



C o u n t y o f S a n L u i s O b i s p o

GENERAL SERVICES AGENCY

Janette D. Pell, Director

Helen McCann, Department Administrator

REQUEST FOR PROPOSAL PS- #1143

Los Osos Wastewater Project – Collection System Construction Management Services

August 17, 2011

The County of San Luis Obispo (County) is currently soliciting proposals for professional services for the Los Osos Wastewater Project Collection System Construction Management (CM) Services.

Each proposal shall specify each and every item as set forth in the attached specifications. Any and all exceptions must be clearly stated in the proposal. Failure to set forth any item in the specifications without taking exception may be grounds for rejection. The County reserves the right to reject any and all proposals and to waive any irregularity or informality in any proposal or in the Request for Proposal process, as long as, in the judgment of the County, such action will not negate fair competition and will permit proper comparative evaluation of the proposals submitted.

This Request for Proposal is posted on the County's Purchasing website at http://www.slocounty.ca.gov/GSA/Purchasing/Current_Formal_Bids_and_Proposals.htm. Any changes, additions, or deletions to this Request for Proposal will be in the form of written addenda issued by the County. Any addenda will be posted on the website. Prospective proposers must check the website for addenda or other relevant new information during the response period. The County is not responsible for the failure of any prospective proposer to receive such addenda. All addenda so issued shall become a part of this Request for Proposal.

If your firm is interested and qualified, please submit ten (10) hard copies and one (1) electronic copy (on CD or DVD) of your proposal on Thursday, September 15, 2011, by 3:00 p.m. to:

County of San Luis Obispo
Debbie Belt, GSA - Purchasing
1087 Santa Rosa Street
San Luis Obispo, CA 93408

If you have any questions about the proposal process, please contact me. For technical questions and information contact John Waddell, Project Manager at (805) 788-2713 or jwaddell@co.slo.ca.us.

All questions pertaining to the content of this Request for Proposal must be made in writing via e-mail to John Waddell at: jwaddell@co.slo.ca.us. All questions will receive a response within three (3) business days. The question and its response will be posted (anonymously) on the County's Purchasing web site (link above). The County reserves the right to determine the appropriateness of comments / questions that will be posted on the website.

DEBBIE BELT
Buyer – GSA – Purchasing
dbelt@co.slo.ca.us

PROPOSAL SUBMITTAL AND SELECTION

1. All proposals, consisting of ten (10) hard copies and one (1) electronic copy (on CD or DVD) must be received by mail, recognized carrier, or hand delivered no later than 3:00 p.m. on Thursday, September 15, 2011. **Late proposals will not be considered and will be returned, unopened.**
2. Proposals shall be limited to a maximum of thirty (30) pages, plus attachments such as resumes, reference information, and fee estimate.
3. All correspondence should be directed to:

San Luis Obispo County
General Services Agency
1087 Santa Rosa Street
San Luis Obispo, CA 93408
ATTENTION: DEBBIE BELT
Telephone: (805) 781-5903
4. All costs incurred in the preparation and submission of proposals and related documentation will be borne by the proposer.
5. It is preferred that all proposals be submitted on recycled paper, printed on two sides.
6. Selection of qualified proposers will be by an impartial Selection Committee using an approved County procedure for awarding professional contracts. Selection will be made on the basis of the proposals as submitted, although the County reserves the right to interview applicants as part of the selection process. The proceedings of the Selection Committee are confidential, and members of the Selection Committee are not to be contacted by the proposers.
7. This Request for Proposal does not constitute an offer of employment or to contract for services.
8. The County reserves the option to accept or reject any or all proposals, wholly or in part, received by reason of this request, and make more than one award, or no award, as the best interests of the County may appear.
9. All documents submitted to the County in response to this Request for Proposal will become the exclusive property of the County and may be returned to the proposer or kept by the County, in the County's sole discretion.
10. All proposals shall remain firm for one hundred twenty (120) days following closing date for receipt of proposals.

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11. The County reserves the right to award the contract to the firm who presents the proposal which in the judgment of the County, best accomplishes the desired results, and shall include, but not be limited to, a consideration of the professional service fee.
12. Any contract awarded pursuant to this Request for Proposal will incorporate the requirements and specifications contained in this Request for Proposal. All information presented in a proposer's proposal will be considered binding upon selection of the successful proposer, unless otherwise modified and agreed to by the County during subsequent negotiations.
13. Under the provisions of the California Public Records Act (the "Act"), Government Code section 6252 et seq., all "public records" (as defined in the Act) of a local agency, such as the County, must be available for inspection and copying upon the request of any person. Under the Act, the County may be obligated to provide a copy of any and all responses to this Request for Proposal, if such requests are made after the contract is awarded. One exception to this required disclosure is information which fits within the definition of a confidential trade secret [Government Code section 6254(k)] or contains other technical, financial or other data whose public disclosure could cause injury to the proposer's competitive position. If any proposer believes that information contained in its response to this Request for Proposal should be protected from disclosure, the proposer MUST specifically identify the pages of the response that contains the information by properly marking the applicable pages and inserting the following notice in the front of its response:

NOTICE: *The data on pages _ of this response identified by an asterisk (*) contain technical or financial information, which are trade secrets, or information for which disclosure would result in substantial injury to the proposer's competitive position. Proposer requests that such data be used only for the evaluation of the response, but understands that the disclosure will be limited to the extent the County considers proper under the law. If an agreement is entered into with the proposer, the County shall have the right to use or disclose the data as provided in the agreement, unless otherwise obligated by law.*

The County will not honor any attempt by proposer to designate its entire proposal as proprietary. If there is any dispute, lawsuit, claim or demand as to whether information within the response to the Request for Proposal is protected from disclosure under the Act, proposer shall indemnify, defend, and hold harmless, the County arising out of such dispute, lawsuit, claim or demand.

14. An electronic copy of your proposal must be included. This electronic copy should include all documents being submitted combined into one Adobe Acrobat (pdf) file on a CD, using this convention for the file name: FIRM NAME + RFP NUMBER

Example: Your firm, Acme Inc., is responding to RFP PS-#1101. Your Adobe Acrobat (pdf) file would be named: **Acme 1101**

Los Osos Wastewater Project – Collection System Construction Management Services**15. Insurance and Indemnification**

- A. The selected consultant will be required to provide commercial general liability insurance coverage in the amount of \$2,000,000 and \$8,000,000 of Professional Liability Insurance. This amount of insurance coverage shall be reflected in your estimated professional fees. See Attachment A, the example Agreement for Professional Engineering Services, Exhibit G, for details of specific insurance coverage requirements.
- B. The consultant shall provide within five (5) days after the Notice of Award is issued a certificate of liability insurance naming the County of San Luis Obispo and its employees and officers as additionally named insured. This shall be maintained in full force and effect for the duration of the contract and must be in an amount and format satisfactory to the County.
- C. To the fullest extent permitted by law, Consultant shall defend, indemnify and hold harmless the County, its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, or other losses that may be asserted by any person or entity, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant and/or its agents, employees or subconsultants. The obligation to indemnify shall be effective and shall extend to all such claims or losses in their entirety. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County, its officers and employees.
- D. The Agreement for Professional Engineering Services will follow the EJCDC E-500 form of agreement. A draft agreement form is included as Attachment A to this RFP. The final agreement will be completed with the details of the successful proposal and must be approved by the USDA, which is the primary funding agency.

