

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Public Works		(2) MEETING DATE March 28, 2006		(3) CONTACT/PHONE John Hollenbeck, Nacimiento Project Manager 781-1288	
(4) SUBJECT Request to Approve Agreements for Appraisal Services for the Nacimiento Water Project with Schenberger, Taylor, McCormick and Jecker, Inc. and with Reeder, Gilman & Borgquist, and Approve a Resolution Authorizing the Director of Public Works to Authorize Additional Contingency Funds for a Total Combined Fee Authorization of \$300,000 for Property and Acquisition Activities.					
(5) SUMMARY OF REQUEST It is requested that the agreements and resolution for the professional appraisal services for the Nacimiento Water Project be executed.					
(6) RECOMMENDED ACTION It is our recommendation that your Honorable Board, acting as the Board of Supervisors of the San Luis Obispo County Flood Control and Water Conservation District: <ol style="list-style-type: none"> 1. Execute the attached Agreement with Schenberger, Taylor, McCormick and Jecker, Inc. for Appraisal Services associated with the Nacimiento Water Project, valued at \$90,000. 2. Execute the attached Agreement with Reeder, Gilman & Borgquist for Appraisal Services associated with the Nacimiento Water Project, valued at \$93,200. 3. Approve the attached Resolution authorizing the Director of Public Works to authorize up to an additional \$116,800 in contingent funds for property appraisal and acquisition activities for a combined total fee authorization of \$300,000. 					
(7) FUNDING SOURCE(S) Nacimiento Water Project Fund (2200001000)		(8) CURRENT YEAR COST \$300,000		(9) ANNUAL COST N/A	
(10) BUDGETED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> N/A <input type="checkbox"/> NO					
(11) OTHER AGENCY/ADVISORY GROUP INVOLVEMENT (LIST): Nacimiento Project Commission					
(12) WILL REQUEST REQUIRE ADDITIONAL STAFF? <input type="checkbox"/> No <input type="checkbox"/> Yes, How Many? _____ <input type="checkbox"/> Permanent _____ <input type="checkbox"/> Limited Term _____ <input type="checkbox"/> Contract _____ <input type="checkbox"/> Temporary Help _____					
(13) SUPERVISOR DISTRICT(S) All			(14) LOCATION MAP <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A		
(15) AGENDA PLACEMENT <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Hearing (Time Est. _____) <input type="checkbox"/> Presentation <input type="checkbox"/> Board Business (Time Est. _____)			(16) EXECUTED DOCUMENTS <input checked="" type="checkbox"/> Resolutions (Orig + 4 copies) <input checked="" type="checkbox"/> Contracts (Orig + 4 copies) <input type="checkbox"/> Ordinances (Orig + 4 copies) <input type="checkbox"/> N/A		
(17) NEED EXTRA EXECUTED COPIES? <input checked="" type="checkbox"/> Number: 3 <input checked="" type="checkbox"/> Attached <input type="checkbox"/> N/A			(18) APPROPRIATION TRANSFER REQUIRED? <input type="checkbox"/> Submitted <input type="checkbox"/> 4/5th's Vote Required <input checked="" type="checkbox"/> N/A		

Reference: 06MAR28-C-7

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(19) ADMINISTRATIVE OFFICE REVIEW	<p style="font-size: 1.2em; font-family: cursive;">OK Leslie Brown</p> <p style="font-size: 1.5em; font-family: cursive; transform: rotate(-15deg);">B-5 3-28-06</p>
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SAN LUIS OBISPO COUNTY DEPARTMENT OF PUBLIC WORKS

Noel King, Director

County Government Center, Room 207 • San Luis Obispo CA 93408 • (805) 781-5252

Fax (805) 781-1229

email address: pwd@co.slo.ca.us

TO: Board of Supervisors of the San Luis Obispo County Flood Control and Water Conservation District

FROM: John R. Hollenbeck, Nacimiento Project Manager

VIA: Noel King, Director of Public Works

DATE: March 28, 2006

SUBJECT: Request to Approve Agreements for Appraisal Services for the Nacimiento Water Project with Schenberger, Taylor, McCormick and Jecker, Inc. and with Reeder, Gilman & Borgquist, and Approve a Resolution Authorizing the Director of Public Works to Authorize Additional Contingency Funds for a Total Combined Fee Authorization of \$300,000 for Property and Acquisition Activities

Recommendation

It is our recommendation that your Honorable Board, acting as the Board of Supervisors of the San Luis Obispo County Flood Control and Water Conservation District:

1. Execute the attached Agreement with Schenberger, Taylor, McCormick and Jecker, Inc. for Appraisal Services associated with the Nacimiento Water Project, valued at \$90,000.
2. Execute the attached Agreement with Reeder, Gilman & Borgquist for Appraisal Services associated with the Nacimiento Water Project, valued at \$93,200.
3. Approve the attached Resolution authorizing the Director of Public Works to authorize up to an additional \$116,800 in contingent funds for property appraisal and acquisition activities for a combined total fee authorization of \$300,000.

Discussion

The Nacimiento Water Supply Project (Project) consists of 45 miles of pipeline, with storage tanks, pump stations and appurtenant facilities for the purpose of conveying up to 15,750 acre feet of water from Lake Nacimiento to local water agencies within the boundaries of the San Luis Obispo County Flood Control and Water Conservation District (District).

On January 6, 2004, your Board certified the Environmental Impact Report on the Project, adopted the Notice of Determination, and directed staff to carry out those actions needed to implement the raw water alternative. In July 2004, your Board entered into entitlement contracts with the four participating agencies (the cities of Paso Robles and San Luis

Obispo, the Atascadero Mutual Water Company, and the Templeton Community Services District). The Nacimiento Water Project is currently estimated to cost \$150,000,000 including design, environmental permitting and mitigation, right-of-way negotiations, coordination with participating agencies and the Nacimiento Project Commission, obtaining municipal finance, legal review and other detail tasks.

The District has assembled a team of professionals to design the proposed facilities such as engineers, right-of-way specialists, environmental professionals, geotechnical engineers, and surveyors. Certified appraisers are needed to assign a value to easements and properties to be acquired as part of the Nacimiento Project. An estimated 60+ private properties and 15+ public/utility properties/easements will be affected by this project.

To select qualified appraisers for this major regional water supply project, District staff participated with Nacimiento Project right-of-way consultants in contacting local appraisers to discuss their qualifications and availability. A modified selection process was followed in lieu of the County's adopted policy for contracting for services. Appraisal firms were contacted and invited to submit written proposals to Hamner, Jewell & Associates, the District's right-of-way specialist for the Nacimiento Project. A screening panel made up of the District's Nacimiento Project Manager, Right-of-Way Agent, a deputy County Counsel and a representative of Hamner, Jewell & Associates assessed the proposals. The selection panel's recommendation is to award the appraisal work to two firms, assigning property appraisals grouped by property type and location to each firm. The advantages of sharing the work between two firms include more resources assigned to this large project, the ability to draw on the skill base of two sets of property specialists, drawing on the talents of two area firms, and retaining a larger, more reliable work force to complete the appraisals.

Schenberger, Taylor, McCormick and Jecker, Inc. would be responsible for appraisal services relating to properties owned by the Monterey County Water Resources Agency, a North County winery, properties fronting along Templeton Road including a horse ranch, the southernmost Salinas River crossing, and properties south of Cuesta tunnel. Reeder, Gilman & Borgquist would be responsible for the balance of remaining appraisals.

Both firms would be managed by District staff and would be in close communication with the Nacimiento Project right-of-way specialist, Hamner, Jewell & Associates. Hamner-Jewell's scope entails communication with affected property owners such as site access coordination, interface between design team and property owners, assembling preliminary title reports for affected properties, and once appraisals are final, presentation of purchase offers.

Other Agency Involvement/Impact

The approach to soliciting proposals and the recommended award of contracts was discussed with both the Nacimiento Technical Support Group and the Project Commission. Both entities indicate their support for the appraisal contracts award, with the Commission taking formal action at their December 15, 2005, and February 16, 2006, meetings.

Several public agencies own property through which the Nacimiento Pipeline will run. These include Monterey County Water Resources Agency, Camp Roberts, Caltrans, the

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State Department of Water Resources, the cities of Paso Robles, Atascadero, and San Luis Obispo. There will also be several crossings of the Union Pacific Railroad tracks.

Nacimiento Project Participants agree to permit easements through their properties at no cost to the Project and expect to take formal action along this line once easement descriptions are presented for action.

