Report to the Auburn City Council

Action Item
Agenda Item No. 8

City Manager Approval

To:	Mayor and City Council Members
From:	Bernie Schroeder, Director of Public Works Megan Siren, Administrative Analyst
Date:	January 27, 2014
Subject:	Consultant Agreement for Engineering & Construction Services for the Sewer Collection System & Consulting Services for the Wastewater Treatment Plant

The Issue

Shall the Council authorize a consultant agreement with NexGen Utility Management, Inc. to continue implementing the Sewer Collection System Rehabilitation Program and assisting with wastewater treatment and sewer collection system compliance?

Conclusion and Recommendation

Staff recommends that the City Council, by RESOLUTION, authorize the Director of Public Works to execute the consultant agreement with NexGen Utility Management for Engineering & Construction Services for the Sewer Collection System and consulting services associated with the wastewater treatment.

Background

The City Council approved the Sewer System Management (SSMP) in October 2007. The SSMP outlines the operations and maintenance requirements for the sewer collection system. Through the SSMP and the initial implementation, the City has identified a list of sewers that are known to cause problems and have created the Sewer Collection System Rehabilitation Program to address these issues. Other capital projects that are incorporated into the SSMP include Pump Station rehabilitation/upgrade projects.

Under the City's current National Pollutant Discharge Elimination System permit (Permit) for operations and discharge from the Wastewater Treatment Plant, the permit requires additional compliance related projects and studies to be completed. A portion of the consultant's tasks include elements from the Permit requirements.

The consultant agreement with NexGen Utility Management, Inc. is split between the following tasks:

- Task 1: Sewer Rehabilitation Program
- Task 2: Capital Project Assistance
  - 2.1: Monticello Pump Station
  - 2.2: Vista Del Valle Pump Station

2.3: WWTP Capital Projects
Task 3: Permitting Assistance

Detailed descriptions of each task are included as part of the professional service agreement. The consultant agreement will be for a total of 1 year with portions of the tasks completed at different times.

Over the last year, NexGen Utility Management has assisted the City with the Auburn Oaks Lift Station Upgrade Project, WWTP Preliminary Design work for the Oxidation Ditch, Monticello Pump Station design, Sewer Collection System Rehabilitation Program, capital projects at the WWTP, assisted with the implementation of the Sewer Division's Computer Maintenance Management System (CMMS), updated sewer system GIS maps, completed and submitted reports to the Regional Board and assisted the City in remaining in compliance with the City's NPDES permit. NexGen Utility Management has the unique and qualified skill-set to identify and rehabilitate our collection system with a systematic approach and assist the City with maintaining compliance with the City's NPDES permit. Staff recommends approval of the consultant agreement with NexGen Utility Management.

Alternatives Available to Council; Implications of Alternatives

1. Proceed with Staff Recommendation
2. Do not proceed with staff recommendation

Fiscal Impact

The professional services agreement totals $269,910 which was included in the preparation of the 2013/14 City of Auburn Operating Budget. The Sewer Enterprise Fund includes adequate funding in Professional Services and in the Capital Improvements Project Budgets to cover the professional service agreement.

PROFESSIONAL SERVICES AGREEMENT
Providing Payment of Prevailing Wages
(City of Auburn / NexGen Utility Management.)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and NexGen Utility Management, Inc. a California, Corporation "Consultant").

2. RECITALS

2.1 City has determined that it requires the following professional services from a consultant: Engineering & construction services for the City of Auburn sewer system and consulting services associated with the wastewater treatment.

2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

3.1 "Scope of Services": Such professional services as are set forth in Consultant's January 21, 2014 proposal to City attached hereto as Exhibit A and incorporated herein by this reference.

3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's January 21, 2014 fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.

3.3 "Commencement Date": February 1, 2014.

3.4 "Expiration Date": March 31, 2015.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

5. CONSULTANT'S SERVICES

5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Two Hundred Sixty Nine Thousand and Nine Hundred Ten Dollars ($269,910) unless specifically approved in advance and in writing by City.

5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.

5.3 Consultant shall perform all work to the highest standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).

5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.

5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. ***Dan Rich*** shall be Consultant's project administrator and shall have direct responsibility for management of Consultant's performance under this Agreement. No change shall be made in Consultant's project administrator without City's prior written consent.

5.6 To the extent that the Scope of Services involves trenches deeper than four feet (4'), Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any:

(1) Material that the contractor believes may be material that is hazardous waste, as defined in Health and Safety Code§ 25117 which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of law.