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Los Osos Wastewater Project – Collection System Construction Management Services**REQUEST FOR PROPOSALS**

The County is inviting Proposals for construction management (CM) services for all facilities included in the Los Osos Wastewater Project – Collection System. A description of the various project components follows.

General Information

Los Osos, California is an unincorporated community with approximately 15,000 residents situated on the coastline of San Luis Obispo County, at the southern end of Morro Bay and adjacent to the Morro Bay National Estuary and State Marine Reserve. The area was sub-divided in the late 19th Century and developed for summer homes and retreats. Sanitation needs were met primarily through individual septic systems, many on densely developed small lots and areas of high groundwater. Beginning as early as 1971, when the permanent population began to grow, the Regional Water Quality Control Board (RWQCB) and other regulatory agencies became concerned with the safety of the sanitary system in Los Osos. To compound matters, the Los Osos area uses groundwater for its potable water supply.

In 1983, the RWQCB established discharge prohibitions for a portion of the Los Osos area that became known as the “Prohibition Zone”. This action set a deadline of 1988, beyond which most new septic system discharges, from new construction or remodels were prohibited. These regulatory actions created a moratorium, effectively halting new construction or major expansions of existing development until the water pollution problem was solved. From 1983 to 2005, when the Los Osos Community Services District (LOCSO) project failed with a recall of a majority of the Board of Directors and termination of the recently started construction, approximately \$30 million was spent on several efforts to develop a wastewater project, with no solution. The current County efforts, authorized through special legislation by the California State Legislature (AB 2701; Blakeslee, 2006), are expected to finally resolve the septic system issue and State mandated Prohibition Zone.

The County's current authority over the Los Osos wastewater project became effective on January 1, 2007. The County's utilized the many existing technical studies and reports as a resource to facilitate a co-equal analysis of several project alternatives in an open and transparent public process. In addition to regular hearings and updates at the County Board of Supervisors, a technical advisory committee (TAC) comprised of 14 community members, each with qualifications in engineering, environmental, or financial disciplines, was formed to develop their own, independent analysis. In fact, the County has held over 100 public meetings on the project since 2006.

The overall project selection process consisted of three primary components including, an engineering screening analysis, environmental analysis, and local approval process. The engineering analysis screened alternatives for those that were most technically and financially viable, resulting in a list of alternatives within a close price range. The co-equal environmental analysis and subsequent local approval process, completed in accordance with the California Environmental Quality Act

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(CEQA), considered the non-monetary issues through a certified Final Environmental Impact Report (EIR). The environmental review process has been completed.

On June 11, 2010, Coastal Development Permit (CDP) Application No. A-3-SLO-09-055/069 was approved by the California Coastal Commission. The CDP contains 120 conditions for the project, many of which are design and construction related and must be complied with prior-to or during construction. The 120 conditions are differentiated by 111 conditions established through the County approval process and 9 Special Coastal Conditions established by Coastal Commission. To ensure compliance the final project plans and specifications must be reviewed and approved by the executive director of the Coastal Commission prior to construction.

Property owners have already approved \$127 million in property assessments to fund the project, which will provide the security for repayment of the majority of the project financing. Financing is provided by the United States Department of Agriculture (USDA) Rural Development (RD) in the amount of approximately \$87 million and the State Water Resources Control Board Clean Water State Revolving Fund (SRF) Program in the amount of approximately \$86 million. As a result of receiving this financing, the County is required to follow financing conditions, which are detailed in USDA Letter of Conditions and State Water Resources Control Board Resolution No. 2011-0009 (included in Reference Material). All property owner approvals required for project funding have been completed, and all financing for the project has been secured.

Project Team Organization

The CM consultant will work as an integral member of the project team. A brief description of the other team members and their roles/responsibilities is provided below:

Project Management: The County's project management team consists of County staff, Carollo Engineers, Inc. (Carollo), and Wallace Group (Wallace) as well as other consultants. The CM consultant will meet with the project management team regularly to review the progress of construction and address potential issues.

Environmental Team: The environmental team consists of County staff and other consultants. The team will perform environmental services through construction including permitting, preparation of mitigation plans, communications with regulatory agencies, and construction and post-construction monitoring for a range of sensitive biological and cultural resources.

Right-of-Way Team: The right-of-way team consists of County staff and other consultants. Right of Way acquisition is currently on-going, however most of the project is in existing right of way or properties purchased for the project by the LOSCD that will be transferred to the County. The project right of way will be certified prior to the start of construction.

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Design Team: The design team for the collection system is led by CDM. CDM is revising and updating the existing drawings prepared for the LOCSD's 2005 project to meet the current requirements and is preparing new specifications. The design is scheduled to be completed in February 2012, followed by the bidding process and contract award in April 2012. The design team will provide support during construction. A summary of the anticipated duties of the designer and CM consultant is provided in Appendix 3 of Exhibit A of the draft Agreement for Professional Engineering Services (Attachment A).

Description of the Los Osos Wastewater Project Collection System and Related Facilities

The Los Osos Wastewater Project will utilize a gravity collection system for the community of Los Osos. A full collection system design was completed by the LOCSD in 2004/2005, prior to their cessation of the project and the passage of AB 2701. This existing design is the basis of the current planning and environmental permitting process and the current design update. The current Project description consists of the following:

1. Collection System: A conventional gravity collection system with pump stations that collects wastewater from individual parcels within the service area and conveys these flows to the Mid-Town site. The Los Osos Prohibition Zone consists of 4,769 connections to the gravity collection system. Refer to Figure 1 for the limits of the service area. The previous LOCSD wastewater project included design of a complete and permitted collection system. The collection system was designed for the Los Osos Community Services District (LOCSD) by Montgomery Watson Harza (MWH) and included a conventional gravity collection system with pump stations that collected and conveyed flow from the service area to a wastewater treatment plant that was planned to be located the Mid-Town site (formerly known as the Tri-W site). The project included the following:
 - Approximately 195,000 linear feet of gravity sewer mains ranging in size from 8-inch to 18-inch in diameter, 790 manholes, 4,700 laterals, and 28,000 linear feet of forcemain ranging in size from 2-inch to 12-inch in diameter;
 - Six duplex and two triplex pump stations ranging in flow capacity from approximately 120 gallons per minute (gpm) to 1,900 gpm and seven standby power facilities ranging in size from 30 kilowatts (kW) to 300 kW (one standby power facility is shared by two pump stations); and
 - Twelve pocket pump stations ranging in flow capacity from approximately 10 gpm to 25 gpm.
2. Mid-Town Pump Station: A submersible pump station located at the Mid-Town site receives all flows from the collection system and pumps these flows to the headworks of the water recycling facility located approximately 2 miles east. The stand-by generator for this pump station will be located at the nearby County park, per CDP Special Coastal Condition 1d. Refer to Figure 1 for the location of the Mid-Town site.