Financial Considerations

The Agreement with Schenberger, Taylor, McCormick and Jecker, Inc. and with Reeder, Gilman & Borgquist would be funded through the Nacimiento Water Project Fund (2200001000). The above-described services with Schenberger, Taylor, McCormick and Jecker, Inc. would be provided on a time-and-materials basis for a fee not to exceed \$90,000. The above-described services with Reeder, Gilman & Borgquist would be provided on a lump sum per parcel basis for a fee not to exceed \$93,200. Because design is at the 30% progress point and some pipe realignment remains a possibility, additional private properties may be affected or easement descriptions may change as design proceeds. Further, some shift of appraisal assignments between the two firms may be warranted to proceed in a timely manner. For this reason, the Nacimiento Project Commission endorsed, and your Board's approval is recommended for, an additional contingency amount of \$116,800. This brings the total fee authorization to \$300,000 and is consistent with the dollar amount endorsed by the Nacimiento Project Commission on February 16, 2006.

The cost of the Project is funded by the Nacimiento Participating Agencies per the Nacimiento Project Water Delivery Entitlement Contracts executed by your Board in August 2004.

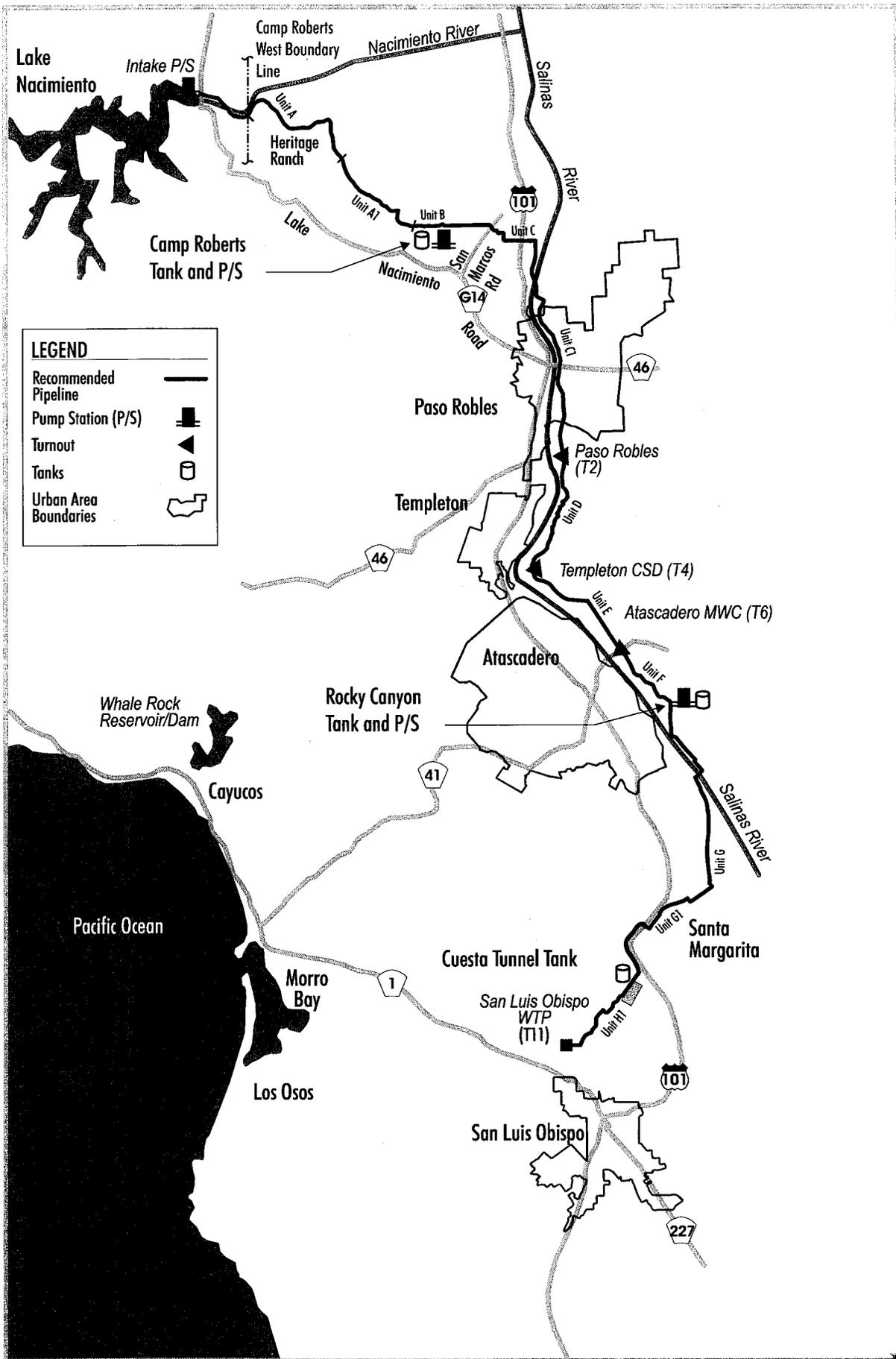
Results

Approval of the recommended action will result in the procurement of necessary project appraisal services, which will provide technical consultation services associated with the Project. The Project will provide public facilities that ensure a safe, reliable water delivery system for the participating communities within the County, thereby promoting a safe and economically viable community.

Attachments:	Attachment A	Agreement for Appraisal Services with Schenberger, Taylor, McCormick and Jecker, Inc.
	Attachment B	Agreement for Appraisal Services with Reeder, Gilman & Borgquist
	Attachment C	Nacimiento Water Project Map
	Attachment D	Resolution

File: NWP File No. D.5.1, NWP File No. A.2.10 (Schenberger), NWP File A.2.11 (Reeder)

Reference: 06MAR28-C-7



LEGEND	
Recommended Pipeline	—
Pump Station (P/S)	■
Turnout	▲
Tanks	□
Urban Area Boundaries	⬭

Nacimiento Water Project Report
UNIT MAP

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**AGREEMENT FOR
PROFESSIONAL APPRAISAL SERVICES
IN SUPPORT OF NACIMIENTO WATER PROJECT**

THIS AGREEMENT, entered into this _____ day of _____, 2006, by and between the SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, herein called "DISTRICT," and Schenberger, Taylor, McCormick and Jecker, Inc., a corporation whose address is 1306 Higuera Street, San Luis Obispo, California 93401-3122, herein called "CONSULTANT."

The DISTRICT's agent for administering this Agreement is the Department of Public Works of San Luis Obispo County, and all written communications hereunder with the DISTRICT shall be addressed to the Director of Public Works ("Director").

WHEREAS, the DISTRICT has need for special services and advice with respect to the Nacimiento Water Project (PROJECT) work described herein; and

WHEREAS, CONSULTANT warrants that it is specially trained, experienced, expert and competent to perform such special services;

NOW, THEREFORE, IT IS AGREED by the parties hereto as follows:

1. **Scope of Work.** CONSULTANT shall, at its own cost and expense, provide all the services, equipment and materials necessary to complete the work described in Exhibit A, which is attached hereto and incorporated herein by this reference. All work shall be performed in a professional manner with the level of care and skill ordinarily exercised by comparable professionals performing comparable services under comparable circumstances at the time the services are performed under this Agreement.

2. **Time for Completion of Work.** No work shall be commenced prior to CONSULTANT'S receipt of the DISTRICT'S Notice to Proceed. All work shall be completed pursuant to schedule described in Exhibit A, however, that extensions of time may be granted in writing by the Director, which said extensions of time, if any, shall be



granted only for reasons attributable to inclement weather, acts of God, or for other cause determined in the sole discretion of the Director to be good and sufficient cause for such extensions.

3. Payment for Services:

a. Compensation. DISTRICT shall pay to CONSULTANT as compensation in full for all work required by this Agreement a sum not to exceed the total amount of Ninety Thousand Dollars (\$90,000.00). CONSULTANT'S compensation shall be based on actual services performed at the rates set forth for each task in the CONSULTANT'S Cost Proposal and Fee Schedule ("Fee Schedule") attached hereto as Exhibit B, and incorporated herein by this reference. Progress payments will be made as set forth below based on compensable services provided pursuant to this Agreement.

b. Reports and Billing Invoices: CONSULTANT shall submit to the DISTRICT, on a monthly basis, a detailed monthly report describing services performed and work accomplished during that preceding period, including the number of hours of work performed and the personnel involved. Billing invoices shall be based upon the CONSULTANT'S Fee Schedule attached hereto as Exhibit B. For the purpose of timely processing of invoices, the CONSULTANT'S invoices are not regarded as received until the monthly report is submitted. Any anticipated problems in performing any future work shall be noted in the monthly reports. The CONSULTANT shall also promptly notify the DISTRICT of any perceived need for a change in the scope of work or services.

