as the quantity estimates provided in the bid documents.

Task 2.4 - Coordination with Other Agencies

CONSULTANT shall provide for coordination of project activities with other governmental agencies, utility companies, and other interested parties. Where licenses, permits and/or approvals from regulatory agencies are required, CONSULTANT shall assist CITY in securing necessary project clearances.

Task 3.0 - Real Property Acquisition

CONSULTANT shall provide assistance to CITY in the acquisition of rights to and/or over properties to be acquired in fee title, for rights-of-way, and for easements. CONSULTANT's responsibilities in respect to such acquisitions shall be limited to the following work tasks:

Task 3.1 - Right of Way Documents

CONSULTANT shall conduct necessary field surveys and prepare legal descriptions and maps for right-of-way acquisition and shall provide verifications needed for recordation of deeds and records of survey.

Task 3.2 - Assistance to Right of Way Agent

CITY shall contract separately for the services of a right-of-way agent to negotiate, purchase or otherwise act on behalf of CITY in obtaining land rights necessary for the contemplated improvements. CONSULTANT shall consult with CITY's designated right-of-way agent and shall advise CITY with respect to engineering requirements related to real property acquisitions.

Task 3.3 - Assistance to Relocation Specialist

CITY shall contract separately for the services of a relocation specialist to evaluate necessary relocation of individuals and businesses resulting from acquisitions and improvements contemplated by the assessment proceedings and to negotiate or otherwise act on behalf of CITY in achieving relocation of affected parties. CONSULTANT shall consult with CITY's designated relocation specialist and shall advise CITY with respect to engineering requirements related to such relocations.

Assessment Engineering Phase

Task 4.0 - Assessment Engineering

CONSULTANT shall provide all assessment engineering services required pursuant to either the Improvement Act of 1911 or the Municipal Improvement Act of 1913, including the following:

Task 4.1 - Boundary Map

CONSULTANT shall prepare a map delineating the proposed boundaries of the assessment district and illustrating the limits of the proposed improvements.

Task 4.2 - Assessment Estimates

CONSULTANT shall prepare preliminary estimates of the assessment amounts for each property to be assessed within the assessment district.

Task 4.3 - Engineer's Report

CONSULTANT shall prepare for the approval of CITY, an Engineer's Report for the assessment district. The Engineer's Report shall conform to the requirements of State statute and procedures set forth by CITY's bond counsel.

The Engineer's Report shall include all necessary engineering documents related to the assessment district proceedings including the assessment diagram, and assessment roll.

Task 4.4 - Establishment of Assessments

CONSULTANT shall, under the direction of CITY's CITY Engineer, establish the amount of assessments in proportion to the estimated benefits to be received by each of the parcels of land within the boundaries of the district. CONSULTANT shall prepare and present to CITY a list of such assessments and assist in the filing and recordation of documents as required by assessment district proceedings.

Task 4.5 - Coordination with City Staff and Bond Counsel

All assessment engineering activities shall be reviewed and coordinated with CITY's staff and legal counsel.

Task 4.6 - Attendance at Public Meetings

CONSULTANT shall be available to attend all public hearings and informal public meetings related to the assessment district and, when requested by CITY, shall make necessary presentations of the findings and conclusions of the Engineer's Report.

Task 5.0 - Assistance Prior to Construction

CONSULTANT shall provide office engineering services necessary to assist the CITY's staff during the construction phase of the project. These services shall include the following:

Task 5.1 - Assistance in Securing Construction Bids

Subsequent to approval of the project plans and specifications, CONSULTANT shall assist CITY's staff in securing bids for the construction of the project, and in the award of construction contracts. These services shall include assistance in securing bids, conducting pre-bid conferences and site tours, tabulation and analysis of bids, and provision of recommendations relative to the award of construction contracts.

Task 5.2 - Preconstruction Conferences

CONSULTANT shall be available to participate in a preconstruction conference with CITY's staff and the construction contractor.

Task 5.3 - Consultation During Bidding Period

CONSULTANT's staff shall be available to advise, answer questions, and provide routine assistance to CITY's staff during the period preceding award of the construction contract for the project.

Construction Phase Services

It is recognized that CITY will require additional professional engineering services during the construction phase of the project that are beyond the Scope of Services described herein.

Because the precise scope of said additional services cannot be presently defined, construction phase engineering services shall be the subject of a separate agreement.

Anticipated services may include (but are not necessarily limited to) construction staking, construction observation, periodic site visitation, analysis of field conditions, interpretation of specifications, preparation of estimates for progress payment, contract administration, preparation of reports supporting grant reimbursement, preparation of "As-Constructed" plans.

COMPENSATION FOR SERVICES
GATEWAY SOUTH ASSESSMENT DISTRICT

CONSULTANT shall be compensated for the services described under Article 2 (Scope of Services) of this Agreement in accordance with the methods and amounts provided herein.

A. Design Phase

Compensation to be paid CONSULTANT for those services set forth in Exhibit "A" (Scope of Services) as "Design Phase" services (Tasks 1 through 3, inclusive) shall be the following fixed fee amounts:

Task 1 - Investigations and surveys.....	\$ 14,500
Task 2 - Plans and contract documents.....	\$ 141,500
Task 3 - Real property acquisition.....	\$ <u>7,000</u>
Subtotal - Design Phase.....	\$ 163,000

B. Assessment Engineering Phase

Compensation to be paid CONSULTANT for those services set forth in Exhibit "A" (Scope of Services) as "Assessment Engineering Phase" services shall be the following fixed fee amount:

Task 4 - Assessment engineering.....	\$ 9,000
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C. Assistance Prior to Construction

For services associated with the provision of assistance to CITY in the securing, evaluation and awarding of the construction contracts, as defined in Task 5 of Exhibit "A", CONSULTANT shall be compensated on an hourly rate basis in accordance with the rate schedule provided in Exhibit "C" (Schedule of Hourly Rates). The maximum amount of compensation for this work effort shall not exceed ten thousand dollars (\$10,000) without prior approval of CITY.