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3. Raw Wastewater Conveyance Pipeline: A pipeline, and appurtenances, that conveys the pumped wastewater flows from the Mid-Town Pump Station to the water recycling facility. The pipeline shall be primarily routed along Los Osos Valley Road as shown on Figure 1.
4. Recycled Water Conveyance Pipeline: A pipeline, and appurtenances, conveying recycled water flows from the water recycling facility to the Broderson site and adjacent community for reuse and disposal. The pipeline will be primarily routed along Los Osos Valley Road with a similar alignment as the Raw Wastewater Conveyance Pipeline and as shown on Figure 1. The Effluent Pump Station located at the water recycling facility, which pumps flow through this pipeline, is not included within the scope of project collection system construction.
5. Recycled Water Distribution Mains and Turn-outs: Pipelines conveying recycled water to various locations within the community including the existing Bayridge Estates leach fields, Sea Pines Golf Course, South Bay Community Park, three elementary schools and Los Osos Middle School. The final pipeline alignments are currently being designed and will primarily be in utility corridors planned for treated effluent pipelines in the previous LOCSO design. Refer to Figure 1 for the planned recycled water main alignments.
6. Broderson Leach Field: A leach field will be located at the Broderson site for disposal of recycled water from the water recycling facility. Refer to Figure 1 for the location of the Broderson site.

Los Osos Wastewater Project – Collection System Construction Management Services**Project Budget**

The initial construction cost estimate for the total project, including the water recycling facility, is \$139 million. Updated construction costs estimates for the project collection system are currently being prepared by the design team. A summary of the individual cost components is provided in Table 1.

Tentative Schedule

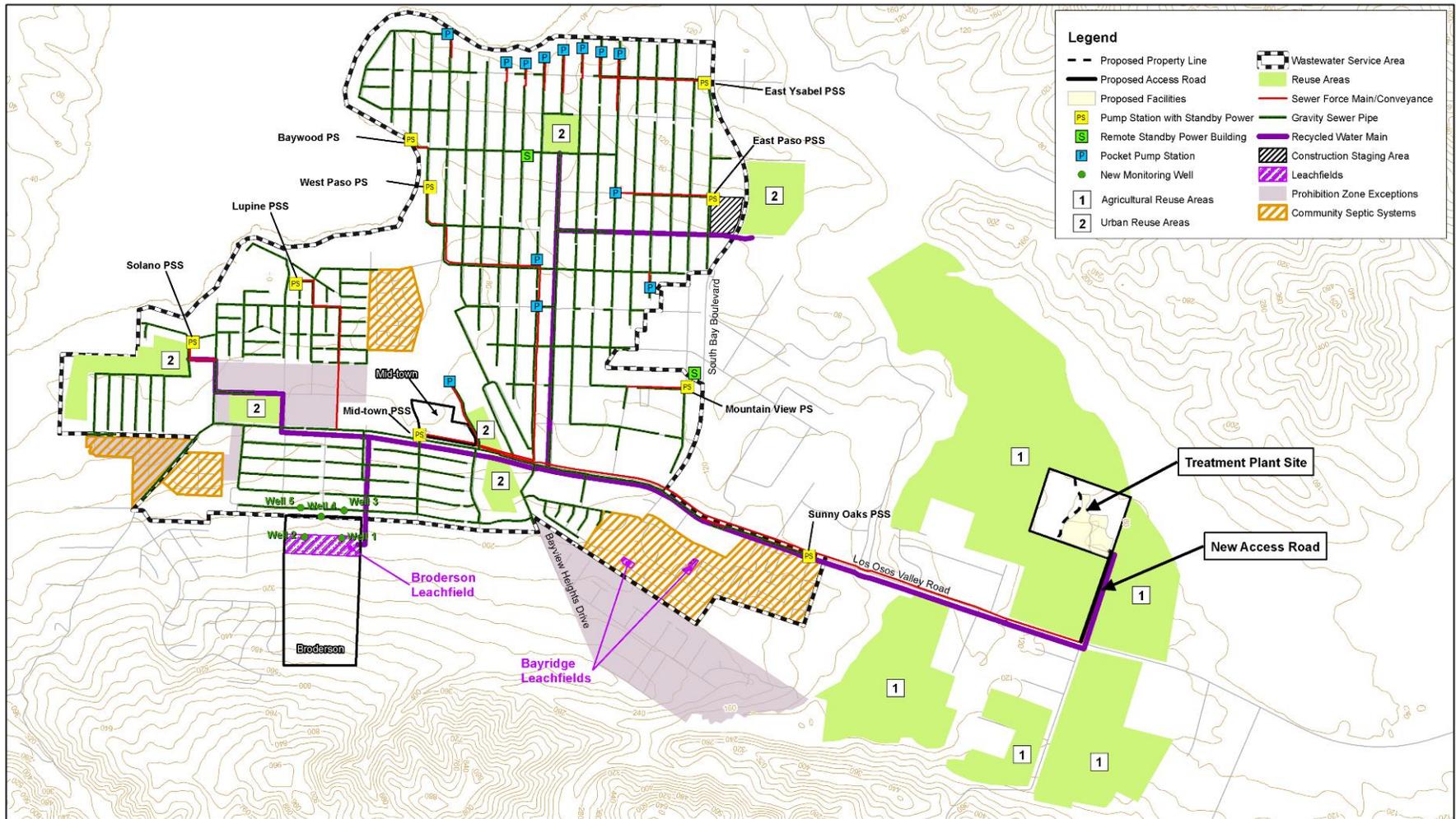
The tentative schedule for this RFP selection process and the primary scope of work is shown below. The schedule for the collection system construction phase will be established based on the working days specified by the designer in the construction contracts. The County will update outside funding and regulatory permitting agencies of the final schedule established and will seek, if needed, amendments to the funding conditions. The tentative schedule is subject to change without notice at the sole discretion of the County.

Milestone

- Proposal Due to County
- Interviews
- Consultant Evaluation and Selection
- Final scope, fee, and agreement
- Target Date for Board approval
- Complete Constructability Review Report
- Bidding Phase
- Construction Phase
- Post-Construction Phase

Approximate Date

September 15, 2011
September –29 - 30, 2011
October 4, 2011
October 24, 2011
November 8, 2011
January 9, 2012
February 2012 – May 2012
May 2012 – December 2013
December 2013 – December 2014



Source: 2007 Digital Globe aerials, San Luis Obispo County GIS Data, Carollo Engineers, and MBA GIS Data.