If DISTRICT objects to all or any portion of any invoice, DISTRICT will so notify CONSULTANT in writing within fourteen (14) calendar days of the invoice date, identify the cause of the disagreement, and pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid.

c. CONSULTANT Personnel: DISTRICT has entered into this Agreement based upon CONSULTANT's representations that the individuals and types of qualified professionals described in the attached Exhibit C will be performing the services described

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in this Agreement. Accordingly, no revisions to the project team as described in the Exhibit C shall be made without the express written consent of the DISTRICT.

4. Accounting Records:

a. CONSULTANT shall maintain accounting records in accordance with generally accepted accounting principles. The CONSULTANT shall obtain the services of a qualified bookkeeper or accountant to ensure that accounting records meet this requirement. The CONSULTANT shall maintain acceptable books of accounts which include, but are not limited to, a general ledger, cash receipts journal, cash disbursements journal, general journal and payroll journal.

b. CONSULTANT shall record costs in a cost accounting system which clearly identifies the source of all costs. Agreement costs shall not be co-mingled with other project costs, but shall be directly traceable to contract billings to the DISTRICT. The use of worksheets to produce billings shall be kept to a minimum. If worksheets are used to produce billings, all entries should be documented and clearly traceable to the CONSULTANT'S cost accounting records.

c. All accounting records and supporting documentation shall be retained for a minimum of five (5) years or until any audit findings are resolved, whichever is later. CONSULTANT shall safeguard the accounting records and supporting documentation.

d. CONSULTANT shall make accounting records and supporting documentation available on demand to the DISTRICT and its designated auditor for inspection and audit. Disallowed costs shall be repaid to the DISTRICT. The DISTRICT may require having the CONSULTANT'S accounting records audited, at DISTRICT'S expense, by an accountant licensed by the State of California. The audit shall be presented to the County Auditor-Controller within thirty (30) days after completion of the audit.

5. Contingency Fund for Changes in Scope of Service. No change in the character or extent of the work to be performed by CONSULTANT shall be made except through a signed written amendment to this Agreement. The amendment shall set forth

the proposed changes in work, adjustment of time, and adjustment of the sum to be paid by DISTRICT to CONSULTANT, if any. The DISTRICT'S Board of Supervisors hereby delegates to the Director the authority to sign amendments to this Agreement that make reasonable modifications to the time of performance or the scope of services, provided that all such amendments do not cumulatively exceed the contingency fund established by the District. Any other amendments must be approved by the Board. These additional funds are intended to provide the DISTRICT with flexibility to respond to unanticipated events or conditions, and the CONSULTANT has no right to make any claim against these funds except as so expressly provided in a written amendment to this Agreement.

6. **Non-Assignment of the Agreement** Inasmuch as this Agreement is intended to secure the specialized services of the CONSULTANT, CONSULTANT may not assign, transfer, delegate or sublet any interest herein without the prior written consent of DISTRICT and any such assignment, transfer, delegation, or sublease without the District's prior written consent shall be considered null and void. This includes revisions to the project team as described in the Exhibit C.

7. **Insurance.** CONSULTANT shall procure the following required insurance coverages at its sole cost and expense and maintain in full force and effect for the period covered by this Agreement such insurance. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A VI and are admitted insurance companies in the State of California, or (2) insurers of equivalent documented quality which the County Risk Manager has approved in writing.

a. Professional Liability Insurance: CONSULTANT shall maintain in full force and effect during the entire term of this Agreement, professional liability "errors and omissions" insurance with limits of liability of not less than \$1,000,000.00 per claim to cover all services rendered by CONSULTANT pursuant to this Agreement.

If coverage is on Claims Made basis, CONSULTANT promises to maintain such coverage for four (4) years following completion of construction of project designed hereunder.

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b. Commercial General Liability: CONSULTANT shall maintain in full force and effect, for the period covered by this Agreement, Commercial General Liability insurance including the following coverages:

1. Personal Injury and Bodily Injury, including death resulting therefrom.
2. Property Damage.
3. Automobile coverage which shall include owned, non-owned and hired vehicles.

The amount of insurance shall not be less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, property damage, and automobile coverage in the total amount of \$2,000,000.00.

The following endorsements must be provided in the Commercial General Liability policy:

1. If the insurance policy covers an "accident" basis, it must be changed to "occurrence".
2. The policy must cover personal injury as well as bodily injury.
3. Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.
4. Broad Form Property Damage Liability must be afforded.
5. Products and Completed Operations coverage must be provided.
6. The DISTRICT and the County of San Luis Obispo ("County"), and either of their officers, employees and agents shall be named as additional insureds under the policy. The policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the DISTRICT or County, whether commercial or self-insurance will be called

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upon to contribute to a loss hereunder. Nothing contained in this Agreement shall be construed to require CONSULTANT'S insurance to indemnify DISTRICT in contravention of Insurance Code 11580.04.

c. Workers' Compensation Insurance: In accordance with the provision of Labor Code Section 3700, CONSULTANT, if CONSULTANT has any employees, is required to be insured against liability for Workers' Compensation or to undertake self-insurance. CONSULTANT agrees to comply with such provisions before commencing the performance of the work of this Agreement.

d. The following requirements apply to all insurance to be provided by CONSULTANT:

1. A certificate of insurance shall be furnished to DISTRICT prior to commencement of work. Upon request by the DISTRICT, CONSULTANT shall provide a certified copy of any insurance policy to the DISTRICT within ten (10) working days.

2. Certificates and policies shall state that the policies not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to DISTRICT.

3. Approval of the insurance shall not relieve or decrease the extent to which the CONSULTANT may be held responsible for payment of damages resulting from CONSULTANT'S services or operations pursuant to this Agreement.

8. Indemnification of DISTRICT. Except as otherwise provided in subparagraphs b and c below, CONSULTANT shall to the fullest extent permitted by law, defend, indemnify and hold harmless the DISTRICT, its officers and employees, from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities or other losses (hereafter collectively "claims"), that arise out of or are made in connection with CONSULTANT's errors or omissions, breach of contract, intentional misconduct, or negligent acts relating to the performance of any duty, obligation, or

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work hereunder. The obligation to defend shall be effective and shall extend to all such claims in their entirety, even when such claims or losses arise from the comparative negligence of the DISTRICT, its officers, agents, and employees. However, the DISTRICT shall be solely responsible for the amount of a judgment rendered solely against the DISTRICT if such judgment is based upon a specific finding of active negligence on the part of the DISTRICT, or one of its officers, agents or employees, and no indemnity provisions contained herein shall require the CONSULTANT to pay the amount of said judgment.

a. The preceding paragraph applies to any and all such claims, regardless of the nature of the claim or theory of recovery. For purposes of the paragraphs found in this Section 8 of the Agreement, "CONSULTANT" shall include the CONSULTANT, and/or its agents, employees, sub-contractors, or other independent contractors hired, by, or directly responsible to, CONSULTANT.

b. Nothing contained in the foregoing indemnity provisions shall be construed to require CONSULTANT to indemnify DISTRICT against any responsibility or liability in contravention of Civil Code 2782.

c. It is the intent of the parties to provide the DISTRICT the fullest indemnification, defense, and "hold harmless" rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Agreement and the remaining language shall be given full force and effect.

9. Indemnification of County. Each and every term and provision of Section 8 above is hereby incorporated herein by reference, as though fully set forth herein, with the word "DISTRICT" being replaced with "County of San Luis Obispo," so that CONSULTANT shall defend, indemnify, and hold harmless the County pursuant to said terms and conditions as so amended.

10. Insurance and Indemnification as Material Provisions. The parties expressly agree that the indemnification and insurance clauses in this Agreement are an integral part of the performance exchanged in this Agreement. The compensation

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stated in this Agreement includes compensation for the risks transferred to CONSULTANT by the indemnification and insurance clauses.

11. **CONSULTANT'S Endorsement on Reports, etc.** CONSULTANT shall endorse all appraisals, reports, maps, plans, documents, materials and other data in accordance with applicable provisions of the laws of the State of California.

12. **Documents, Information and Materials Ownership.** All documents, information and materials of any and every type prepared by the CONSULTANT pursuant to this Agreement shall be the property of the DISTRICT. Such documents shall include but not be limited to data, drawings, appraisal reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONSULTANT in performing work under this Agreement, whether completed or in process. The CONSULTANT shall assume no responsibility for the unintended use by others of any such documents, information, or materials on project(s) which are not related to the scope of services described under this Agreement.

13. **Termination of Agreement Without Cause.** DISTRICT may terminate this Agreement at any time by giving the CONSULTANT 20 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Other than payments for services satisfactorily rendered prior to the effective date of said termination, CONSULTANT shall be entitled to no further compensation or payment of any type from the DISTRICT.

