

**AGREEMENT FOR
ENGINEERING CONSULTING SERVICES
(NON-FEDERAL FUNDING)**

THIS AGREEMENT, entered into this ___ day of _____, 20___, by and between the SAN LUIS OBISPO FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a political subdivision of the State of California, herein called "DISTRICT," and _____, herein called 'ENGINEER.'

The DISTRICT department responsible for administering this AGREEMENT is the Department of Public Works, and all written communications hereunder with the DISTRICT shall be addressed to the Director of Public Works.

WHEREAS, the DISTRICT has need for special services and advice with respect to the work described herein; and

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

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

1. **Scope of Work.** ENGINEER 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 to the highest professional standard.

2. **Time for Completion of Work.** No work shall be commenced prior to ENGINEER'S receipt of the DISTRICT'S Notice to Proceed. All work shall be completed no later than December 3, 2007, provided, however, that extensions of time may be granted in writing by the Director of Public Works of San Luis Obispo County, 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 of Public Works of San Luis Obispo County to be good and sufficient cause for such extensions.

3. Payment for Services:

a. **Compensation.** DISTRICT shall pay to ENGINEER as compensation in full for all work required by this Agreement for consulting services consisting of the following:

ENGINEER'S compensation shall be based on actual services performed and costs incurred at the rates set forth for each task in the ENGINEER'S Cost Proposal included in Exhibit B, and incorporated herein by this reference. Progress payments will be made as set forth below based on compensable services provided and allowable costs incurred pursuant to this Agreement.

b. **Reports and Billing Invoices:** ENGINEER shall submit to the DISTRICT, on a task completion basis, a detailed statement of 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 ENGINEER'S cost proposal attached hereto as Exhibit B. For the purpose of timely processing of invoices, the ENGINEER'S invoices are not regarded as received until the applicable deliverable is submitted. Any anticipated problems in performing any future work shall be noted in the billing invoice transmittal letter. The ENGINEER shall also promptly notify the County of any perceived need for a change in the scope of work or services.

4. Accounting Records:

a. ENGINEER shall maintain accounting records in accordance with generally accepted accounting principles. The ENGINEER shall obtain the services of a qualified bookkeeper or accountant to ensure that accounting records meet this requirement. The ENGINEER 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. ENGINEER 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 ENGINEER'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. ENGINEER shall safeguard the accounting records and supporting documentation.

d. ENGINEER 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 ENGINEER'S accounting records audited, at ENGINEER'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 ENGINEER 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 ENGINEER, if any. A contingency fund of _____ is hereby created to address such changes to the scope of services and/or completion date. The DISTRICT'S Board of Supervisors (Board) hereby delegates to the Director of Public Works and Transportation 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. 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 ENGINEER 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 Agreement. Inasmuch as this Agreement is intended to secure the specialized services of the ENGINEER, ENGINEER 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 County's prior written consent shall be considered null and void. This includes revisions to the project team as described in the organization chart (See Exhibit C).

7. Insurance. ENGINEER 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: ENGINEER 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 and \$2,000,000.00 in aggregate to cover all services rendered by ENGINEER pursuant to this Agreement.

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

b. Commercial General Liability (CGL): ENGINEER 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 \$1,000,000.00.

The following endorsements must be provided in the CGL 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 San Luis Obispo County Flood Control and Water Conservation District, its officers, employees and agents shall be named as additional insured under the policy. The policy shall provide that the insurance will operate as primary insurance. No other insurance effected by the DISTRICT, 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 ENGINEER’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, ENGINEER, if ENGINEER has any employees, is required to be insured against liability for Workers’ Compensation or to undertake self-insurance. ENGINEER 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 ENGINEER:

1. A certificate of insurance shall be furnished to DISTRICT prior to commencement of work. Upon request by the DISTRICT, ENGINEER 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 ENGINEER may be held responsible for payment of damages resulting from ENGINEER'S services or operations pursuant to this Agreement.

8. Indemnification. Except as otherwise provided in subparagraphs (b) and (c) below, ENGINEER shall 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 that may be asserted by any person or entity, and that arise out of or are made in connection with the acts or omissions relating to the performance of any duty, obligation, or work hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the DISTRICT, its officers and employees. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the DISTRICT, its officers and employees.

a. The preceding paragraph applies to any theory of recovery relating to said act or omission by the ENGINEER, or its agents, employees, or other independent contractors directly responsible to ENGINEER, including, but not limited to the following:

- I. Violation of statute, ordinance, or regulation.
- ii. Professional malpractice.
- iii. Willful, intentional or other wrongful acts, or failures to act.
- iv. Negligence or recklessness.
- v. Furnishing of defective or dangerous products.
- vi. Broad Form Property Damage (Including Completed Operations).
- vii. Premises liability.
- viii. Strict liability
- ix. Inverse condemnation.

