

# **CONSULTATION AND DESIGN AGREEMENT Between ROMAN FOUNTAINS, a New Mexico Corporation and**

In consideration of the fees or sums agreed to be paid, and the recitals, covenants, obligations and representations listed herein, this agreement is made on the date shown below, by and between **(Client)** and Roman Fountains Corporation (**Consultant**) as it specifically pertains to the decorative, architectural fountain (Project), as described in Exhibit "B" attached.

Roman Fountains Corporation agrees to furnish to **(Client)** the specialized fountain design and consultation services as outlined in "Exhibit A" attached.

## **1. Fee:**

Consultant agrees to furnish Client professional services detailed on the attached Exhibit "A". Such services shall be performed and delivered as expeditiously as is consistent with professional skill, care, and orderly progress typical for projects of said scope and complexity, and as specifically stated in Exhibit "A".

As compensation for furnishing said professional services on the Project, Consultant shall be paid on a lump sum fee basis (inclusive of all labor, materials, overhead, profit and other related expenses) in the amount of \$ . This fee does not apply to separate project site visits which Client may periodically request of Consultant, which shall be added to the Agreement per Exhibit "A," Item "G," as required by Client.

Consultant agrees that while it shall be under its own direction and control as to the conduct and performance of its professional services, such performance shall be subject to the observation, review, and general oversight of Client, at its sole expense.

Should the amount of design work exceed the agreed original project scope and limits as described in Exhibit "B" attached, in such a manner as to increase the level of work required to be performed to complete the design after the Agreement has been formally executed, this Agreement shall be null and void, and Consultant reserves the option to re-negotiate the consulting fee with Client at its sole discretion or terminate the Agreement in its entirety.

## **Taxes:**

Any and all applicable sales, use, gross receipts, excise or other form of legal tax or surcharge that may be required to be added to this Agreement is specifically excluded and shall be added, collected, remitted or otherwise paid by Client to the appropriate taxing entity.

## **Relationship Created:**

The services of Consultant are on a professional, independent contractor basis and Consultant is not an employee of Client for any purpose whatsoever. Consultant does not have, nor shall it hold itself out as having, any right, power, authority, or obligation to create any contract or obligation, either expressed or implied, on behalf of, in the name

of, or binding upon Client unless Client consents in writing. Consultant shall have the right to hire its own employees,

## **2. Liability Insurance:**

**Consultant, as independent contractor, shall be responsible for maintaining a policy of liability insurance adequate to cover reasonable claims arising out of the performance of its services under this Agreement. With said technical responsibility, Consultant shall also retain technical authority on its design tasks and shall not be held responsible for conditions which arise from interference, revisions, or any other alterations or modifications to its work by Client's employees, consultants, present and future clients, or Clients' contractors or subcontractors whether known to Consultant or not. Purchase and maintenance of said policy shall be at the sole non-reimbursable expense of Consultant. Consultant shall not inherit or assume any liability or obligation for acts of Client relating to projects engaged in prior to or concurrent with this Agreement. Consultant agrees that it shall carry and maintain at its own cost through completion of its obligations hereunder and specific business insurance coverages of the type, and in the minimum amounts listed below:**

- 1. Workers' Compensation and Employers' Liability Insurance.**
- 2. Commercial General Liability Insurance with Bodily Injury and Property Damage coverage with combined limits of not less than \$1,000,000 for each occurrence, and \$2,000,000 General/Product-Completed Operations Aggregate.**
- 3. Automobile Liability Insurance with coverage for all vehicles used in connection with this Project with limits of not less than \$500,000 bodily injury for each person, \$1,000,000 bodily injury per accident and \$250,000 for property damage.**

**Consultant shall furnish Client a current "Certificate of Insurance" as evidence that policies providing the stated coverages and limits of insurance are in full force and effect on written request. The certificate shall provide that any company issuing an insurance policy for work under this contract shall provide not less than 30 days advance written notice of cancellation, coverage or limits change, with written notice being promptly given to Client.**