14. **Termination of Agreement for Cause.** If CONSULTANT fails to perform CONSULTANT'S duties to the satisfaction of the DISTRICT, or if CONSULTANT fails to fulfill in a timely and professional manner CONSULTANT'S obligations under this Agreement or if CONSULTANT shall violate any of the terms or provisions of this Agreement or if CONSULTANT, CONSULTANT'S agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the DISTRICT, then DISTRICT shall have the right to terminate this Agreement effective immediately upon the DISTRICT giving written notice thereof to the

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CONSULTANT. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. CONSULTANT shall be paid for all work satisfactorily completed prior to the effective date of such termination. If DISTRICT'S termination of the Agreement for cause is defective for any reason, including but not limited to DISTRICT'S reliance on erroneous facts concerning CONSULTANT'S performance, or any defect in notice thereof, this Agreement shall automatically terminate without cause on the twentieth day following the DISTRICT'S written notice of termination for cause to the CONSULTANT, and the DISTRICT'S maximum liability shall not exceed the amount payable to CONSULTANT under Section 13 above.

15. **Compliance with Laws.** CONSULTANT shall comply with all Federal, State, and local laws and ordinances that are applicable to the performance of the work of this Agreement.

16. **Covenant Against Contingent Fees.** CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percent, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

17. **Nondiscrimination.** CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

18. **Disputes & Claims.**

a. **Notice of Potential Claim.** The CONSULTANT shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the DISTRICT, or for the happening of any event, thing, occurrence, or other cause, unless CONSULTANT has provided the DISTRICT with timely written Notice of Potential Claim as hereinafter specified. The written Notice of Potential Claim shall set forth the reasons for which the CONSULTANT believes additional compensation will or may be due, the nature of the cost involved, and, insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the DISTRICT prior to the time that the CONSULTANT shall have performed the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the DISTRICT, or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. It is the intention of this paragraph that differences between the parties relating to this Agreement be brought to the attention of the DISTRICT at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The CONSULTANT hereby agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written Notice of Potential Claim as herein required was filed with the Director.

b. **Processing of Actual Claim.** In addition to the above requirements for Notice of Potential Claim, a detailed, Notice of Actual Claim must be submitted in writing to the DISTRICT on or before the date of final payment under this Agreement. All such claims shall be governed by the procedures set forth in section 20104.2 and 20104.4 of the Public Contract Code, except that the word "claim" as used in said sections shall be construed as referring to any claim relating to this Agreement. The CONSULTANT shall not be entitled to any additional compensation unless CONSULTANT has (1) provided the DISTRICT with a timely written Notice of Actual Claim and (2) followed the procedures set forth in Public Contract Code section 20104.2 and 20104.4.

c. **Claim is No Excuse.** Neither the filing of a Notice of Potential Claim or of a Notice of Actual Claim, nor the pendency of a dispute or claim, nor its consideration by the DISTRICT, shall excuse the CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

19. **CONSULTANT is an Independent Contractor.** It is expressly understood that in the performance of the services herein provided, CONSULTANT shall be and is an independent CONSULTANT, and is not an agent or employee of DISTRICT. CONSULTANT has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of the services rendered hereunder. CONSULTANT shall be solely responsible for all matters relating to the payment of his employees, including compliance with Social Security, withholding, and all other regulations governing such matters.

20. **Entire Agreement and Modification.** This Agreement constitutes the entire understanding of the parties hereto. CONSULTANT shall be entitled to no other compensation and/or benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Any changes increasing CONSULTANT'S compensation and/or benefits must be approved by the DISTRICT'S Board of Supervisors; any other changes may be signed by the Director on behalf of the DISTRICT. CONSULTANT specifically acknowledges that in entering into and executing this Agreement, CONSULTANT relies solely upon the provisions contained in this Agreement and no others.

21. **Enforceability.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

22. **Warranty of CONSULTANT.** CONSULTANT warrants that CONSULTANT and each of the personnel employed or otherwise retained by CONSULTANT for work under this Agreement are properly certified and licensed under

the laws and regulations of the State of California to provide the special services herein agreed to.

23. Subcontractors.

a. Other than work designated in Exhibits A, B, and C to be performed by other persons, the CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the DISTRICT.

b. Any subcontract entered into by CONSULTANT relating to this Agreement shall contain all the provisions contained in this Agreement.

c. Any substitution of subcontractors must be approved in writing by the DISTRICT in advance of assigning work to a substitute subcontractor.

24. Applicable Law and Venue. This contract has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this contract shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this contract.

25. Notices. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by first class mail to the DISTRICT at:

Mr. Noel King, Director
San Luis Obispo County
Department of Public Works
County Government Center, Room 207
San Luis Obispo, CA 93408

and to the CONSULTANT:

Mr. Todd O. Murphy, MAI
Schenberger, Taylor, McCormick and Jecker, inc.
1306 Higuera Street
San Luis Obispo, CA 93401-3122



26. Cost Disclosure - Documents and Written Reports. Pursuant to Government Code section 7550, if the total cost of this Agreement is over \$5,000, the CONSULTANT shall include in all final documents and in all written reports submitted a written summary of costs, which shall set forth the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such documentation or written report. The Agreement and subagreement numbers and dollar amounts shall be contained in a separate section of such document or written report.

27. Litigation Support. CONSULTANT understands that the properties being appraised by CONSULTANT under this Agreement may become the subject of an eminent domain action. In such event, the CONSULTANT agrees to provide expert appraisal testimony when requested by the District, and the District reserves the right to designate which appraiser listed in Exhibit C shall be providing the CONSULTANT's expert appraisal testimony in such action.

28. Findings Confidential. Given the sensitive nature of property negotiations and litigation, the CONSULTANT agrees to maintain in strict confidentiality all information it receives from the District (except information which is otherwise public record) regarding: (a) work it is performing for the District pursuant to this Agreement; (b) property negotiations and negotiation strategy; (c) any potential or ongoing litigation relating to the Project; and (d) any and all communications from any attorneys representing the District. No reports, maps, information, documents, or any other materials given to or prepared by CONSULTANT under this Agreement which DISTRICT requests in writing to be kept confidential, shall be made available to any individual or organization by CONSULTANT without the prior written approval of DISTRICT.

29. Restrictive Covenant. CONSULTANT agrees that he will not, during the continuance of this Agreement, perform or otherwise exercise the services described in Exhibit A for anyone except for the DISTRICT, unless and until said DISTRICT waives this restriction.

30. Quality Control and Quality Assurance. The CONSULTANT shall provide a description of their quality control procedure. The process shall be implemented for all facets of work and a quality control/quality assurance statement and signature shall be placed on all submittals to the DISTRICT.

IN WITNESS THEREOF, DISTRICT and CONSULTANT have executed this Agreement on the day and year first hereinabove set forth.

IN WITNESS THEREOF, the parties hereto have executed this Agreement, and this Agreement shall become effective on the date shown signed by the County of San Luis Obispo Flood Control and Water Conservation District.

ATTEST:

County Clerk and Ex-Officio Clerk of the Board of Supervisors, County of San Luis Obispo Flood Control and Water Conservation District, State of California

Date: _____, 20__

COUNTY OF SAN LUIS OBISPO FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: _____
Chairperson of the Board
County of San Luis Obispo Flood Control and Water Conservation District, State of California

Date: _____, 20__

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: *Patricia J. Iron*
Deputy County Counsel

Date: 3/10/2006

CONSULTANT

By: _____

Title: _____

Date: _____, 20__

Handwritten initials/signature

Agreement for
Professional Appraisal Services
In Support of Nacimiento Water Project

Exhibit A – Scope of Work

**SCHENBERGER, TAYLOR, McCORMICK & JECKER, INC. (STM&J)
APPRAISAL REPORT SERVICES**

Our staff will attend all necessary kick-off and coordination meetings. We will coordinate with other team members in securing necessary documents and maps. We will provide a separate appraisal summary statement ("summary statement") for each of the properties appraised in accordance with government code, eminent domain standards, and with USPAP requirements. We will undertake all necessary steps to provide the District credible appraisals, including undertaking all appropriate valuation analyses and meeting with property owners and/or their representative during our inspections.

Deliverable Product

For each parcel assigned to Consultant, Consultant will provide the District with three (3) original hard copies (and an electronic version) of a summary statement of the basis of the appraisal in a format approved by the District. This summary statement shall include the information described in Government Code section 7267.2(b). Although the District reserves the right to receive from the Consultant any other written information relating to the appraisal, no other written information shall be delivered to District other than the summary statement unless specifically requested by the District.

