RESOLUTION AUTHORIZING A CONTRACT WITH VALLEY MANAGEMENT GROUP (VMG), IN THE AMOUNT OF $100,000, FOR PLAN REVIEW, VALUE ENGINEERING, CONSTRUCTION MANAGEMENT, INSPECTION, AND MATERIALS TESTING SERVICES FOR FIRE COMPANY NOS. 7, 10 & 11 AMBULANCE BAY EXPANSION, PROJECT NO. 04-27

WHEREAS, the Fire Company Nos. 7, 10, & 11 Ambulance Bay Expansion Project requires specific and vast work experience for plan review, value engineering, construction management, inspection and materials testing services; and

WHEREAS, Valley Management Group has the qualifications to perform such work; and

WHEREAS, Valley Management Group is not on the master vendor pool list; and

WHEREAS, Stockton Municipal Code ("SMC") Section 3-105 provides for an exception to the competitive bidding requirements in cases where the City Council has approved findings which support and justify exceptions to the competitive bidding process for a sole source provider; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

1. Pursuant to the requirements of SMC Section 3-105, the City Council hereby approves the following findings which support entering into an agreement with Valley Management Group for plan review, value engineering, construction management, inspection, and materials testing services.

   a. The Fire Department requests VMG provide construction management services based on their specific and vast work experience on fire companies. VMG has vast experience in project design, coordination of contractors and subcontractors, as well as inspection services. VMG comes highly recommended from the government agencies of Lodi, Modesto, Riverbank, Ripon, Woodbridge, and Lathrop.

   b. VMG is currently providing excellent construction management services for the City's Fire Company Nos. 9 and 12.

   c. The estimate fee submitted by VMG is reasonable.
d. Public Works does not have the staff resources to perform this work in the time prescribed.

2. Based on these findings, pursuant to SMC Section 3-105, the City Council hereby declares a sole source provider exception to the competitive bidding process is justified.

3. The "Consulting Services Agreement," attached as Exhibit A and by reference made a part hereof, between the City of Stockton and Valley Management Group is hereby approved.

4. The City Manager is hereby and directed to execute any documents necessary to carry out the purposes of this resolution.

5. The City Manager is hereby authorized to record any and all appropriations and transactions necessary to complete funding of the project.

PASSED, APPROVED and ADOPTED ________________

DEC 14, 2004

GARY A. PODESTO, Mayor
of the City of Stockton

ATTEST:

KATHERINE GONG MEI
City Clerk of the City of Stockton
AGREEMENT FOR CONSULTING SERVICES
BETWEEN THE CITY OF STOCKTON AND VALLEY MANAGEMENT GROUP
FOR FIRE COMPANIES NOS. 7, 10 & 11 AMBULANCE BAY EXPANSION
PROJECT NO. 04-27

Article I. Parties and Purpose

Section 1.1 Parties. THIS AGREEMENT is made and entered into on_______
by and between the CITY OF STOCKTON, a municipal
corporation ("City") and Valley Management Group, a California corporation
("Consultant").

Section 1.2 Purpose. The purpose of this Agreement is to set out the terms
and conditions pursuant to which Consultant shall provide plan review, value
engineering, construction management, inspection, and materials testing services to
City for the Fire Companies Nos. 7, 10 & 11 Ambulance Bay Expansion, Project No. 04-
27 ("Project").

Article II. Scope of Services

Section 2.1 Scope of Services. Consistent with the standards of its profession,
Consultant shall perform such services as necessary to assist City in completion of the
Project. Such services shall include those activities and services stated in Exhibit A,
attached and incorporated by this reference.

Section 2.2 Time Frame. The services shall be performed according to the
schedule as set out in Exhibit A.

Section 2.3 Meetings. Consultant shall attend such meetings as provided in
Exhibit A.