## **3. Assignment of Agreement:**

**Neither this Agreement nor Clients' or Consultants' obligations, duties or interests shall be transferable or assignable and any attempt to so transfer shall render this Agreement null and void.**

**However, Consultant shall be permitted to seek outside assistance on technical matters, which may from time to time exceed its abilities, knowledge, and expertise. All such outside support deemed necessary shall be at Consultants' sole expense and liability.**

#### **4. Compliance With Laws, etc:**

**Consultant agrees to comply with all applicable laws, regulations and ordinances to the extent that it applies to Consultants' general operations and normal course of business conducted and written scope of services provided. Final responsibility for compliance and conformance with any and all codes (building, plumbing, electrical or otherwise) shall be the ultimate responsibility of a licensed engineer engaged and hired by the Client to review, seal or stamp and otherwise approve the fountain design and drawing package for code, ordinance and legal compliance issues prior to commencing any work, at Clients' sole expense.**

#### **5. Disputes:**

Consultant and Client agree that in the event of disagreement, dispute, controversy, Project delay, unanticipated extra expense, or problem that may arise during the design or construction phase of the Project or following its completion, the parties will cooperate in good faith to

explore and, if possible arrive at an amicable resolution of the problem without resort to litigation or arbitration. In the event that the parties are unable to resolve contract issues amicably, a mediator acceptable to both parties may be engaged to resolve the dispute. Notwithstanding the foregoing, the parties agree that any action taken or statements made in an effort to resolve a dispute shall be without prejudice to any legal right or defense that such party may subsequently raise in the event resolution is unable to be accomplished through dispute resolution or arbitration.

#### **6. Payment:**

Client shall make payments to Consultant per the payment schedule set forth below:

#### **Design Phase Terms Of Payment**

A 50% down payment is required with signed agreement (see "deposit" below).

Final payment is due on completion of final design package and notification of client that design package is ready for delivery.

A deposit of ----- shall be due and payable by Client to Consultant prior to commencement of work, and shall be applied toward the Clients' invoice for the agreed upon Design and Consultation Services per Exhibit "A."

#### **7. Termination:**

This Agreement shall terminate upon the satisfactory completion, delivery, and full payment thereof, of the agreed scope of services between Client and Consultant, as per Exhibit "A". The Agreement may be extended if deemed necessary by mutual, written signed agreement and consent of both parties.

In the event Client unilaterally and without cause terminates this Agreement, Consultant shall be entitled to receive full payment for all work and services performed under the Agreement through the date of termination. In the event of "Termination for Cause" (e.g., fraud, malpractice, misrepresentation, dishonesty, theft, embezzlement, gross negligence, etc.), neither party shall be obligated to honor the remainder of the Agreement with the other, and the Agreement shall immediately become null and void.

**Conflict of Interest:**

It is understood that the Consultant is actively seeking or engaged in consulting agreements with other non-related parties on a non-interference basis. When Consultant, acting in good faith under the terms of this Agreement, shall deem conflict of interest with respect to Client not at issue, it will remain free of restraint to pursue an independent agreement with another party. When conflict of interest with respect to Client and a third party shall be suspected by Consultant, it shall give Client prior notice with pertinent details in writing. Client shall then notify Consultant within ten (10) working days if conflict of interest is at issue, with reasonable written detail as to the causes or nature of the alleged conflict of interest.

**Ownership of Documents:**

Title to, and all copyright ownership in plans, drawings, specifications, calculations, ideas, concepts, models, mock-up materials, or other tangible or intangible work, materials, products or systems, produced, designed, developed or invented by Consultant or otherwise discovered, used or incorporated under the terms of this Agreement shall be and remain the property of Consultant. Client shall be permitted to make additional copies of all documents for its' own records and non-competing use purposes. Distribution of copies by Client to other parties not associated with the project is not permitted, unless authorized in writing by consultant.

**Roman & Design Agreement 8. Notices:**

Any notice, demand or request required or permitted to be given hereunder shall be in writing and shall be deemed effective twenty-four (24) hours after having been deposited in the United States mail, postage pre-paid, registered or certified, and addressed to the addressee at its official mailing address, as set forth below. Either party may change its address for purposes of this Agreement by proper written notice given in accordance herewith to the other party.