(2) Subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids.

(3) Unknown physical conditions at the site of any unusual nature that materially differ from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

City shall promptly investigate the conditions, and if it finds that the conditions do so materially differ, or involve hazardous waste, and cause a decrease or increase in the contractor's cost of, or the time required for, performance of any part of the work, the City shall issue a change order under the procedures described in this Agreement.

6. COMPENSATION

6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept payment in accordance with the Approved Fee Schedule in full satisfaction for such services.

6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other payroll deductions from payments made to Consultant except as otherwise required by law.

6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis pursuant to the Approved Fee Schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule or to compensation other than in compliance with this Agreement, including, without limitation, Section 5.1 above..

6.4 To the extent applicable, this Agreement is further subject to the provisions of Article 1.7 (commencing at § 20104.50) of Division 2, Part 3 of the Public Contract Code regarding prompt payment of contractors by local governments. Article 1.7 mandates certain procedures for the payment of undisputed and

properly submitted payment requests within 30 days after receipt, for the review of payment requests, for notice to the contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with this Article. This Agreement hereby incorporates the provisions of Article 1.7 as though fully set forth herein.

6.5 To the extent applicable, at any time during the term of the Agreement, the Consultant may at its own expense substitute securities equivalent to the amount withheld as retention (or the retained percentage) in accordance with Public Contract Code § 22300. At the request and expense of the consultant, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in this state as the escrow agent, who shall then pay those moneys to the City. Upon satisfactory completion of the contract, the securities shall be returned to the Consultant.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon use or dissemination by City. Consultant may take and retain copies of such written products as desired, but shall not seek to copyright such written products.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

Under no circumstances shall Consultant look to the City as his employer. Consultant shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned PERS retirement benefits, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not

be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION

10.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the parties intend the provisions of this indemnity provision to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.

10.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other expenses of litigation. Consultant shall not be entitled to any refund of attorneys' fees, defense costs or expenses in the event that it is adjudicated to have been non-negligent.

10.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 10 and any amount due City from Consultant arising from Consultant's failure either to (i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

10.4 The obligations of Consultant under this Section 10 are not limited by the provisions of any workers' compensation or similar statute. Consultant expressly

waives its statutory immunity under such statutes as to City, its officers, agents, employees and volunteers.

10.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 10 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others, Consultant agrees to indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims, losses, costs and expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.

10.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply whether or not any insurance policies apply to a claim, demand, damage, liability, loss, cost or expense.

11. INSURANCE

11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

11.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars ($1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.

11.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars ($1,000,000) per claimant and One Million dollars ($1,000,000) per incident.

11.1.3 Worker's Compensation insurance if and as required by the laws of the State of California.

11.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars ($1,000,000).

11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.

11.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.

11.4 Consultant agrees that if it does not keep the insurance coverages required by this Agreement in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium(s) thereon at Consultant's expense.

11.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the required coverages are in effect and naming the City and its officers, employees, agents and volunteers as additional insureds. Prior to commencement of work under this Agreement, Consultant shall file such certificate(s) with City's Risk Manager.

11.6 Consultant shall provide proof that policies of insurance required by this Agreement expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.

11.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.

11.8 The insurance provided by Consultant shall be primary to any other coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers shall be in excess of Consultant's insurance and shall not contribute with it.

11.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving

the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against the City.

11.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.

11.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 10 of this Agreement.

12. MUTUAL COOPERATION

12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

12.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following

deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Auburn
1225 Lincoln Way
Auburn CA 95603
Telephone: (530) 823-4211 x___
Facsimile: (530) 823-4216

If to Consultant:

NexGen Utility Management
C/O Dan Rich
4010 Lennane Dr
Sacramento, CA 95834
Telephone: (916) 779-7301
Facsimile: (916) 564-8030

With courtesy copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
Colantuono & Levin, P.C.
11364 Pleasant Valley Road
Penn Valley, CA 95946
Telephone: (530) 432-7357
Facsimile: (530) 432-7356

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

17.1. City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement as provided in Section 5.1 above and as otherwise provided in this Agreement.

18. GENERAL PROVISIONS

18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.

18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.

18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph shall govern construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular and vice versa, in any place or places herein in which the context requires such substitution(s).

18.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party to be charged with the waiver.

18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.

18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance from the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any or all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition contained in this Agreement, the party prevailing in such action, whether or not reduced to judgment, shall be entitled to its reasonable court costs, including any accountants' and attorneys' fees expended in the action. The venue for any litigation shall be Placer County, California and Consultant

hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to the extent necessary to, cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.