Section 2.4 Staffing. Consultant acknowledges that City has relied on its
special capabilities, the qualifications of its principals, and the level of performance
demonstrated by Consultant in performing the work initially requested by City.
Consultant certifies that it is prepared and can perform the contract services in a timely
manner, within the time frame specified in Exhibit A. All services shall be performed by
Consultant's staff and shall not be subcontracted unless and until agreed to in writing by
City.

Consultant shall designate the Project Manager for all work performed pursuant
to this Agreement and notify City's Public Works Department of the identity of the
Project Manager. Consultant shall immediately notify City of any anticipated change in
the Project Manager. Upon receiving notice of any change or contemplated change in
the Project Manager, City shall have the right to approve or reject, in its sole discretion,
the replacement and, if it so desires, to terminate the contract without penalty or further obligations, subject only to the provisions set forth in Section 4.2 of this Agreement.

Section 2.5 Subconsultants. Consultant shall notify City of its desire to engage any subconsultant(s) prior to allowing the subconsultant to perform any of Consultant’s obligations under this Agreement. City shall have the right to approve or reject the proposed subconsultant and no work will be performed by the subconsultant unless and until City gives its written approval of the subconsultant. In the event City provides written approval of the subconsultant, Consultant shall remain fully responsible for the selection, qualifications, the complete and full performance of the contract services, and for payment of the subconsultants. The parties acknowledge and agree that under no circumstances are any subconsultants of Consultant to be considered employees or agents of the City, nor shall they have any legally enforceable interest in or be considered third party beneficiaries of this Agreement.

Article III. Compensation

Section 3.1 Compensation. The amount of compensation for the work stated in Exhibit A is $100,000.

Section 3.2 Method of Compensation.

3.2.1 Invoices. Consultant shall submit invoices for work completed on a time and materials basis on a monthly basis. Each invoice shall provide the following details: The work performed, the date of the performance; the time attributable to each item of work or task; the amount charged for each item of work or task; the Project task to which the work is attributable; the total current charges for the invoiced services, and the running total for all work performed and the entire Project.

3.2.2 Time for Payment. Compensation for each invoice shall be paid by City within thirty (30) days after City’s receipt and acceptance of the invoiced charges.

3.2.3 Disputed Charges. City shall notify Consultant within fifteen (15) days following its receipt of the invoices of any questions or concerns City has regarding the appropriateness of the charges or information included in or omitted from the invoices. The notification shall be in writing and shall explain, in detail, City’s concerns. City may withhold payment for the invoice until Consultant provides such additional information or explanation as necessary, in City’s opinion, to resolve the issue or question. City shall not act unreasonably or with undue delay in working with Consultant to resolve such matters.

Section 3.3 Costs. Consultant shall be reimbursed by City for all direct costs incurred necessary for the project to proceed expeditiously as identified in Exhibit A. Each item for which reimbursement is sought must be identified on the invoices
submitted to City. Items questioned by City shall be subject to the same procedure identified in Section 3.2.3, above.

Section 3.4 Additional Work; Change of Work.

3.4.1 Request for Additional Work: City reserves the right to make such alterations, deviations, additions to, or omissions to service requests pursuant to this Agreement, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by City to be necessary or advisable for the proper completion of the work contemplated. Any such changes will be set forth in a contract amendment or change order which will specify, in addition to the work to be done or deleted or other change to be made, the basis for compensation and the time for performance for said change. The contract amendment shall not become effective until approved by authorized representatives of City and Consultant.

3.4.2 Expenditure Limits: Individual and cumulative amendments requiring an additional expenditure by City exceeding $26,740 plus ten percent (10%) of the initial contract price over $100,000 require approval of the Stockton City Council. Amendments not meeting the above criteria require approval by the Stockton City Manager.

The City Manager, or other authorized City official, has the authority to issue amendments in such sums as is reasonably necessary for emergency purposes. After issuing an amendment in an emergency situation, the City Manager or other authorized City official shall report, in writing, such action and the reason therefore to the Stockton City Council not later than the Council's next regularly scheduled meeting or as soon thereafter as is practicable under the circumstances.