**9. Severability:**

If any part of this Agreement is held by a court of competent jurisdiction to be invalid, null and void or otherwise unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**10. Governing Law:**

This Agreement and each and every purchase and sale or other contract contemplated hereunder or pursuant hereto shall be construed and the rights and liabilities of the

parties hereunder shall be determined in accordance with the laws of the State of New Mexico.

**11. Attorney's Fees:**

If any legal action is necessary to enforce the terms or payment of this Agreement, the prevailing party shall be entitled to reasonable interest and attorney's fees including costs of collection, in addition to any other relief to which prevailing party may be entitled.

**12. Sole Agreement:**

This Agreement and attached, initialed "Exhibit(s)" sets forth the entire understanding between parties as to the subject matter hereof and supercedes all prior and collateral representations between the parties hereto. No person, other than a duly authorized owner/officer of Consultant is authorized to agree to a change in this Agreement binding on Consultant and then only by an instrument in writing. Client attests that it has read and understands the entire written AGREEMENT and accepts it in its entirety as so written and presented. IN WITNESS WHEREOF, each of the parties hereto has caused this agreement to be signed on its behalf by a duly authorized owner or officer and hascau day of \_\_\_\_\_.

(CONSULTANT):

**Roman Fountains Corporation, A Division of Volcano Industries, Inc.**

By: \_\_\_\_\_ (Signature) Title: President and General Manager  
Consultants' legal mailing address for notice:

P.O. Drawer 10190  
Albuquerque, NM 87184-0190  
Federal I.D.# (If Corporation) Or S.S.# (If Other Form): 85-0254639

(CLIENT):

By: \_\_\_\_\_ (Signature)  
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**Roman & Design Agreement Title:**

Clients' legal mailing address for notice:  
Federal I.D.# (If Corporation) Or S.S.# (If Other Form):

THIS AGREEMENT IS NULL AND VOID IF NOT FULLY EXECUTED AND ACCOMPANIED BY DEPOSIT PAYMENT AS REQUIRED IN ITEM NUMBER SEVEN (7) ABOVE, AND POSTMARKED TO ROMAN FOUNTAINS CORPORATION AT THE ABOVE GIVEN OFFICIAL MAILING ADDRESS, BY .

**Attached Exhibits Are An Integral Part Of This Agreement**

## Consultation & Design Agreement

### **EXHIBIT 'A'** **DESIGN AND CONSULTATION SCOPE OF WORK**

1. Complete scaled, installation drawings of the fountain system, prepared on AUTOCAD software for print on "D" size (24" X 36") sheet format (also furnished on disk and via e-mail if so requested by Client) with all necessary and required details of the fountain system installation thereof. Drawing products, components and details shall establish a minimum quality standard for the Project, and specifically include the following:

1. Schematic design (piping, mechanical and electrical).
2. Fountain system layout plans (piping, mechanical and electrical).
3. Fountain design details showing proper location and installation profiles of all specified fountain component items.
4. All necessary and required fountain system sections, elevations, plan views and specialized equipment details.
5. Pump room equipment design and layout (piping, mechanical and electrical), including plan, elevation, and section views.
6. Complete fountain equipment lists, number keyed to fountain drawings.
7. Typical fountain system general installation notes, cautions and warnings.
8. All fountain system piping runs and sizing, electrical conduit runs and sizing, electrical circuit and wire size/type requirement call-outs, and drain, overflow and water make-up utility requirements, as they pertain to the fountain system installation and operation thereof.