Overall Project Site Plan

LOS OSOS WASTEWATER PROJECT 2010
 Revised: 5/16/11

Figure 1: Overall Project Site Plan

Table 1: Total Project Construction Cost Estimate

	Average Estimate (\$ M)	Notes
Collection System		1
Mobilization/Demobilization	\$3.9	
Gravity Sewers and Force Mains	\$29.2	
Manholes	\$4.5	
Shoring and Dewatering	\$5.1	
Duplex Pump Stations	\$2.6	
Triplex Pump Stations	\$1.2	
Pocket Pump Stations	\$2.4	
Standby Power Facilities	\$2.5	
Misc. Facilities	\$3.3	
Laterals in Right-of-Way	\$9.3	
Road Restoration	\$5.2	
Homeowner On-Lot Facilities	\$0	2
Out-of-Town Conveyance	\$3.4	3
Total Collection System	\$72.4	
Treatment Process	\$23.1	4, 5
Solids Processing	\$3.0	6, 7
Recycled Water Reuse		
Water Conservation Program	\$0.0	8
Broderson Pipe and Leachfield	\$6.1	
Recycled Water Turn-outs	\$1.8	9
Recycled Water Storage (50 af)	\$0.8	
Total Recycled Water Reuse	\$8.6	
Sub-Total Construction	\$107.1	
10% Construction Contingency	\$10.7	10
Sub-Total Construction Costs	\$117.8	
Cost Escalation (18.0%) to Mid-Point of Construction	\$21.2	11
Total Project Construction Costs	\$139	

- (1) Collection System estimates from Fine Screening Report (FSR), Table 3.17, except as noted.
- (2) Homeowner On-Lot Facilities not eligible for project financing; owner financed. Total cost estimated at \$13.3 million, plus escalation.
- (3) Conveyance estimate from Conveyance Tech Memo, Table 7, with no micro-tunneling.
- (4) Secondary treatment estimate from FSR, Tables 4.9 & 4.19.
- (5) Tertiary treatment estimate from FSR, Section 4.8 for full flow.
- (6) Thickening estimate from FSR, Table 5.3.
- (7) Dewatering estimate from FSR, Table 5.5.
- (8) Water Conservation Program budget of \$5 M required per project Coastal Development Permit conditions included in Project Soft Costs; no escalation on Water Conservation Program.
- (9) Average of range for estimated 10,000 to 15,000 linear feet of recycled water pipeline at

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\$143/lf.

(10) Assume 10% construction contingency, less Homeowner On-Lot Facilities.

(11) FSR, Appendix C estimated construction cost escalation at 5%, per year, from April 2007 to June 2011, the estimated mid-point of construction. The estimated construction cost escalation has been revised to reflect recent economic developments and project delays. The Engineering News Report Construction Cost Index 20-Cities Average for February, 2010 is 8671 (10.05% increase over April, 2007). Adding an assumed 3% annual escalation from February, 2010 to an assumed mid-point of construction in June, 2012, the total escalation is 18.0%.

Anticipated Scope of Work for Construction Management Services

The CM consultant shall provide construction management services as generally described in this section and as specifically described in the draft Agreement for Engineering Services (Attachment A). Overall, the CM consultant shall be responsible for a constructability review prior to completion of final design and comprehensive construction management services including contract administration, coordination of multiple construction contracts, submittal review, resident project representative, inspections and testing, public outreach and information, progress payment requests, and project close-out. Anticipated services include:

1. **Constructability Review and Report:** During the Final Design Phase, review the draft Contract Documents, including plans, specifications, front-end documents, schedules, and cost estimates. Prepare a report advising the County of the CM consultant's opinion of suggested revisions to the Contract Document and bid packages that will optimize the bid climate for receiving the most qualified and cost competitive bidders, reduce the potential for change orders, minimize potential delays and conflicts, provide flexibility for material procurement, and minimize potential risks to the project. The report should be formatted to facilitate the design team's review and incorporation into the final Contract Documents. Attend a design review meeting and provide a detailed presentation of the recommendations in the report to the project management and design teams.
2. **Storm Water Pollution Prevention Plan (SWPPP):** During the Final Design Phase, coordinate with the designer and Regional Water Quality Control Board to develop a project wide SWPPP to meet the requirements of the current Construction General Storm Water Permit. Furnish the SWPPP details to the designer to be included in the Contract Documents, in bid items, specifications, and drawings for implementation by the contractors. It is anticipated that the CM consultant will complete the role of Qualified SWPPP Developer (QSD). Each of the multiple contractors anticipated on the project will be required to complete and implement the details of the SWPPP applicable to the specifications for their portion of the work as the Qualified SWPPP Practitioner (QSP).
3. **Bidding assistance:** During the Bidding Phase, attend up to five pre-bid meetings and up to five bid openings. Assist the County and design team in evaluating and reviewing bid proposals, subcontractors, suppliers, and requests for use of substitute and "or-equal" materials and equipment. Assist the County with any negotiations with or review of prospective contractors.
4. **Construction management:** Provide full service construction management services for up to five separate construction contracts for the project collection system. The following summary of responsibilities includes scope of work items and tasks that are planned for the CM consultant and will be developed as additional tasks in the final agreement, based on the

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details proposed by the CM consultant. The general scope of work requirements are included in the draft Agreement for Engineering Services (Attachment A).

- a. Administration of the Construction Contracts, acting as the County's representative in dealing with the contractor, to ensure the completion of the work in accordance with the Construction Contracts.
- b. Services of Resident Project Representative (s) to be on-site for the daily observation of the contractors' work to ensure that the work is proceeding in accordance with the Contract Documents and for coordination of construction management, testing, and inspection activities. The CM consultant may utilize more than one Resident Project Representative due to the scope of the overall construction project and number of construction contracts. Detailed daily reports of all of the contractor's activities shall be prepared in sufficient detail to document actual production rates and estimate construction costs.
- c. Services of qualified inspectors and testing technicians to perform all inspections, tests, and approvals required at the site and at the place of manufacture or fabrication. Written testing and inspection reports, certifications, or approvals shall be submitted.
- d. Reviewing and determining the acceptability of schedules and plans required to be submitted by the contractor, including progress schedule, submittal schedule, schedule of values, staking request schedule, project safety plan, hazardous materials handling plan, trench safety and shoring plan, and traffic control plan.
- e. Establish construction baselines and benchmarks, including construction staking, necessary for the contractor to complete the work to the lines and grades shown in the drawings. (A record of survey of the monumentation in the construction area, located at most intersections, is included in the Reference Material provided with this RFP.)
- f. Recommend and prepare change orders for contractor or County initiated changes or extra work. The recommendation shall include the CM consultant's own independent cost estimate and change order justification. As appropriate, request the designer to review the proposed changes.
- g. Coordinate, schedule, and chair regular progress meetings with the contractor and County project management team regarding construction issues, progress, and performance.
- h. Establish a dispute review committee, comprised of senior staff of the CM consultant, to independently and impartially review disputes by the contractor with the County and/or designer. Provide formal written recommendations to the County for resolving the dispute.