Upon receipt of an amendment approved pursuant to the above provisions, Consultant shall immediately proceed with the work ordered unless some other time for performance is specified in the amendment.

Article IV. Time for Performance and Expedited Termination

Section 4.1 Time for Performance. The time for performance of the work described herein shall be as provided in Exhibit A.

Section 4.2 Expedited Termination

4.2.1 Time for Termination. City may terminate this Agreement without penalty by giving Consultant a minimum of ten (10) days' written notice prior to the effective date of the proposed termination.

4.2.2 Effect of Termination Notice. Unless otherwise notified by City, Consultant, upon receiving notice of the proposed termination date, shall suspend all work in progress and shall deliver to City within ten (10) days and in whatever stages it exists, the work and any related documents prepared as part of the contract services.
Consultant shall be entitled to payment for such work and any authorized services provided up to the effective date of termination of this Agreement.

Article V. Miscellaneous Provisions

Section 5.1 Non-discrimination. In performing services under this Agreement, Consultant shall not discriminate with regard to its employment practices or in the engagement of any subcontractors on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, ancestry, disability, or on any other basis prohibited by federal or California law.

Section 5.2 Insurance Requirements. Prior to performing any work under this Agreement, Consultant shall submit proof of Comprehensive General Liability Insurance coverage, which shall include personal injury and property damage limits of not less than One Million Dollars ($1,000,000) per person and One Million Dollars ($1,000,000) per occurrence and professional liability insurance with limits of not less than One Million Dollars ($1,000,000). Consultant shall also submit to City, prior to performing the contract services, proof of Workers' Compensation Insurance in accordance with California Law. Proof of said coverages shall be in a form acceptable to City, name City as an additional insured by endorsement, and shall include a provision requiring the carrier(s) to provide thirty (30) days' advance written notice prior to City of the effective date of any anticipated change in or limitation or reduction of coverage or limits below the required minimums or cancellation of the policy or policies.

Section 5.3 Successors and Assigns; Assignment.

5.3.1 Successors and Assigns. This Agreement shall bind and inure to the benefit of City and Consultant and each of their partners, successors, assigns, agents, and legal representatives without the need of any additional written consent by those persons so bound.

5.3.2 Assignment; Transfer; Consent to Assignment. Consultant shall not assign or transfer any interest or delegate any obligation without the prior written consent of City. Consent to any such assignment, transfer, and/or delegation shall be at the sole discretion of City. Any attempt by Consultant to assign, transfer, or delegate its interests or obligations under this Agreement without City's prior written consent shall render this Agreement void at City's sole discretion.

Section 5.4 Licensing, Permits, and Compliance with Law. Prior to performing the contract services, Consultant shall, at its own expense, obtain and maintain for the term of this Agreement, all licenses and permits required for its performance of the contract services, including a City business license. In addition, in performing the contract services, Consultant shall comply with all federal, state, and local laws, regulations, and ordinances.
Section 5.5 **Notices.** Any notice to be given to the parties hereto in connection with this Agreement shall be deemed communicated as of the date of actual receipt and may be effected in writing by personal delivery or by certified mail or express or overnight delivery, postage prepaid, addressed as follows:

To City:  
City of Stockton  
Attention: James B. Giottonini  
Public Works Department  
425 N. El Dorado Street  
Stockton, California 95202

To Consultant:  
Valley Management Group  
Attention: Greg Parrett  
315 W. Pine, Suite #7  
Lodi, CA 95240

Section 5.6 **Cooperation of City.** City shall cooperate fully and in a timely manner in providing relevant information in its possession, or at its disposal, requested by CONSULTANT or as necessary to enable Consultant to complete the contract services in a timely and satisfactory manner.

Section 5.7 **Ownership of Documents.** Documents and other materials prepared on behalf of City during the course of Consultant’s performance of the contract services shall become the property of City upon the completion of the Project or upon termination of this Agreement, whichever occurs first. Consultant shall deliver such documents to City within ten (10) days after the completion or termination of this Agreement. City agrees to hold Consultant harmless from any liability resulting from the use of such document for any purpose other than the purpose(s) for which the documents were prepared, provided that the documents were accurate when prepared for their original purpose(s).