STM&J Appraisal Property Summary List

We will appraise certain fee and easement property interests described by District located within the following properties:

Assignment	Property Identification
1	Monterey County Water Resources Agency 10690 Nacimiento Lake Drive, Bradley APNs 080-041-014 and 080-091-001 and -002 Dan Heath Lake Nacimiento Resort Approximately 510-acre total property Resort occupies a lakefront portion of this property

8-5
20

Agreement for
Professional Appraisal Services
In Support of Nacimiento Water Project

Exhibit A – Scope of Work

Assignment	Property Identification
2	<p>Russell 1172 San Marcos Road, Paso Robles APNs 026-104-001 and 027-145-022</p> <p>Approximately 311 acres Vineyard and winery Partial existing open space easement</p>
3	<p>Weyrich Development Company 1875 South River Road, Paso Robles APNs 033-021-001, 033-121-001, 033-131-001, and 033-141-001</p> <p>Land along the Salinas River Former Santa Ysabel Ranch APNs have been renumbered; exact acreage of affected parcels is not known</p>
4	<p>Bruce Nesbitt 717 Marquita Avenue, Paso Robles APNs 040-143-031, -046, and -047 and 040-151-075</p> <p>55.21± acres Three parcels of 18 to 20± acres each</p>
5	<p>Lipari 160 Templeton Road, Templeton APN 034-131-001</p> <p>29± acres Surge tank location</p>
6	<p>Lehnhoff 2475 Templeton Road, Templeton APN 034-171-006</p> <p>120± acres Livestock pasture</p>
7	<p>Heilmann 3435 Templeton Road, Atascadero APN 034-071-007</p> <p>108± acres Planted in hay</p>

85
21

Agreement for
Professional Appraisal Services
In Support of Nacimiento Water Project

Exhibit A – Scope of Work

Assignment	Property Identification
8	<p>Mora 3120 Templeton Road, Atascadero APN 034-421-023</p> <p>47± acres Agricultural cropping</p>
9	<p>Boland 3375 Templeton Road, Atascadero APN 034-421-022</p> <p>58± acres</p>
10	<p>Heilmann 3435 Templeton Road, Atascadero APNs 034-421-034 and -035</p> <p>Two parcels 101± acres Planted in hay</p>
11A	<p>Edward Allred 3773 Templeton Road, Atascadero APNs 034-421-019 and -020</p> <p>88.65 acres Two parcels Specialty horses Extensive horse operation</p>
11B	<p>Edward Allred 4401, 4409 Templeton Road, Atascadero APN 034-421-039</p> <p>63.07 acres Possible five legal parcels per APN map Specialty horses pasture land</p>
12	<p>Davis 9570 Rocky Canyon Road, Atascadero APNs 034-431-002 and -003; 034-434-015, -016, and -017; and 034-432-004</p> <p>Happy Valley Ranch 750± acres</p>

Handwritten initials/signature

Agreement for
Professional Appraisal Services
In Support of Nacimiento Water Project

Exhibit A – Scope of Work

Assignment	Property Identification
13	Taft 9990 Santa Clara Road, Atascadero APNs 034-432-009 and -010 23± acres Private bridge crossing Salinas River
14	Glick Stenner Creek Road, San Luis Obispo APNs 073-261-006, -008, -009, and -010 880 acres Glick Stenner Creek Ranch Existing state waterline Union Pacific Railroad tracks

SUPPORT SERVICES

We will provide additional support services as requested, including consultations on counteroffers, at the hourly rates stated in Exhibit B. If necessary, we will provide deposition/trial testimony for eminent domain proceedings. Deposition/trial testimony would be billed at \$375 per hour.

CONTINGENCY BUDGET

As an optional service, we will provide appraisals for \$3,500 per additional property appraisal requested.

Any special or unusual circumstances will be reviewed with you on an "as necessary" basis.

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23

Agreement for
Professional Appraisal Services
In Support of Nacimientto Water Project

Exhibit A – Scope of Work

DELIVERY SCHEDULE

Our completion schedule is estimated based on the date of receipt of necessary project documents (i.e., title report, legal description, area calculations, maps, and project plans, as well as property owner name, address, and contact number). The first summary statement of appraisal will be delivered to the District roughly 4 weeks from receipt of project documents. Subsequent summary statements will be delivered at a schedule of roughly 1.5 summary statements per week, assuming no delays in receiving all necessary project documents.

More difficult assignments and/or unforeseen conditions may result in additional completion time being necessary. Our best estimate for report delivery is shown as follows:

Function	Weeks
Lead Time	4
Appraisal Completion (14 assignments @ 1.5 per week)	9
Contingency	<u>1</u>
Total	14

Therefore, our total expected delivery time is budgeted at 14 weeks, or roughly 3.5 months, assuming no delays in receiving project documents.

05
24

Agreement for
Professional Appraisal Services
In Support of Nacimiento Water Project

Exhibit B – Cost Proposal and Fee Schedule

**INITIAL JOB ORGANIZATION, KICK-OFF MEETINGS,
AND PROJECT SETUP**

Staff	Est. Days	Fee per Day	Est. Fee ¹
Todd O. Murphy, MAI	2	\$1,500	\$3,000
Gerald C. Taylor, SREA, MAI	1	1,500	1,500
Preston H. Thomas, Research Assistant	2	400	<u>800</u>
Total Initial Job Organization, Kick-Off Meetings, and Project Setup			\$5,300

APPRAISAL ASSIGNMENTS

Assignment	Property Owner	Days x \$1,500 per Day	Est. Fee
1	Monterey County/Heath	5.0 to 8.0	\$7,500 to \$12,000
2	Russell	5.5	8,250
3	Weyrich	3.5	5,250
4	Nesbitt	3.0	4,500
5	Lipari	3.0	4,500
6	Lehnhoff	2.0	3,000
7	Heilmann	2.5	3,750
8	Mora	2.0	3,000
9	Boland	2.0	3,000
10	Heilmann	3.0	4,500
11A	Allred	5.0	7,500
11B	Allred	3.0	4,500
12	Davis	5.0	7,500
13	Taft	3.0	4,500
14	Glick	4.0	6,000
Subtotal Appraisals		51.50 to 54.50	\$77,250 to \$81,750
Total With Initial Job Organization, Kick-Off Meetings, and Project Setup			\$82,550 to \$87,050
Rounded			\$82,500 to \$87,000

¹ The fees listed on this page represent "not-to-exceed" estimates of fee amounts relating to the services being offered under this agreement. It is understood that the District will only be billed for the actual time incurred up to the maximum contract price.

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Agreement for
Professional Appraisal Services
In Support of Nacimiento Water Project

Exhibit B – Cost Proposal and Fee Schedule

BILLING PROCESS

We will submit monthly invoices to the District based on actual services completed to date in accordance with the following fee schedule:

Employee	Hourly Rate
Todd O. Murphy, MAI	\$187.50
Gerald C. Taylor, SREA, MAI	\$187.50
Preston H. Thomas, Research Assistant	\$ 50.00
Travis Collins, Research Assistant	\$ 35.00

Our total contract price for the scope of work shown in Exhibit A will not exceed \$90,000, without written authorization from the client. The District shall pay in a timely manner the monthly invoices for the work described in Exhibit A up to a cumulative maximum amount of \$90,000.

The "Support Services" and "Contingency Fund" work referenced at the end of Exhibit A are not included in the total contract price.

Agreement for
Professional Appraisal Services
In Support of Nacimiento Water Project

Exhibit C – Project Team

SCHENBERGER, TAYLOR, McCORMICK & JECKER, INC.

Todd O. Murphy, MAI.....	Principal/Lead Appraiser
Gerald C. Taylor, SREA, MAI	Principal/Senior Appraiser
Preston H. Thomas	Staff Research Analyst
Travis Collins	Research Assistant
Janis S. Immel	Senior Document Production Specialist
Dixie L. Ridge	Document Production Specialist
Shannon Jerger	Word Processing Operator

65
27

**AGREEMENT FOR
PROFESSIONAL APPRAISAL SERVICES
IN SUPPORT OF NACIMIENTO WATER PROJECT**

THIS AGREEMENT, entered into this _____ day of _____, 2006, by and between the SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, herein called "DISTRICT," and REEDER, GILMAN & BORGQUIST, a corporation whose address is 1101 South Broadway, Suite A, Santa Maria, California 93454, herein called "CONSULTANT."

The DISTRICT's agent for administering this Agreement is the Department of Public Works of San Luis Obispo County ("Department"), and all written communications hereunder with the DISTRICT shall be addressed to the Director of Public Works ("Director").