18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the provisions of this Agreement and those of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed on behalf of the City and Consultant.

18.10 To the extent applicable, this Agreement is further subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the Public Contract Code regarding the resolution of public works claims of less than $375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the contractor, for the response to such claims by the contracting public agency, for a mandatory meet and confer conference upon the request of the contractor, for mandatory nonbinding mediation in the event litigation is commenced, and for mandatory judicial arbitration if the parties fail to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set forth herein.

18.11 This Agreement is further subject to the provisions of California Public Contracts Code § 6109 which prohibits the Consultant from performing work on this project with a subcontractor who is ineligible to perform work on the project pursuant to §§ 1777.1 or 1777.7 of the Labor Code.

18.12 Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating

to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

19 PREVAILING WAGES

19.1 To the extent that the estimated amount of this Agreement exceeds $1,000, this Agreement is subject to prevailing wage law, including, but not limited to, the following:

19.1.1 The Consultant shall pay the prevailing wage rates for all work performed under the Agreement. When any craft or classification is omitted from the general prevailing wage determinations, the Consultant shall pay the wage rate of the craft or classification most closely related to the omitted classification. The Consultant shall forfeit as a penalty to City $50.00 or any greater penalty provided in the Labor Code for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates for any work done under the Agreement employed in the execution of the work by Consultant or by any subcontractor of Consultant in violation of the provisions of the Labor Code. In addition, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Consultant.

19.1.2 Consultant shall comply with the provisions of Labor Code § 1777.5 concerning the employment of apprentices on public works projects, and further agrees that Consultant is responsible for compliance with § 1777.5 by all of its subcontractors.

19.1.3 Pursuant to Labor Code § 1776, Consultant and any subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other

employee employed by Consultant in connection with this Agreement. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: (1) The information contained in the payroll record is true and correct; and (2) The employer has complied with the requirements of Labor Code §§ 1811, and 1815 for any work performed by his or her employees on the public works project. The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours as required by Labor Code § 1776.

19.2 To the extent that the estimated amount of this Agreement exceeds $1,000, this Agreement is further subject to 8-hour work day and wage and hour penalty law, including, but not limited to, Labor Code §§ 1810 and 1813, as well as California nondiscrimination laws, as follows:

19.2.1 Consultant shall strictly adhere to the provisions of the Labor Code regarding the 8-hour day and the 40-hour week, overtime, Saturday, Sunday and holiday work and nondiscrimination on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or sexual orientation, except as provided in Government Code § 12940. Pursuant to the Labor Code, eight hours' labor shall constitute a legal day's work. Work performed by Consultant's employees in excess of eight hours per day, and 40 hours during any one week, must include compensation for all hours worked in excess of eight hours per day, or 40 hours during any one week, at not less than one and one-half times the basic rate of pay. Consultant shall forfeit as a penalty to City $25.00 or any greater penalty set forth in the Labor Code for each worker employed in the execution of the work by Consultant or by any Subcontractor of Consultant, for each calendar day during which such worker is required or permitted to the work more than eight hours in one calendar day or more than 40 hours in any one calendar week in violation of the Labor Code.

19.3 Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to Consultant under this Agreement. All such documents shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written

request of City. In addition, pursuant to Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds ten thousand dollars, all such documents and this Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of City, for a period of three (3) years after final payment under the Agreement.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"
City of Auburn

By_____

Date:_____

"Consultant"
NexGen Utility Management

By:_____
Dan Rich, Principal

Date:_____

By: _____
Vince Yee, Principal

Date: _____

Attest:

By_____
Deputy City Clerk

Date:_____

Approved as to form:

By_____
Michael G. Colantuono, City Attorney

Date:_____

EXHIBIT A
SCOPE OF WORK

Scope of Work

This Scope of Work has been divided into three major tasks:

Task 1- Onsite Oversight of Sewer System Repair Projects

Task 2- Capital Project Assistance

Task 3- Wastewater Permitting Assistance

Task 1- Onsite Oversight of Sewer System Repair Projects

Similar to our work in past years, we will continue to provide as-needed, onsite construction oversight of various planned and emergency repair projects. Our work includes:

1. Solicit bids and assist selection of contractors
2. Daily construction management and inspection of work
3. Manage and resolve issues that may arise during construction.
4. Manage communications with contractors
5. For projects completed by City resources, assist as necessary.