Section 5.8 **Independent Contractor.**

5.8.1 Status as Independent Contractor. In performing the contract services, Consultant and its employees, agents, assigns, or subcontractors, if any, are not acting nor shall they be considered for any purpose as employees of City, but are performing the contract services solely as independent contractors. Consequently, City shall not, under any circumstances, be liable to any third parties, Consultant, or any person or persons acting for or under Consultant for any deaths, injuries, or property damage received or claimed, unless any such liability arises by virtue of the sole negligence of City and/or its officers, employees, or agents.

5.8.2 Defense; Indemnity. Consultant agrees to defend, indemnify, and hold harmless City and its officers and employees from any liability arising in connection with Consultant and which is not the result of the sole negligence of City and/or its officers,
employees, or agents. The duty to defend and the duty to indemnify are separate and independent obligations.

Section 5.9 Anti-waiver Provision. Waiver of any provision of this Agreement shall be effective only if set forth in a writing signed by authorized representatives of the parties. In addition, in the event of a breach of any provisions of this Agreement, a failure by the non-breaching party to immediately pursue or enforce its remedies shall not be construed as a waiver of the provision or any right to pursue enforcement for that or any subsequent breach of the provision, this Agreement, or any other terms or conditions of this Agreement.

Section 5.10 Attorney's Fees. In the event any dispute between the parties arises under or regarding this Agreement, the prevailing party in any litigation resolving the dispute shall be entitled to reimbursement of its reasonable attorney's fees from the non-prevailing party (as determined by the court or other agreed upon neutral fact finder), including the reasonable cost of house counsel for City at rates comparable to counsel in private practice for similar work and with similar experience.

Section 5.11 Captions. The captions used for the sections and subsections in this Agreement are for convenience only and shall not be deemed relevant in resolving questions regarding the parties' intentions or in interpreting the provisions of this Agreement.

Section 5.12 Applicable Law. This Agreement shall be governed by the laws of the State of California. Venue shall be proper in the Superior Court of the State of California, County of San Joaquin, Stockton Branch, or, for actions brought in federal court, the United States District Court for the Eastern District of California, Sacramento Division.

Section 5.13 Severability. The provisions of this Agreement shall be severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void, and provided the essential purpose of the Agreement has not been frustrated, shall remain enforceable and in full effect.

Section 5.14 Entire Agreement, Integration, and Modification. This Agreement and the attached Exhibit A shall constitute the entire integrated agreement between City and Consultant relating to the subject matter addressed therein and shall supersede all prior negotiations, agreements and understandings between the parties. In the event of any conflict between the provisions of this Agreement and any provisions contained in Exhibit A, the provisions of this Agreement shall govern. No modifications or additions to this Agreement or Exhibit A shall be binding on either party unless the modifications have been mutually agreed to by the parties and are set forth in a written instrument signed by authorized representatives of City and Consultant.
Section 5.15 Authority. The undersigned represent and warrant that they are authorized to bind the parties to this Agreement by executing this document.

IN WITNESS WHEREOF, the City and Consultant, through their authorized representatives, have executed this Agreement to be effective as of the date first above written.

ATTEST:

By: ____________________________
    KATHERINE GONG MEISSNER
    CITY CLERK

CITY OF STOCKTON,
a municipal corporation

By: ____________________________
    MARK E. LEWIS
    CITY MANAGER

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

______________________________
CITY ATTORNEY

VALLEY MANAGEMENT GROUP

By: ____________________________
    (Signature of Authorized Representative)

______________________________
    (Printed Name)

______________________________
    (Job Title of Authorized Representative)

COUNSEL FOR CONSULTANT

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Valley Management Group

EXHIBIT A

"Scope of Services for Fire Companies Nos. 7, 10 & 11"