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- i. Develop and implement a project specific safety plan for all non-contractor personnel who visit the construction site. Anticipated personnel include the CM consultant and sub-consultant, County staff and consultants, environmental monitors, elected officials, and other agency staff.
- j. Documentation of compliance with funding agency (USDA and State Water Board) requirements including “buy America” provisions, labor compliance (Davis-Bacon Act), disadvantaged business enterprise (DBE), and American Recovery and Reinvestment Act (ARRA).
- k. Documentation of compliance with environmental permitting and mitigation measures in accordance with the requirements of the environmental documents and regulatory permits.
- l. On-site staff shall participate in environmental and safety education trainings required for the project.
- m. Maintain a hard copy file of the construction drawings at the CM consultant’s local office that is regularly updated with mark-ups of all field changes and as-built conditions for the purpose of preparing a final set of Record Drawings. Maintain a conformed copy of the construction contracts and specifications at the CM consultant’s local office that is regularly updated with all approved modifications and changes.
- n. Establish, utilize and maintain a project file database system, with a geographic information systems (GIS) user interface for use by the County, designer, CM consultant, and prime and sub-contractors. The file database shall contain all documents relative to the construction phase including drawings, specifications, amendments, daily reports, requests for information, change orders, submittals, shop drawings, correspondence, permits, and other, and shall be accessible via a GIS interface that provides links to all stored documents relative to a specific location or site within the project area. Maintain a hard-copy log of the project file database.
- o. Designate a public information officer who will serve as the single point of contact for public inquiries, comments, complaints, and disputes, and for contact with and statements to the press. The designee shall keep a detailed log of contacts with the public and press. Issues with the public that cannot be resolved within a reasonable number of contacts should be referred to the County’s project management team for resolution. A phone number and email address for contacting the public information officer shall be prominently displayed on public information materials.
- p. Establish and maintain a project construction information web page for access by the general public in order to effectively share project information with the community. The

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site shall inform the community of traffic delays and access restriction expected for the current day and for expected impacts for the next several days and shall include general information about the current progress and planned future schedule. The site shall be updated by the CM consultant on a daily basis with information obtained directly from the contractors or from the CM consultant's observation of the work. The web page shall include a map interface, such as Google or Yahoo maps, to graphically depict active and planned construction impact areas.

- q. Develop and implement procedures for start-up, testing, and acceptance of the completed work for both individual components and as a complete system.
 - r. Coordinate and lead any project close-out negotiations with the contractor and provide written verification that all payments, lien releases, and final change orders have been completed.
5. Post-Construction: Prepare and submit a final Construction Summary Report, compiled to include all construction contracts. The report shall be a well organized record of the completed system and include the Record Drawings prepared by the CM consultant, operations manuals furnished by the contractor, and any third party agreements related to the collection system and its construction or operations. Visit the project, with the County and designer, to observe any apparent defects that may be discovered, and at the end of the warranty period make recommendations regarding any replacements or corrections required.

Proposal Format

Proposals shall be limited to a maximum of twenty (20) pages, plus attachments such as resumes, reference information, and fee estimate.

1. Project Title: Los Osos Wastewater Project – Collection System Construction Management Services
2. Applicant or Firm Name
3. Firm and Project Team Qualifications
 - a. Type of organization, size, professional registration and affiliations.
 - b. Names and qualifications of key personnel to be assigned to this project. Include company affiliations, credentials, and years of related experience. The construction manager should have a minimum of twenty years of experience and each Resident Project Representative should have a minimum of ten years of experience in the field on related construction activity on behalf of an owner, CM consultant, or contractor.
 - c. Organizational chart of proposed project team along with a description of tasks and responsibility of each team member.

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- d. Anticipated availability of each member of the Project team.
- e. Specific experience of construction manager, Resident Project Representative, and selected team members with regard to construction management services for similar projects.
- f. Name, address, and telephone numbers of project manager to whom correspondence should be addressed.
- g. Qualifications of sub-consultants or joint venture firm, if appropriate.

4. Experience

Provide descriptions of representative projects where the proposed project team, or team member, has performed similar services. Information to be provided will include the following:

- a. Project name and location;
- b. Summary of project;
- c. Your firm 's role in project;
- d. Role of the proposed construction manager, Resident Project Representative, and other key team members for this project;
- e. Reference and contact information for client;
- f. References and contact information for other team members (examples: testing and inspection, environmental, geotechnical, and survey);
- g. Reference and contact information for the contractor;
- h. Initially authorized fee and final fee;
- i. Initial authorized bid amount, cost of authorized change orders as percent of original bid amount, and final construction cost, and;
- j. Dates of construction start and completion.

5. Project Understanding and Approach

The County has identified several issues as critical to successful administration of the Los Osos Wastewater Project Collection System construction. The proposal should address the following issues, at a minimum, and others that the proposer believes to be critical to the project design and delivery.

- a. Approach to evaluating the bid packages and bidding climate to recommend a strategy that will result in the most competitive construction bids.
- b. Understanding of requirements and challenges for the project and approach to completing a constructability review that will recommend methods to allocate or mitigate risks to the project.

Los Osos Wastewater Project – Collection System Construction Management Services

- c. Approach to change management – documentation of potential change orders and claim issues and timely notification to the County.
- d. Planned number of Resident Project Representatives to be assigned to the project and approach to the daily construction management activities of the multiple construction contracts.
- e. Approach to communications and document management between the designer, CM consultant, County, contractor, and other agencies.
- f. Approach to public outreach and communications.
- g. Approach to resolving project disputes involving the designer, contractor, or County over design intent, unforeseen changes, utility conflicts, schedule delays, and other issues.
- h. Overall approach to the coordination and management of the construction activities.

6. Fee Estimate

A fee estimate for the entire scope of work anticipated shall be provided to the County by the proposer. The fee estimate shall include preliminary cost details for the major components of each task listed above, or others proposed by the CM consultant, with corresponding resource hours and rates consistent with the proposed schedule.

Consultant Selection Criteria

A selection panel consisting of County staff and program management staff will evaluate Proposals. The County may change the consultant selection criteria without notice, and may consider other criteria it deems relevant. The anticipated selection criteria are:

Number	Description	Weight
1	Firm's experience, qualifications and references	10%
2	Experience, qualifications and references of the proposed project team	30%
3	Approach to bidding strategy and constructability review	20%
4	Approach to the daily construction management of the overall project	20%
5	Approach to communications and document management	20%

Attachments

Attachment A: Draft Agreement for Professional Engineering Services

List of Reference Material

The following is a list of the reference material available to the proposer. Documents are provided with this RFP on CD-ROM and also on the County's Purchasing web site referenced on page 1 of this RFP.