WHEREAS, the DISTRICT has need for special services and advice with respect to the Nacimiento Water Project (PROJECT) work described herein; and

WHEREAS, CONSULTANT warrants that it is specially trained, experienced, expert and competent to perform such special services;

NOW, THEREFORE, IT IS AGREED by the parties hereto as follows:

1. **Scope of Work.** CONSULTANT shall, at its own cost and expense, provide all the services, equipment and materials necessary to complete the work described in Exhibit A, which is attached hereto and incorporated herein by this reference. All work shall be performed in a professional manner with the level of care and skill ordinarily exercised by comparable professionals performing comparable services under comparable circumstances at the time the services are performed under this Agreement.

2. **Time for Completion of Work.** No work shall be commenced prior to CONSULTANT'S receipt of the DISTRICT'S Notice to Proceed. All work shall be completed pursuant to schedule described in Exhibit A, provided, however, that extensions of time may be granted in writing by the Director, which said extensions of time, if any, shall

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28

be granted only for reasons attributable to inclement weather, acts of God, or for other cause determined in the sole discretion of the Director to be good and sufficient cause for such extensions.

3. Payment for Services:

a. **Compensation.** DISTRICT shall pay to CONSULTANT as compensation in full for all work required by this Agreement a sum not to exceed the total amount of Ninety Three Thousand Two Hundred Dollars (\$93,200.00). CONSULTANT'S compensation shall be based on actual services performed at the rates set forth for each task in the CONSULTANT'S Cost Proposal and Fee Schedule ("Fee Schedule") attached hereto as Exhibit B, and incorporated herein by this reference. Progress payments will be made as set forth below based on compensable services provided pursuant to this Agreement.

b. **Reports and Billing Invoices:** CONSULTANT shall submit to the DISTRICT, on a monthly basis, a detailed monthly report describing services performed and work accomplished during that preceding period, including the number of hours of work performed and the personnel involved. Billing invoices shall be based upon the CONSULTANT'S Fee Schedule attached hereto as Exhibit B. For the purpose of timely processing of invoices, the CONSULTANT'S invoices are not regarded as received until the monthly report is submitted. Any anticipated problems in performing any future work shall be noted in the monthly reports. The CONSULTANT shall also promptly notify the DISTRICT of any perceived need for a change in the scope of work or services.

If DISTRICT objects to all or any portion of any invoice, DISTRICT will so notify CONSULTANT in writing within fourteen (14) calendar days of the invoice date, identify the cause of the disagreement, and pay when due that portion of the invoice not in dispute. The parties will immediately make every effort to settle the disputed portion of the invoice. In the absence of written notification described above, the balance as stated on the invoice will be paid.

c. **CONSULTANT Personnel:** DISTRICT has entered into this Agreement based upon CONSULTANT's representations that the individuals and types of qualified

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professionals described in the attached Exhibit C will be performing the services described in this Agreement. Accordingly, no revisions to the project team as described in the Exhibit C shall be made without the express written consent of the DISTRICT.

4. Accounting Records:

a. CONSULTANT shall maintain accounting records in accordance with generally accepted accounting principles. The CONSULTANT shall obtain the services of a qualified bookkeeper or accountant to ensure that accounting records meet this requirement. The CONSULTANT shall maintain acceptable books of accounts which include, but are not limited to, a general ledger, cash receipts journal, cash disbursements journal, general journal and payroll journal.

b. CONSULTANT shall record costs in a cost accounting system which clearly identifies the source of all costs. Agreement costs shall not be co-mingled with other project costs, but shall be directly traceable to contract billings to the DISTRICT. The use of worksheets to produce billings shall be kept to a minimum. If worksheets are used to produce billings, all entries should be documented and clearly traceable to the CONSULTANT'S cost accounting records.

c. All accounting records and supporting documentation shall be retained for a minimum of five (5) years or until any audit findings are resolved, whichever is later. CONSULTANT shall safeguard the accounting records and supporting documentation.

d. CONSULTANT shall make accounting records and supporting documentation available on demand to the DISTRICT and its designated auditor for inspection and audit. Disallowed costs shall be repaid to the DISTRICT. The DISTRICT may require having the CONSULTANT'S accounting records audited, at DISTRICT'S expense, by an accountant licensed by the State of California. The audit shall be presented to the County Auditor-Controller within thirty (30) days after completion of the audit.

5. Contingency Fund for Changes in Scope of Service. No change in the character or extent of the work to be performed by CONSULTANT shall be made except

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through a signed written amendment to this Agreement. The amendment shall set forth the proposed changes in work, adjustment of time, and adjustment of the sum to be paid by DISTRICT to CONSULTANT, if any. The DISTRICT'S Board of Supervisors hereby delegates to the Director the authority to sign amendments to this Agreement that make reasonable modifications to the time of performance or the scope of services, provided that all such amendments do not cumulatively exceed the contingency fund established by the District. Any other amendments must be approved by the Board. These additional funds are intended to provide the DISTRICT with flexibility to respond to unanticipated events or conditions, and the CONSULTANT has no right to make any claim against these funds except as so expressly provided in a written amendment to this Agreement.

6. **Non-Assignment of the Agreement** Inasmuch as this Agreement is intended to secure the specialized services of the CONSULTANT, CONSULTANT may not assign, transfer, delegate or sublet any interest herein without the prior written consent of DISTRICT and any such assignment, transfer, delegation, or sublease without the District's prior written consent shall be considered null and void. This includes revisions to the project team as described in the Exhibit C.

7. **Insurance.** CONSULTANT shall procure the following required insurance coverages at its sole cost and expense and maintain in full force and effect for the period covered by this Agreement such insurance. All insurance coverages are to be placed with insurers which (1) have a Best's rating of no less than A VI and are admitted insurance companies in the State of California, or (2) insurers of equivalent documented quality which the County Risk Manager has approved in writing.

a. Professional Liability Insurance: CONSULTANT shall maintain in full force and effect during the entire term of this Agreement, professional liability "errors and omissions" insurance with limits of liability of not less than \$2,000,000.00 per claim to cover all services rendered by CONSULTANT pursuant to this Agreement.

If coverage is on Claims Made basis, CONSULTANT promises to maintain such coverage for four (4) years following completion of construction of project designed hereunder.

b. Commercial General Liability: CONSULTANT shall maintain in full force and effect, for the period covered by this Agreement, Commercial General Liability insurance including the following coverages:

1. Personal Injury and Bodily Injury, including death resulting therefrom.
2. Property Damage.
3. Automobile coverage which shall include owned, non-owned and hired vehicles.

The amount of insurance shall not be less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, property damage, and automobile coverage in the total amount of \$2,000,000.00.

The following endorsements must be provided in the Commercial General Liability policy:

1. If the insurance policy covers an "accident" basis, it must be changed to "occurrence".
2. The policy must cover personal injury as well as bodily injury.
3. Blanket contractual liability must be afforded and the policy must contain a cross liability or severability of interest endorsement.
4. Broad Form Property Damage Liability must be afforded.
5. Products and Completed Operations coverage must be provided.
6. The DISTRICT and the County of San Luis Obispo ("County"), and either of their officers, employees and agents shall be named as additional insureds under the policy. The

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policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the DISTRICT or County, whether commercial or self-insurance will be called upon to contribute to a loss hereunder. Nothing contained in this Agreement shall be construed to require CONSULTANT'S insurance to indemnify DISTRICT in contravention of Insurance Code 11580.04.

c. Workers' Compensation Insurance: In accordance with the provision of Labor Code Section 3700, CONSULTANT, if CONSULTANT has any employees, is required to be insured against liability for Workers' Compensation or to undertake self-insurance. CONSULTANT agrees to comply with such provisions before commencing the performance of the work of this Agreement.

d. The following requirements apply to all insurance to be provided by CONSULTANT:

1. A certificate of insurance shall be furnished to DISTRICT prior to commencement of work. Upon request by the DISTRICT, CONSULTANT shall provide a certified copy of any insurance policy to the DISTRICT within ten (10) working days.

2. Certificates and policies shall state that the policies not be canceled or reduced in coverage or changed in any other material aspect without thirty (30) days prior written notice to DISTRICT.

3. Approval of the insurance shall not relieve or decrease the extent to which the CONSULTANT may be held responsible for payment of damages resulting from CONSULTANT'S services or operations pursuant to this Agreement.