2. Complete required to meet the design intent, as listed and detailed on the fountain system design drawings.

cost estimates pertaining specifically to the fountain system equipment package

3. Complete fountain system specifications, formatted per CSI Section 02815 "fountains", for inclusion in the Clients' general project construction specification manual. Specifications shall include complete fountain system materials lists, minimum manufacturers qualifications and responsibilities, minimum installer qualifications and responsibilities, and general installation reference standards, quality assurance standards, 30-day operating period requirements, including start-up and Operation and Maintenance training requirements.
4. General consultation and coordination with Client, during regular business hours as necessary and required to develop and advance the Project and maintain schedules and progress as agreed between the parties, including telephone, written and oral consultation and coordination with Architect, City or other interested parties, as directed or instructed by Client, as required to complete the project design scope agreement.
5. Review and written response to Client comments specifically pertaining to our design drawing package and specifications as it impacts manufacture, delivery, installation and operation of fountain system equipment package.

6. "Review and written comment only" of "as-built" drawings pertaining to final fountain installation, if requested by Client. Recording of "as-built" drawing is the responsibility of the fountain system installer selected by owner, who shall be solely responsible for timely submission of "as-built" drawings and notations to Consultant for review and comment.

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#### **Roman & Design Agreement**

7. Provide site visit(s) at additional cost, at various stages of fountain equipment installation as

follows:

1. Site visits shall include review of design drawings with Client, review of equipment installation methods and procedures with Client and owners' selected installer, verification of equipment quantities and authenticity, notification of potential construction problems and written reports based on observations from the site visit as it specifically pertains to design and installation of fountain system equipment, with written reports, including corrective actions to be taken, as necessary.
2. For each Client requested site visit, the Consultant shall be paid a lump sum fee of Two thousand four hundred dollars (\$2,400.00). This fee covers a maximum two (2) consecutive day visit and shall include all Consultant expenses (e.g. airfare, car rental, hotel, meals, and miscellaneous travel reimbursables). Additional days on site beyond two (2) days requested by Client shall be paid by Client to Consultant at a rate of \$500.00 per diem, plus all related/documented travel expenses to and from the location designated by Client.
3. The Consultant will only perform site visits at the written request of Client, who shall provide a minimum of 15 days advance notice of requested visit, and who shall be responsible for payment thereof, in accordance with paragraph G, Item #2 above.
8. Specifically excluded from Roman Fountains' scope of work and responsibility, in addition to any and all exclusions specifically listed in the Agreement:

Actual civil or structural design of the fountain site, pools, basins, or equipment vessels and pump room structure, paver or concrete specification or design, manufacture and construction, paver support design and construction, which shall be performed by a licensed structural engineer as hired and paid for by Client. Consultant does not hold itself out or otherwise represent or warrant that it holds any professional licenses, and is engaged by Client based solely on Consultant's reputation, knowledge and work experience in consulting, designing and supplying decorative fountains and water features.

Consultants' structural responsibility shall be limited to providing pool and pump room dimensions and clearances for owners' installer to properly locate, orient, and install specified fountain system equipment, including indicating minimum structural thicknesses at critical equipment installation locations. Further Consultant shall not be

responsible for the actual design of the power distribution system to the fountain site or fountain mechanical room or pit, fountain waterproofing of concrete, or any other structural material, sealing of slab joints, or sealing of piping through any walls, floors, or ceilings.

Provisions for Operation and Maintenance instructions, operator training and Operation and Maintenance manual preparation and delivery to Client will be specifically listed as a requirement in the written fountain specifications furnished by Consultant and shall be included by owner selected installer in its installation bid, with actual operation and maintenance functions performed by qualified personnel employed by the fountain system owner, and coordinated with the fountain system installer as deemed necessary and required by owner.

Any necessary, requested or required (by code, ordinance, law or otherwise) engineering stamps, certifications or seals shall be provided by the Client who shall bear the full cost of review and certification by a licensed engineer familiar with such work, as deemed necessary. Review of Consultants' drawings for compliance with local, state and national codes or jurisdictions shall also be the sole responsibility and cost of Client, in conjunction with Clients' independent engineering review.

## **(END OF EXHIBIT "A")**

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**Consultation & Design Agreement**

## **EXHIBIT "B"**

### **(FOUNTAIN EQUIPMENT AND SERVICES LIST, WITH DELIVERY SCHEDULES, ETC.)**

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