- x. Violation of civil rights.
- xi. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board, or any other California public entity responsible for collecting payroll taxes, when the ENGINEER is not an independent ENGINEER.

b. Nothing contained in the foregoing indemnity provisions shall be construed to require ENGINEER 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 contract and the remaining language shall be given full force and effect.

9. 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 ENGINEER by the indemnification and insurance clauses.

10. ENGINEER’S Endorsement on Reports, etc. ENGINEER shall endorse all reports, maps, plans, documents, materials and other data in accordance with applicable provisions of the laws of the State of California.

11. Documents, Information and Materials Ownership. All documents, information and materials of any and every type prepared by the ENGINEER pursuant to this Agreement shall be the property of the DISTRICT. Such documents shall include but not be limited to data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the ENGINEER in performing work under this Agreement, whether completed or in process. The ENGINEER 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.

12. Termination of Agreement Without Cause. DISTRICT may terminate this Agreement at any time by giving the ENGINEER twenty (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, ENGINEER shall be entitled to no further compensation or payment of any type from the DISTRICT.

13. Termination of Agreement for Cause. If ENGINEER fails to perform ENGINEER'S duties to the satisfaction of the DISTRICT, or if ENGINEER fails to fulfill in a timely and professional manner ENGINEER'S obligations under this Agreement or if ENGINEER shall violate any of the terms or provisions of this Agreement or if ENGINEER, ENGINEER'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 ENGINEER. 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. ENGINEER 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 ENGINEER'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 ENGINEER, and the DISTRICT'S maximum liability shall not exceed the amount payable to ENGINEER under paragraph 12 above.

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

15. Covenant Against Contingent Fees: ENGINEER warrants that he has not employed or retained any company or person, other than a bona fide employee working for ENGINEER, 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.

16. Nondiscrimination: ENGINEER 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.

17. Disputes & Claims:

a. Notice of Potential Claim. The ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER 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 of Public Works.

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 ENGINEER shall not be entitled to any additional compensation unless ENGINEER 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 ENGINEER from full and timely performance in accordance with the terms of this Agreement.

18. ENGINEER is an Independent Contractor. It is expressly understood that in the performance of the services herein provided, ENGINEER shall be, and is, an independent engineer, and is not an agent or employee of DISTRICT. ENGINEER has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons assisting ENGINEER in the performance of the services rendered hereunder. ENGINEER 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.

19. Entire Agreement and Modification. This Agreement constitutes the entire understanding of the parties hereto. ENGINEER 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 ENGINEER'S compensation and/or benefits must be approved by the DISTRICT'S Board

of Supervisors; any other changes may be signed by the Director of Public Works on behalf of the DISTRICT. ENGINEER specifically acknowledges that in entering into and executing this Agreement, ENGINEER relies solely upon the provisions contained in this Agreement and no others.

20. 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.

21. Warranty of ENGINEER. ENGINEER warrants that ENGINEER and each of the personnel employed or otherwise retained by ENGINEER 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.

22. Subcontractors

a. Other than work designated in Exhibits A and B to be performed by other persons, the ENGINEER 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 ENGINEER 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.

23. 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.

24. 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 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 Contractor:

25. Cost Disclosure - Documents and Written Reports. Pursuant to Government Code section 7550, if the total cost of this Agreement is over \$5,000, the ENGINEER 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.

26. Findings Confidential. No reports, maps, information, documents, or any other materials given to or prepared by ENGINEER under this Contract which DISTRICT requests in writing to be kept confidential, shall be made available to any individual or organization by ENGINEER without the prior written approval of DISTRICT.

27. Restrictive Covenant. ENGINEER 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.

28. Quality Control and Quality Assurance. The ENGINEER shall provide a description of their Quality Control procedure. The process shall be implemented for all facets of work and a QC-QA statement and signature shall be placed on all submittals to the DISTRICT.

IN WITNESS THEREOF, DISTRICT and ENGINEER 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 San Luis Obispo County Flood Control and Water Conservation District.

San Luis Obispo County Flood Control and
Water Conservation District

Date: _____, 20__

By: _____

Chairperson of the Board
County of San Luis Obispo
State of California

ATTEST:

County Clerk and Ex-Officio Clerk of the
Board of Supervisors, County of San Luis Obispo,
State of California

Date: _____

ENGINEER

Date: _____, 20__

By: _____

Title: _____

APPROVED AS TO FORM AND LEGAL EFFECT:

JAMES B. LINDHOLM, JR.
County Counsel

By: _____
Deputy County Counsel

Date: _____