8. **Indemnification of DISTRICT.** Except as otherwise provided in subparagraphs b and c below, CONSULTANT shall to the fullest extent permitted by law, defend, indemnify and hold harmless the DISTRICT, its officers and employees, from all claims, demands, damages, costs, expenses, judgments, attorney fees,

liabilities or other losses (hereafter collectively "claims"), that arise out of or are made in connection with CONSULTANT's errors or omissions, breach of contract, intentional misconduct, or negligent acts relating to the performance of any duty, obligation, or work hereunder. The obligation to defend shall be effective and shall extend to all such claims in their entirety, even when such claims or losses arise from the comparative negligence of the DISTRICT, its officers, agents, and employees. However, the DISTRICT shall be solely responsible for the amount of a judgment rendered solely against the DISTRICT if such judgment is based upon a specific finding of active negligence on the part of the DISTRICT, or one of its officers, agents or employees, and no indemnity provisions contained herein shall require the CONSULTANT to pay the amount of said judgment.

a. The preceding paragraph applies to any and all such claims, regardless of the nature of the claim or theory of recovery. For purposes of the paragraphs found in this Section 8 of the Agreement, "CONSULTANT" shall include the CONSULTANT, and/or its agents, employees, sub-contractors, or other independent contractors hired, by, or directly responsible to, CONSULTANT.

b. Nothing contained in the foregoing indemnity provisions shall be construed to require CONSULTANT to indemnify DISTRICT against any responsibility or liability in contravention of Civil Code 2782.

c. It is the intent of the parties to provide the DISTRICT the fullest indemnification, defense, and "hold harmless" rights allowed under the law. If any word(s) contained herein are deemed by a court to be in contravention of applicable law, said word(s) shall be severed from this Agreement and the remaining language shall be given full force and effect.

9. **Indemnification of County.** Each and every term and provision of Section 8 above is hereby incorporated herein by reference, as though fully set forth herein, with the word "DISTRICT" being replaced with "County of San Luis Obispo," so that CONSULTANT shall defend, indemnify, and hold harmless the County pursuant to said terms and conditions as so amended.

10. **Insurance and Indemnification as Material Provisions.** The parties expressly agree that the indemnification and insurance clauses in this Agreement are an integral part of the performance exchanged in this Agreement. The compensation stated in this Agreement includes compensation for the risks transferred to CONSULTANT by the indemnification and insurance clauses.

11. **CONSULTANT'S Endorsement on Reports, etc.** CONSULTANT shall endorse all appraisals, reports, maps, plans, documents, materials and other data in accordance with applicable provisions of the laws of the State of California.

12. **Documents, Information and Materials Ownership.** All documents, information and materials of any and every type prepared by the CONSULTANT pursuant to this Agreement shall be the property of the DISTRICT. Such documents shall include but not be limited to data, drawings, appraisal reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONSULTANT in performing work under this Agreement, whether completed or in process. The CONSULTANT shall assume no responsibility for the unintended use by others of any such documents, information, or materials on project(s) which are not related to the scope of services described under this Agreement.

13. **Termination of Agreement Without Cause.** DISTRICT may terminate this Agreement at any time by giving the CONSULTANT 20 days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Other than payments for services satisfactorily rendered prior to the effective date of said termination, CONSULTANT shall be entitled to no further compensation or payment of any type from the DISTRICT.

14. **Termination of Agreement for Cause.** If CONSULTANT fails to perform CONSULTANT'S duties to the satisfaction of the DISTRICT, or if CONSULTANT fails to fulfill in a timely and professional manner CONSULTANT'S obligations under this Agreement or if CONSULTANT shall violate any of the terms or provisions of this Agreement or if CONSULTANT, CONSULTANT'S agents or employees fail to exercise

good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the DISTRICT, then DISTRICT shall have the right to terminate this Agreement effective immediately upon the DISTRICT giving written notice thereof to the CONSULTANT. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. CONSULTANT shall be paid for all work satisfactorily completed prior to the effective date of such termination. If DISTRICT'S termination of the Agreement for cause is defective for any reason, including but not limited to DISTRICT'S reliance on erroneous facts concerning CONSULTANT'S performance, or any defect in notice thereof, this Agreement shall automatically terminate without cause on the twentieth day following the DISTRICT'S written notice of termination for cause to the CONSULTANT, and the DISTRICT'S maximum liability shall not exceed the amount payable to CONSULTANT under Section 13 above.

15. Compliance with Laws. CONSULTANT shall comply with all Federal, State, and local laws and ordinances that are applicable to the performance of the work of this Agreement.

16. Covenant Against Contingent Fees. CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percent, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, DISTRICT shall have the right to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

17. Nondiscrimination. CONSULTANT shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be

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amended from time to time, which are herein incorporated by reference and made a part of this Agreement.

18. Disputes & Claims.

a. **Notice of Potential Claim.** The CONSULTANT shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the DISTRICT, or for the happening of any event, thing, occurrence, or other cause, unless CONSULTANT has provided the DISTRICT with timely written Notice of Potential Claim as hereinafter specified. The written Notice of Potential Claim shall set forth the reasons for which the CONSULTANT believes additional compensation will or may be due, the nature of the cost involved, and, insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the DISTRICT prior to the time that the CONSULTANT shall have performed the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the DISTRICT, or in all other cases within 15 days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. It is the intention of this paragraph that differences between the parties relating to this Agreement be brought to the attention of the DISTRICT at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The CONSULTANT hereby agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written Notice of Potential Claim as herein required was filed with the Director.

b. **Processing of Actual Claim.** In addition to the above requirements for Notice of Potential Claim, a detailed, Notice of Actual Claim must be submitted in writing to the DISTRICT on or before the date of final payment under this Agreement. All such claims shall be governed by the procedures set forth in section 20104.2 and 20104.4 of the Public Contract Code, except that the word "claim" as used in said sections shall be construed as referring to any claim relating to this Agreement. The CONSULTANT shall not be entitled to any additional compensation unless

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37

CONSULTANT has (1) provided the DISTRICT with a timely written Notice of Actual Claim and (2) followed the procedures set forth in Public Contract Code section 20104.2 and 20104.4.

c. **Claim is No Excuse.** Neither the filing of a Notice of Potential Claim or of a Notice of Actual Claim, nor the pendency of a dispute or claim, nor its consideration by the DISTRICT, shall excuse the CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

19. **CONSULTANT is an Independent Contractor.** It is expressly understood that in the performance of the services herein provided, CONSULTANT shall be and is an independent CONSULTANT, and is not an agent or employee of DISTRICT. CONSULTANT has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons assisting CONSULTANT in the performance of the services rendered hereunder. CONSULTANT shall be solely responsible for all matters relating to the payment of his employees, including compliance with Social Security, withholding, and all other regulations governing such matters.

20. **Entire Agreement and Modification.** This Agreement constitutes the entire understanding of the parties hereto. CONSULTANT shall be entitled to no other compensation and/or benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Any changes increasing CONSULTANT'S compensation and/or benefits must be approved by the DISTRICT'S Board of Supervisors; any other changes may be signed by the Director on behalf of the DISTRICT. CONSULTANT specifically acknowledges that in entering into and executing this Agreement, CONSULTANT relies solely upon the provisions contained in this Agreement and no others.

21. **Enforceability.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

22. **Warranty of CONSULTANT.** CONSULTANT warrants that CONSULTANT and each of the personnel employed or otherwise retained by CONSULTANT for work under this Agreement are properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to.

23. **Subcontractors.**

a. Other than work designated in Exhibits A, B, and C to be performed by other persons, the CONSULTANT shall perform the work contemplated with resources available within its own organization and no portion of the work shall be subcontracted without written authorization by the DISTRICT.

b. Any subcontract entered into by CONSULTANT relating to this Agreement shall contain all the provisions contained in this Agreement.

c. Any substitution of subcontractors must be approved in writing by the DISTRICT in advance of assigning work to a substitute subcontractor.

24. **Applicable Law and Venue.** This contract has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this contract shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this contract.

25. **Notices.** Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by first class mail to the DISTRICT at:

Mr. Noel King, Director
San Luis Obispo County
Department of Public Works
County Government Center, Room 207
San Luis Obispo, CA 93408

and to the CONSULTANT:

Mr. Warren Reeder
Reeder, Gilman & Borgquist
P.O. Box 726
Santa Maria, CA 93456

26. Cost Disclosure - Documents and Written Reports. Pursuant to Government Code section 7550, if the total cost of this Agreement is over \$5,000, the CONSULTANT shall include in all final documents and in all written reports submitted a written summary of costs, which shall set forth the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such documentation or written report. The Agreement and subagreement numbers and dollar amounts shall be contained in a separate section of such document or written report.

27. Litigation Support. CONSULTANT understands that the properties being appraised by CONSULTANT under this Agreement may become the subject of an eminent domain action. In such event, the CONSULTANT agrees to provide expert appraisal testimony when requested by the District, and the District reserves the right to designate which appraiser listed in Exhibit C shall be providing the CONSULTANT's expert appraisal testimony in such action.