- Project Coastal Development Permit (CDP) and Conditions
- Summary of CEQA/NEPA Environmental Mitigation Measures
- State Water Resources Control Board Resolution 2011-0009
- USDA Funding Approval Letter of Conditions; August 30, 2010
- Record of Survey #2005-001, Los Osos Area Monuments, Joseph T. Morris LS 6192; Recorded September 15, 2005
- Viable Project Alternatives: Fine Screening Analysis; August 2007
- LOCS D Project Documents: Note: These documents are provided for reference only, the County's design team is preparing a new set of Contract Documents for the collection system construction.
 - LOCS D, Los Osos Wastewater Project Drawings (Volume IV and V); February 2004 (PDF version).
 - LOCS D, Los Osos Wastewater Project Technical Specifications (Volume IIA and IIB); February 2004 (PDF version)
 - LOCS D, Los Osos Wastewater Project Addendum Nos. 1 – 6; March 2004 through February 2005 (PDF version)
 - LOCS D Revised Project Report Design Documents; March 24, 2003 (Design Criteria)
 - LOCS D Standard Specifications; October 30, 2001 (Design Criteria)

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification. This document should be adapted to the particular circumstances of the contemplated Project and the Controlling Laws and Regulations.

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL ENGINEERING SERVICES**

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE



and

Issued and Published Jointly by



AMERICAN COUNCIL OF ENGINEERING COMPANIES

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AMERICAN SOCIETY OF CIVIL ENGINEERS

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NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

This Agreement has been prepared for use with the Standard General Conditions of the Construction Contract (EJCDC C-700, 2007 Edition). Their provisions are interrelated, and a change in one may necessitate a change in the other. For guidance on the completion and use of this Agreement, see EJCDC User's Guide to the Owner-Engineer Agreement, EJCDC E-001, 2009 Edition.

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ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL ENGINEERING SERVICES

THIS IS AN AGREEMENT effective as of _____, 2011 ("Effective Date") between

County of San Luis Obispo ("Owner") and _____ ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows: Los Osos Wastewater Project Collection System, Los Osos, California

("Project").

Engineer's services under this Agreement are generally identified as follows:

PREAMBLE

This Agreement is based upon the "Agreement Between Owner and Engineer for Professional Services" form prepared by the Engineers Joint Contract Documents Committee (EJCDC). Since one of the requirements for users of this form is that all additions and changes to, and deletions from, the form be clearly shown, the original signed version of this Agreement shows all of the additions and changes to, and deletions from, the EJCDC form that the parties have agreed to.

Owner and Engineer further agree as follows:

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibits A and D.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.
- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner (hereafter collectively “Owner Information”) to Engineer pursuant to this Agreement. Engineer may use such Owner Information requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, unless the Engineer becomes aware of any information that is inconsistent with any Owner Information. In such event, the Engineer shall promptly notify the Owner of such inconsistent information and advise Owner as to how the inconsistency should be addressed or reconciled.

A list of all such Owner Information is listed in Appendix 1 to Exhibit B. Owner shall respond in writing to any written requests of Engineer that additional information be considered “Owner Information” under this Agreement within 10 business days of receiving Engineer’s written request. The Owner Information list can only be modified by the Owner’s written acceptance of such a written request by the Engineer. If Owner does not provide a written response within said 10-day period, the request shall be deemed to have been denied by the Owner.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable. Engineer shall carry out its responsibility in a timely manner so as to not delay Engineer’s performance of its services.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer’s services is impaired, or Engineer’s services are delayed or suspended, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer’s services, and the rates and amounts of Engineer’s compensation, shall be adjusted equitably.

- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required within this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, ~~as its sole remedy,~~ to the recovery of direct damages, ~~if any,~~ resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any undisputed payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
1. Amounts due Engineer will accrue interest ~~be increased~~ at the rate of ~~1.0~~ 0.5% ~~(one half of one percent)~~ (one half of one percent) per month ~~(or the maximum rate of interest permitted by law, if less)~~ from said thirtieth day; and
 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions:* If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement (other than an action affecting a state or federal income tax rate), then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.
- E. *Continuing Obligation to Perform:* Under no circumstances shall a disputed invoice be the grounds for the Engineer's delay or refusal to timely perform any services contemplated by this Agreement.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. ~~Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.~~
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Subject to the requirement that services be performed in a manner consistent with Exhibit A, Engineer may employ or hire such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner. Owner shall be provided prior notice of the Engineer's use of any Consultant not listed in Appendix 1 of Exhibit A for services related

to this Agreement whenever there is a reasonable likelihood that the total sums paid by Engineer to said Consultant will exceed \$25,000. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the Owner and any Consultant, and no use of any Consultants by Engineer shall relieve the Engineer of its responsibilities and obligations hereunder. The Engineer agrees to be as fully responsible to the Owner for the acts and omissions of its Consultants and of persons either directly or indirectly employed or hired by any of them as it is for the acts and omissions of persons directly employed by the Engineer. The Engineer's responsibility to pay its Consultants is an independent obligation that is separate and distinct from the Owner's responsibility to make payments to the Engineer under this Agreement.

- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, ~~specialty contractors, manufacturers, suppliers, and the publishers of technical standards.~~ Notwithstanding the foregoing, services provided by Engineer, including, but not limited to, any Documents provided or furnished by Engineer to Owner, shall satisfy the standard of care set forth in Paragraph 6.01.A.
- E. Compliance with Laws and Regulations, and Policies and Procedures:
1. Engineer and Owner shall comply with applicable Laws and regulations.
 2. Prior to the Effective Date, Owner provided to Engineer in writing any and all policies and procedures of Owner applicable to Engineer's performance of services under this Agreement provided to Engineer in writing. The title(s) of said policies and procedures are included in the list of Owner Information in Appendix 1 to Exhibit B. Engineer shall comply with such policies and procedures, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 3. ~~This Agreement is based on Laws and Regulations and Owner provided written policies and procedures as of the Effective Date. Changes after the Effective Date to these Laws and Regulations, or to Owner-provided written policies and procedures, may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation.~~
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition), and as amended by the Owner's supplementary conditions, unless the Owner notifies the

- Engineer that, subject to Agency approval, other general conditions shall be used. both parties mutually agree to use other general conditions by specific reference in Exhibit J.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Contractor to comply with Laws and Regulations applicable to such Contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide, or have any responsibility for, surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer's own agents, employees, and Consultants.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.
- M. The Engineer accepts the relationship of trust and confidence established with Owner by this Agreement, and covenants with the Owner to furnish the Engineer's reasonable skill and judgement in furthering the interests of the Owner. The Engineer shall use its best efforts to perform in an expeditious and economical manner consistent with the interests of the Owner.