I. Description of Services:

1. Owner's representative managing all consultants, contractors and subcontractors, vendors
2. Contract Administration Management
3. Program Management
4. Procurement Management
5. Manage design process, permitting process
6. Manage Construction
7. Manage startup and equipment hookup
8. Provide Geotechnical Monitoring and Special Inspection Services

II. Pre-construction Phase

1. Provide program input
2. Provide budget review and approval
3. Provide input for project development & schedule
4. Support the method of team selection
5. Provide input on Master Plan
6. Identify management control system input needs
7. Input & review drawings & specifications
8. Provide value engineering where needed
9. Provide program review and comments
10. Support evaluating existing facilities and services (e.g. Soils testing, etc.)
11. Evaluate site and construction process
12. Develop program budget
13. Assist with consultant selection if needed
14. Support the final design
15. Develop outline specifications
16. Develop cost estimate
17. Monitor project development schedule
18. Develop management & control system
19. Support finalize working drawings & specifications as well as bid documents
20. Support the permitting process
21. Advise on long lead items
22. Review and recommend bidders
23. Support the issuance of notice to proceed to contractor working with city officials to get contract approval
24. Support the effort of finalized plans and issue plans and specifications
25. Hold pre-bid conference

II. Construction Phase

1. Conduct bi-weekly project meetings (weekly, if necessary), prepare agenda, minutes and distribute
2. Process all general contract documentation and maintain document files
3. Review and process all clarifications
4. Review and process all contract changes
5. Review and submit progress payment requests
6. Perform contractor schedule reviews
7. Prepare and maintain an As Built Schedule of contract activities
8. Obtain and submit Certified Payroll data for project records to the City
9. Conduct employee interviews
10. Process and review submittals and shop drawings
11. Review Contractor As Built drawings
12. Assist with project scheduling / coordination
13. Observe, record and report all construction activities
14. Prepare and maintain a photographic record of project
15. Prepare, coordinate and verify completion of all punch items
16. Monitor and review potential claims
17. Monitor and track potential delays
18. Negotiate changes with contractor as needed
19. Perform final inspections and coordinate with City as needed
20. Prepare final progress payments

III. Post Construction

1. Attend Post construction meeting
2. Review As Built plans with contractor and submit to City
3. Recommend notice of substantial/final completion be filed
4. Review and submit to the City all Warranty/Guarantee documents required by the contract
5. Transmit all project files to the City Department of Public Works

Promptly, upon completion of the construction work associated with a work order is completed, VMG shall notify the Department of Public Works in writing, whether such work should be accepted by the city as complete and final in accordance with the terms and conditions of the City’s contract for that construction work. VMG’s determination shall be given to the Department of Public Works after diligent investigation including satisfaction of its other obligations under this Contract. If the VMG recommends that the City should not accept the work, VMG shall document the facts and analysis supporting its determination in its written notification to the Department of Public Works.
IV. Time of Services Offered/Fee Schedule

1. Valley Management Group will invoice the City of Stockton once a month throughout the duration of the project. The start of the services offered in this proposal will commence when the City of Stockton Fire Department executes this Consulting Agreement and returns the signed and dated copy therewith along with a purchase order.

2. Hourly Rate Schedule to be used:
   a. Principal $125.00 / Hr.
   b. Project Mgr. $100.00 / Hr.
   c. Estimator/Scheduler $ 80.00 / Hr.
   d. PM Tech. $ 60.00 / Hr.
   e. Admin Support $ 35.00 / Hr.

3. This proposal is based on the completion date for Fire Stations 7, 10, & 11.

Note: In the event that the project is extended beyond VMG’s control, Valley Management Group will be reimbursed for their services on a time and Material basis according to our hourly rate structure as well as any reimbursable/attorney fees that may be associated.

Total Estimate for Consultant Services: $90,000.00*

Total Estimate for Geotechnical Monitoring and Special Inspection Services based on Time & Materials only: $10,000.00*