28. Findings Confidential. Given the sensitive nature of property negotiations and litigation, the CONSULTANT agrees to maintain in strict confidentiality all information it receives from the District (except information which is otherwise public record) regarding: (a) work it is performing for the District pursuant to this Agreement; (b) property negotiations and negotiation strategy; (c) any potential or ongoing litigation relating to the Project; and (d) any and all communications from any attorneys representing the District. No reports, maps, information, documents, or any other materials given to or prepared by CONSULTANT under this Agreement which DISTRICT requests in writing to be kept confidential, shall be made available to any individual or organization by CONSULTANT without the prior written approval of DISTRICT.

29. Restrictive Covenant. CONSULTANT agrees that he will not, during the continuance of this Agreement, perform or otherwise exercise the services described in

Exhibit A for anyone except for the DISTRICT, unless and until said DISTRICT waives this restriction.

30. Quality Control and Quality Assurance. The CONSULTANT shall provide a description of their quality control procedure. The process shall be implemented for all facets of work and a quality control/quality assurance statement and signature shall be placed on all submittals to the DISTRICT.

IN WITNESS THEREOF, DISTRICT and CONSULTANT have executed this Agreement on the day and year first hereinabove set forth.

IN WITNESS THEREOF, the parties hereto have executed this Agreement, and this Agreement shall become effective on the date shown signed by the County of San Luis Obispo Flood Control and Water Conservation District.

ATTEST:

County Clerk and Ex-Officio Clerk of the Board of Supervisors, County of San Luis Obispo Flood Control and Water Conservation District, State of California

Date: _____, 20__

COUNTY OF SAN LUIS OBISPO FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: _____
Chairperson of the Board
County of San Luis Obispo Flood Control and Water Conservation District, State of California

Date: _____, 20__

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: *James B. Lindholm, Jr.*
Deputy County Counsel

Date: 3/10/, 20 06

CONSULTANT

By: *Warrin Reed*

Title: PARTNER

Date: 3/10/2006, 20__

Handwritten initials and numbers: 5, 41

Agreement for
Professional Appraisal Services
In Support of Nacimiento Water Project

Exhibit A – Scope of Work

Reeder, Gilman & Borgquist ("Consultant" or "we") will appraise certain property interests described by the San Luis Obispo County Flood Control & Water Conservation District (District) for parcels as assigned by the District or the Nacimiento Water Project (Project). The appraisals will be conducted in accordance with the Uniform Standards of Professional Appraisal Practice, California eminent domain law and California Government Code section 7267.2(b).

The basic property interests to be appraised are easements for underground pipeline, communications, and other appurtenances on parcels as assigned by the District. The Project generally extends from Nacimiento Dam to the City of San Luis Obispo's water treatment plant in San Luis Obispo County. The Easement Granting Clause and the Right of Way Maps or Area Calculations will be provided by the District.

For each parcel assigned to Consultant, Consultant will provide the District with three (3) hard copies (and an electronic version) of a summary statement of the basis of the appraisal in a form approved by the District. This summary statement shall include the information described in Government Code section 7267.2(b). Although the District reserves the right to receive from the Consultant any other written information relating to the appraisal, no other written information shall be delivered to District other than the summary statement unless specifically requested by the District.

We will periodically meet with project officials for overall coordination and attendance at a kick-off meeting regarding this project. We will review and update the District's overall budget for property acquisition, based upon our opinion of likely just compensation required for purchase of the required rights for the project, given the nature and total number of easements and fee parcels to be acquired for the project.

We are to review the Army Corp of Engineers' appraisals as assigned by the District for various government properties including Camp Roberts, Santa Margarita Booster Station and Camp San Luis Obispo. We may be required to perform our own appraisals for these properties, an activity that would require subsequent District authorization.

Appraisal services will also include assisting the District in review and advice on counteroffers.

With regard to schedule, we expect to receive appraisal data (easement granting clause and right-of-way maps or area calculations) for sets of parcels at a time as opposed to full data for all requested appraisals. Under this phased approach, we agree to complete appraisal reports within one month of receipt of appraisal data for each set of parcels. Were we to receive data for an estimated 41 parcels all at once, the appraisal report for all parcels would take 4 months.

Agreement for
Professional Appraisal Services
In Support of Nacimiento Water Project

Exhibit B – Cost Proposal and Fee Schedule

Task	Basis of Fee	Subtotal Fee
Appraisal of one fee site (Cuesta Tank)	\$4,000	\$4,000
Review of Army Corps property appraisals	3 parcels at \$2,000 each ¹	\$6,000
Appraisals for underground pipeline easement	41 parcels at \$1,800 each	\$73,800
Kickoff and other special meeting attendance	40 hours at \$180/hour	\$7,200
Review and update District's overall project budget for easement and fee acquisition	12 hours at \$180/hour	\$2,200
Total Base Fee (Compensation) =		\$93,200

Additional appraisals would be completed at a cost of \$1,800 each and would be authorized under a subsequent authorization.

Reeder, Gilman & Borgquist will invoice for appraisals and appraisal review of Army Corps properties at the lump sum amounts stated in the table above. Consultation services will be invoiced at the hourly billing rate specified in the table above. Agreed-upon additional services of Mr. Warren Reeder will be billed at the hourly rate stated above not to exceed the amounts stated above without prior written authorization.

It is understood that the amounts stated above include all labor, mileage, reproduction, communications, overhead, profit, and other direct and indirect costs incidental to the performance of the services stated herein and that rates are to remain constant for the duration of this project.

¹ Alternatively, the fee for appraisals at Camp Roberts, Santa Margarita Booster Station and Camp San Luis Obispo, if needed, is \$5,000 each, for a total of \$15,000 which would require District's prior authorization.

BS
43

Agreement for
Professional Appraisal Services
In Support of Nacimiento Water Project

Exhibit C – Project Team

Appraisal services would be provided by Mr. Warren Reeder, Ms. Leslie Gilman, and Ms. Lisa Borgquist, resumes for who are on file with the District.

85
44

BEFORE THE BOARD OF SUPERVISORS

of the
**SAN LUIS OBISPO COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT**

_____ day _____, 20__

PRESENT: Supervisors

ABSENT:

RESOLUTION NO. ____

**RESOLUTION OF THE BOARD OF SUPERVISORS OF
THE SAN LUIS OBISPO COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
REGARDING FUNDING FOR NACIMIENTO WATER PROJECT APPRAISAL
SERVICES**

The following resolution is hereby offered and read:

WHEREAS, the San Luis Obispo County Flood Control and Water Conservation District (District) in cooperation with the Nacimiento Project Commission is underway with design and permitting activities associated with the Nacimiento Water Project; and

WHEREAS, certain lands owned by private parties and public agencies other than the County of San Luis Obispo will be affected by the construction and operation of the proposed 45 miles of pipeline and appurtenances; and

WHEREAS, the District needs to appraise the fair market value of the property interests the District intends to acquire along the route of the Nacimiento Water Project; and

WHEREAS, the Nacimiento Project Commission endorsed a \$300,000 budget to proceed with appraisal activities by retaining the services of two appraisal firms (Schenberger, Taylor, McCormick and Jecker and Reeder, Gilman, & Borgquist); and

WHEREAS, the Board has before it two separate agreements for each appraisal firm entitled "Agreement For Professional Appraisal Services For The Nacimiento Water Project" (hereafter "Agreements"); and

WHEREAS, the combined fee for the base scopes of services of the two appraisal firms totals \$183,200 with both firms indicating their availability to assist with additionally authorized appraisal work as-needed; and

WHEREAS, the District and the Nacimiento Project Commission desire to maintain flexibility to respond to changing alignment and property owner issues throughout the appraisal and easement acquisition activities.

B-5
45

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the the San Luis Obispo County Flood Control & Water Conservation District as follows:

1. That a contingency amount of \$116,800 be designated within the Nacimiento Project design phase budget for the purposes of advancing appraisal services of the project;
2. The Director of Public Works is hereby delegated the authority to sign amendments to the Agreements that make reasonable modifications to the time of performance or the scope of services, provided that all such amendments do not cumulatively exceed the above-stated contingency amount. Any other amendments must be approved by the Board; and
3. Any amendments entered into by the Director of Public Works pursuant to this resolution must be approved as to form by the Office of County Counsel.

Upon motion of Supervisor _____, seconded by Supervisor _____, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing Resolution is hereby adopted.

Chairperson of the Board of Supervisors
San Luis Obispo County Flood Control & Water Conservation District

ATTEST:

Clerk of the Board of Supervisors

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:
JAMES B. LINDHOLM, JR.
County Counsel

By: *James B. Lindholm, Jr.*
Deputy County Counsel

Dated: 3/10/06

<filename>

B-5
46