6.02 *Design Without Construction Phase Services* DELETED

A. ~~Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction and Owner assumes all responsibility for the application and interpretation of the Contract Documents, review and response to Contractor claims, contract administration, processing Change Orders, revisions to the Contract Documents during construction, construction surety bonding and insurance requirements, construction observation and review, review of payment applications, and all other necessary Construction Phase engineering and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase engineering or professional services except for those services that are expressly required of Engineer in Exhibit A, Paragraph A1.05.~~

6.03 *Use of Documents*

A. All Documents, information, and materials of any and every type prepared by the Engineer pursuant to this Agreement shall be property of the Owner. Such Documents shall include but not be limited to data, Drawings, Specifications, reports, Record Drawings, estimates, summaries, change orders, responses to Contractor requests, and such other information and materials as may have been accumulated by the Engineer in performing the 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 outside the scope of this Project which are not related to the scope of services described under this Agreement. ~~are instruments of service in respect to this Project, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.~~

B. ~~Either party to this Agreement may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, or electronic media are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern. If the parties agree to other electronic transmittal procedures, such are set forth in Exhibit J. Consensus DOCS 200.2 Electronic Communications Protocol Addendum may be attached to Exhibit J and become a part of this Agreement.~~

C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. Owner may make and retain copies of Documents for information and reference in connection with use on the Project by Owner. ~~Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents and subject to the following limitations: (1) Owner acknowledges that (1) such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.~~
- F. For purposes of this Article 6.03, any of the following shall constitute Engineer's written acknowledgement that a Document has been completed by the Engineer:
1. Document bears the signature and the seal or stamp of a registered professional engineer employed by Engineer. The endorsement and signature by a registered engineer of any Documents, including plans, calculations, specifications, reports, and other data, shall be in accordance with applicable provisions of the laws of the State of California.
 2. Documents for general contract administration that are prepared and signed by the Engineer or Resident Project Representative for the Construction Phase services set forth in Appendix A and Appendix D, including, but not limited to, recommendations, testing and inspection reports, daily reports, clarifications, interpretations, determinations, change orders, responses to Contractor requests, approvals of Contractor submittals, notices, transmittals, and certificates.
- G. For Documents completed by Consultant(s) hired by Engineer, the Consultant and Engineer shall both provide written acknowledgement of completion of the Document.
- H. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.
- I. Notwithstanding any provision to the contrary contained in this Agreement, Engineer shall retain sole ownership to its preexisting information including but not limited to computer programs, software, standard details, figures, templates and specifications. Provided,

however, that any such preexisting information shall be provided to the Owner to the extent Owner needs to use such preexisting information to fully read, understand or use any Documents.

6.04 Insurance

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies and as loss payees on any property insurance policies carried by Owner which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and Engineer and to each other additional insured (if any) to which a certificate of insurance has been issued.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.
- H. Any Consultant agreement in excess of \$25,000 entered into by Engineer relating to this Agreement shall incorporate all the provisions in this Agreement and shall require the Consultant to comply with the insurance requirements contained in this Article 6.04 and Exhibit G.

6.05 *Suspension and Termination*

A. Suspension:

1. By Owner: Owner may suspend the Project upon seven days written notice to Engineer. If the Project is suspended by the Owner for more than 30 days and is then resumed, the Engineer's compensation may be equitably adjusted, as mutually agreed, using Exhibit K, Amendment to Owner Engineer Agreement, to provide for expenses incurred in the interruption and resumption of Engineer's services. Said suspension period shall end upon Engineer's receipt of Owner's written notice that the suspension is over. Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
2. By Engineer: Engineer may, after giving seven-thirty days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer the Engineer's ability to provide any services whatsoever under the Agreement has been substantially impaired for more than 60 days. Said suspension period shall end once the factors substantially impairing the Engineer's ability to provide any services have been alleviated to a degree that allows Engineer to resume providing services under the Agreement.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon ~~seven~~30 days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon ~~seven~~30 days written notice if the Engineer's services for the Project are delayed or suspended for more than ~~90~~180 days for reasons beyond Engineer's control.
 - 3) ~~Engineer shall have no liability to Owner on account of such termination.~~
 - c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a or B.1.b (or 6.09.E., infra.) if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the

same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

- a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph ~~Article~~ 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.E.
2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.05.D.1, to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.

6.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically

stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.08.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

6.09 *Environmental Condition of Site*

- A. Owner has disclosed to Engineer in writing the existence of all ~~known and suspected~~ Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other Constituents of Concern known and suspected by Owner located at or near the Site, including type, quantity, and location.
- B. Owner represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify

and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall be entitled to have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both. ; or (2) terminating this Agreement for cause on 30 days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner" "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.10 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by California Civil Code Section 2782.8 and any other applicable law, Engineer shall indemnify, defend and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from reasonable claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, or relating to, the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent, reckless or willful misconduct act or omission of the Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."
- ~~B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.~~
- B. Any Consultant agreement in excess of \$25,000 entered into by Engineer relating to this Agreement shall incorporate all the provisions in this Agreement and shall require the Consultant to comply with the indemnification requirements contained in this Article 6.10 and Exhibit I.
- C. *Environmental Indemnification:* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals, and all court, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, or damage is attributable to bodily injury,

sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.

- D. *Percentage Share of Negligence:* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- E. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.

6.11 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. *Hierarchy of Provisions:* To the extent there is any inconsistency between any language in the body of this Agreement and the Exhibits attached hereto, the language in the body of this Agreement shall take precedence over any inconsistent language in any such Exhibit.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 2. *Agency* – The Rural Utilities Service or any designated representative of Rural Utilities Service, including USDA, Rural Development.
 3. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in ~~Paragraph~~ Article 8.01 and any duly executed amendments.
 4. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 6. *Construction Contract* – The entire and integrated written ~~a~~ Agreement between Owner and Contractor concerning the Work.
 7. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by ~~Engineer~~ Designer. Construction Cost does not include costs of services of Designer, Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner’s costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 8. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (“CERCLA”); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (“RCRA”); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; and (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.
10. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
11. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
12. *Designer* – The engineer of record for the preparation of the Drawings, Specifications, and other items in the scope of work under the Agreement for Professional Engineering Services effective May 17, 2011, between the Owner and Camp Dresser & McKee, Inc.
13. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, estimates, summaries, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
14. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
15. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
16. *Engineer* – The individual or entity named as such in this Agreement.
17. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
18. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
19. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
20. *PCBs* – Polychlorinated biphenyls.

21. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
22. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
23. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
24. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as ~~an Additional Service~~ and based ~~solely on the Resident Project Representative's and Contractor's record copies~~ of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer, ~~and with annotations~~ ed by Contractor to show changes made during construction.
25. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
26. *Resident Project Representative* – The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any Resident Inspector, assistants or field staff of Resident Project Representative agreed to by Owner. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
27. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
28. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
29. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
30. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
31. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

32. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
33. *Supplier* – A manufacturer, fabricator, supplier, distributor, material_man, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
34. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Designer, Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.
35. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer’s Services.
- B. Exhibit B, Owner’s Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Resident Project Representative
- E. Exhibit E, Notice of Acceptability of Work
- F. Exhibit F, Construction Cost Limit, is intentionally omitted and not included as part of this Agreement.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability, is intentionally omitted and not included as part of this Agreement.

- J. Exhibit J, Special Provisions, is intentionally omitted and not included as part of this Agreement.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Article 8.04:
 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

8.05 *Federal Requirements:*

- A. Agency Concurrence. Signature of a duly authorized representative of Agency in the space provided on the signature page of EJCDC form E-500 hereof does not constitute a commitment to provide financial assistance or payments hereunder but does signify that this Agreement conforms to Agency's applicable requirements. This Agreement shall not be effective unless the Funding Agency's designated representative concurs. No amendment to this Agreement shall be effective unless the Funding Agency's designated representative concurs.