D. Additionally Authorized Services

Services required of CONSULTANT and authorized by CITY which are beyond the scale of project and/or the scope of services described in Exhibit "A" (Scope of Services) shall, unless otherwise agreed to by the parties in writing, be compensated for in accordance with the hourly rate schedule contained in Exhibit "C" or (in the event that such services are required after December 31, 1988) in accordance with CONSULTANT's published standard hourly rates in effect at the time said additional services are rendered.

E. Cost of Services by Construction Phase

It is recognized that CITY may utilize one or several funding sources for the completion of the project. The following division of the compensation amount for preparation of plans and specifications (as identified in Paragraph A above) is provided for CITY's use in assigning design costs to the various funding sources:

Mount Hermon Road Widening.....	\$ 39,000
La Madrona Road Improvements.....	\$ 27,000
Water and Sewer Improvements.....	<u>\$ 75,500</u>

Total Cost of Task 2.....\$ 141,500

F. Outside Direct Reimbursable Expenses

CONSULTANT shall be entitled to reimbursement, plus an allowance of fifteen percent (15%), for outside direct costs identifiable as a project expenses. Such expenses may include, but are not necessarily limited to:

- (1) Reproduction and duplication expenses, including blueprinting, photographic reproduction, photocopying, and offset printing;
- (2) Long-distance telephone calls between CONSULTANT's place of business and points outside of the "408" and "415" dialing areas.
- (3) Telegraph costs, facsimile transmission expenses, costs of shipping and express delivery services.

CONSULTANT shall receive reimbursement of expenses for travel authorized by CITY for project related purposes to destinations beyond one hundred (100) air-miles of Scotts Valley. Reimbursable travel expense shall include air or surface transportation costs by common carrier, mileage expense for use of personal or company vehicles, lodging, meals, automobile rental and other normal and reasonable expenses associated with business travel. Transportation and automobile rental expense shall be reimbursed at actual cost as shown on the ticket, invoice or tariff bill. Lodging, meals and related subsistence expenses shall be reimbursed at the rate of \$85.00 per person per day. Use of personal or company vehicles shall be reimbursed at the rate of \$0.30 per mile.

Costs payable under this paragraph shall not exceed \$5,000.00 without the prior written approval of the CITY.

G. Progress Payments

CONSULTANT shall be entitled to monthly progress payments in accordance with the provisions of Article 3 of the Agreement. CONSULTANT shall submit invoices indicating the relative completion of each identified pay item along with copies of invoices for any identifiable project-related direct expenses. CONSULTANT shall provide sufficient billing detail to permit allocation of fees, costs and expenses to project accounts.

Invoices for work items in which compensation is based on hourly rates shall clearly identify the employee classification category, the hourly rate and the extension thereof. For contract work items in which compensation is based on a fixed fee, invoices shall be based on the estimated percentage of completion of the work item. The percentage completion shall be supported by a billing worksheet showing the hours worked by each personnel classification during the billing period and showing the extension thereof using the hourly rates shown in Exhibit "C". The billing worksheet shall show all additional non-personnel costs applicable to the work under this Agreement which are included in the computation of the percentage completed. The data and calculations contained on said billing worksheet shall be used for verification of relative progress only, and shall not increase or decrease the total fixed fee compensation due CONSULTANT.

CITY agrees to pay CONSULTANT's invoices within thirty (30) calendar days after receipt of said invoices. Invoices not paid within said period shall be subject to a late payment charge as provided in Article 3 of the Agreement.

SCHEDULE OF HOURLY RATES

GATEWAY SOUTH ASSESSMENT DISTRICT

The following hourly rates are applicable to services authorized by the CITY which are beyond the scope of services defined in the Agreement and which are authorized before January 1, 1989:

<u>Classification</u>	<u>Hourly Rate</u>
Principal Engineer	\$ 85.00
Senior Engineer	\$ 67.00
Associate Engineer	\$ 56.00
Assistant Engineer	\$ 51.00
Designer	\$ 46.00
Senior Drafter	\$ 45.00
Drafter	\$ 39.00
Computer Technician	\$ 44.00
2-Person Survey Party	\$ 122.00
3-Person Survey Party	\$ 150.00
Technical Typist	\$ 28.00
Clerical	\$ 23.00
Delivery	\$ 21.00

The above rates include all direct wages and salaries, payroll costs, overhead costs, and profit. The rates do not include direct, identifiable project-related expenses which will be billed at our direct cost plus fifteen percent (15%) or travel-related expenses which will be billed at direct cost (without mark-up).

LIST OF SUBCONTRACTORS
GATEWAY SOUTH ASSESSMENT DISTRICT

It is anticipated as of the date of execution of the Agreement, that the following subcontractors will be employed in the prosecution of portions of the work described in Exhibit "A" and that the amount of such subcontracted work will be in excess of two thousand dollars (\$2,000.00)

Aerial Photogrammetry:

Harl Pugh & Associates
469 Grand Avenue
South San Francisco, CA 94080

Land Surveyors:

Harvey F. Blomquist
38566 Royal Ann Common
Fremont, CA 94536

Arcturus Land Surveying
328 Harrison Avenue
Santa Cruz, CA 95062

The employment of additional subcontractors or the substitution of other subcontractors for those listed above shall be subject to the approval of the City Engineer as provided in Article 8 of the Agreement.