This work is largely completed by Chris Bressi who previously served as one of the City's senior inspectors. Based on previous year's workload, we have assumed Chris would be needed onsite about 30 hours per week.

Task 2- Capital Project Assistance

NEXGEN will assist the City in the implementation of its Sewer Capital Improvement Plan (CIP). The 2014 CIP includes a number of new and upgraded facilities, including:

Task 2.1- Construction Management of the Monticello Pump Station. This station has been designed and will be constructed in 2014. We will conduct pre-bid meeting with interested contractors, answer questions, and review bids and assist the City in Contractor selection. We will provide as needed construction inspection and testing of the facility.

Task 2.2- Design of the Vista Del Valle Pump Station. The Vista Del Valle Pump Station will be upgraded to include reliability criteria developed in the City's Adopted Sewer System Management Plan. NEXGEN will provide needed electrical, civil, and mechanical engineering design and construction management for this pump station upgrade. Surveying and any geotechnical engineering would be contracted directly with the City. We will prepare contract documents similar to the previous pump station projects for public bidding.

Task 2.3- WWTP Capital Projects. We will assist the City in various planned upgrades to the WWTP. These tasks include:

- The City will install a new floating brush aerator in the oxidation ditch in the Spring of 2014. We will coordinate the electrical and contractor installation of the new aerator.
- We will develop implementation schedules for the new oxidation ditch (design activities would be under a separate authorization).
- We will assist the City in the development of its new rate study and Prop 218 hearings.
- We will make requested changes to the City's computer maintenance management system database.

Task 3- Wastewater Permitting Assistance

The City's NPDES Permit (Permit) was renewed in early 2011 and requires various progress reports on its compliance with ammonia-nitrogen, groundwater limits, source control activities, and others. NEXGEN's permitting related tasks include:

- Complete and submit compliance progress reports
- Review of monthly monitoring reports and meetings with operations staff on plant performance
- Review of regional pipeline design and construction information, specifically related to proposed change orders.
- Periodic updates to the *Healthy Auburn Waters* public outreach program
- Periodic meetings with the Regional Board.
- Expected updates to the City's Sewer System Management Plan.

As with past years we have included a budget allowance for this task since the specific level of effort is not known.

EXHIBIT B
APPROVED FEE SCHEDULE

NEXGEN's budget to complete Tasks 1-3 is provided in Table 1.

Table 1
BUDGET FOR 2014 SEWER ENGINEERING AND CONSTRUCTION SERVICES
City of Auburn, California

TASKS	Project Manager/	Senior Engineer	Associate Engineer	Resident Inspector	GIS/ CAD Prog.	TOTAL COST ITEM
	165	145	130	95	70	($)
Task 1- Oversight of Sewer System Repairs	20			1600		$ 155,300
Task 2- Capital Project Assistance						
Task 2a- Pump Station CM	40	20	10			$ 10,800
Task 2b- Pump Station Design	40	100	90	8	80	$ 33,560
Task 2c- WWTP Capital Projects	30	20	60			$ 15,650
Task 3. Permitting Assistance (allowance)	180	100	80			$ 54,600
GRAND TOTALS	**310**	**240**	**240**	**1608**	**80**	**$ 269,910**

NON-COLLUSION DECLARATION

TO BE EXECUTED BY
BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the _____ of _____, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____[date], at _____[city], _____[state]."

_____ _____
Signature DATE

_____
Printed Name of Signatory

WORKERS' COMPENSATION INSURANCE CERTIFICATE

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

> I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

DATE: _____

_____
(Contractor)

By: _____
(Signature)

_____
(Title)

Attest:

By: _____
(Signature)

_____
(Title)

RESOLUTION NO. 14-

RESOLUTION AUTHORIZING THE CONSULTANT AGREEMENT WITH NEXGEN UTILITY MANAGEMENT FOR WASTEWATER CONSULTING

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby authorize the Director of Public Works to execute a consultant contract with NexGen Utility Management, Inc. for Engineering & Construction Services for the Sewer Collection System and consulting services associated with the wastewater treatment.

A true and correct copy of said Consultant Agreement is attached hereto as Exhibit "A."

DATED: January 27, 2014

_____
Bridget Powers, Mayor

ATTEST:

_____
Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify that the foregoing resolution was duly passed at a regular session meeting of the City Council of the City of Auburn held on the 27th day of January 2014 by the following vote on roll call:

Ayes:
Noes:
Absent:

_____
Stephanie L. Snyder, City Clerk