- B. *Audit and Access to Records.* Owner, Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Engineer which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Engineer shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- C. *Restrictions on Lobbying.* Engineer and each Consultant shall comply with Restrictions on Lobbying if they are recipients of engineering services contracts and subcontracts that exceed \$100,000 at any tier under a Federal loan that exceeds \$150,000 or a Federal grant that exceeds \$100,000. If applicable, Engineer must complete a certification form on lobbying activities related to a specific Federal loan or grant that is a funding source for this Agreement. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other applicable award. Each tier shall disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Certifications and disclosures are forwarded from tier to tier up to the Owner. Necessary certification and disclosure forms shall be provided by Owner.
- D. *Suspension and Debarment.* Engineer certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency. Engineer will not contract with any Consultant for this Project if it or its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Necessary certification forms shall be provided by the Owner. The Engineer will complete and submit a form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – lower tier transactions" to the Owner who will forward it the USDA, Rural Development processing office.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

ENGINEER:

COUNTY OF SAN LUIS OBISPO

By: _____

By: _____

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

Title: _____

Date
Signed: _____

Date
Signed: _____

ATTEST:

Engineer License or Firm's
Certificate No. _____

By: _____

State of: _____

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

Date
Signed: _____

APPROVED AS TO FORM AND LEGAL EFFECT:

WARREN R. JENSEN
County Counsel

By: _____

Title: Deputy County Counsel

Date
Signed: _____

AGENCY CONCURRENCE:

As lender or insurer of funds to defray the costs of this Contract, and without liability for any payments thereunder, the Agency hereby concurs in the form, content, and execution of this Agreement.

By: _____

Type
Name: _____

Date
Signed: _____

Address for giving notices:

Address for giving notices:

San Luis Obispo Co. Dept. of Public Works
County Government Center, Rm 201
San Luis Obispo, CA 93408

Designated Representative (Paragraph 8.03.A):

Designated Representative (Paragraph 8.03.A):

John Waddell
Title: Project Manager
Phone Number: 805-781-5252
Facsimile Number: 805-781-1229
E-Mail Address: jwaddell@co.slo.ca.us

Title: _____
Phone Number: _____
Facsimile Number: _____
E-Mail Address: _____

DRAFT

This is **EXHIBIT A**, consisting of ___ pages, referred to in and part of the **Agreement ~~between Owner and Engineer for Professional Engineering Services~~** dated _____, 2011.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

The Agreement requires Engineer to provide Owner with construction management services for the construction of the Los Osos Wastewater Project Collection System (the "Project"), including, but not limited to, general contract administration, Resident Project Representative, and independent testing and inspection services.

The Project consists of a gravity collection system covering four areas of the Los Osos community (Zones A, B, C, and D). The major components of the Project include the following improvements: approximately 45 miles of pipelines; nine major pump stations; 12 pocket pump stations; force mains to convey raw wastewater to a new wastewater treatment plant (WWTP) location near the Los Osos Mortuary; recycled water lines with turn-outs to various reuse sites; and a disposal leachfield at the Broderson site. The planned contracting approach includes four area bid packages (one for each zone) and one pump supply contract (5 bid packages total) and the Owner reserves the right to reduce the number of bid packages as it sees fit.

Engineer shall provide Basic and Additional Services as set forth below.

PART 1 – BASIC SERVICES

A1.01 General Provisions

- A. Engineer's Assigned Personnel: All work performed under this Agreement shall be performed by the Engineer's personnel identified in the Organizational Chart, attached as Appendix 1 to this Exhibit A. Any changes to the key personnel designated on the Organization Chart must be approved in writing by the Owner.
- B. The Engineer has prepared a Project schedule, with milestone dates for deliverables, for each task and phase set forth in Exhibit A. The schedule is attached as Appendix 2 to this Exhibit A. Engineer shall maintain the schedule throughout all phases of services and update as necessary to reflect changes in scope or schedules.
- C. At times Engineer may need to seek appropriate review of a matter by the Designer before the Engineer takes action on the item. Engineer must use its own professional judgement as to when consultation with the Designer is appropriate. Engineer shall keep Owner informed of Engineer's communications with the Designer, and shall copy Owner with all written communications between Engineer and Designer. If Engineer estimates that the Designer will need to spend more than 4 staff hours to provide Engineer the review and/or feedback needed by Engineer on a particular matter, and if the circumstances allow sufficient time to seek Owner's pre-approval of the Engineer's request for such review by Designer, Engineer shall seek such pre-approval of Owner before requesting review by Designer. If Owner does not respond to such a request by Engineer within 2 working days, the request shall be deemed approved.

D. Provided, as Appendix 3 to this Exhibit A, a list of “Anticipated Construction Duties of Designer and Engineer” as a general summary of the Designer’s duties, relative to the duties of the Engineer during and after the Construction Phase under this Agreement.

~~A1.01 Study and Report Phase DELETED~~

~~A1.01 Preliminary Design Phase DELETED~~

A1.02 Final Design Phase

A. Upon written authorization from Owner, Engineer shall:

1. Review Drawings and Specifications and other bidding documents prepared by the Designer and prepare and furnish a Constructability Review Report for review by the Owner. The Constructability Review Report shall:
 - a. Provide specific recommendations for modifications or additions to the Contract Documents that are expected to increase the efficiency of construction, reduce the Construction Costs, mitigate risks for unplanned costs, provide for increased safety or public convenience, and other changes that will facilitate the Work.
 - b. Advise Owner and Agency of any adjustment recommended by the Engineer to the opinion of probable Construction Cost developed by the Designer.
 - c. Be prepared and furnished to Owner within _____ calendar days of authorization to proceed with this phase.
2. Prepare a project-wide temporary storm water pollution prevention plan (SWPPP) or qualified SWPPP developer (QSD) plan to meet the requirements of the current Construction General Storm Water Permit and furnish to Owner the details necessary for the Designer to incorporate the requirements of the SWPPP into the bid items, Specifications, and Drawings in the Contract Documents within _____ calendar days of authorization to proceed with this phase.
3. Prepare a detailed Project Management Plan to be implemented during the Construction Phase of the Project. The Project Management Plan shall:
 - a. Include provisions for document control and sharing, public outreach, meeting schedule, regular progress reporting details and schedule, roles of each entity involved during construction, utility coordination, safety procedures and training schedule, quality control plan and procedures, and procedures for ensuring compliance with environmental and funding agency conditions established for the Project.
 - b. Be prepared and furnished to Owner within _____ calendar days of authorization to proceed with this phase.
4. Perform or provide the following additional Final Design Phase tasks or deliverables: [here list any such tasks or deliverables]

- ~~A. After acceptance by Owner of the Preliminary Design Phase documents, revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, and any other deliverables subject to any Owner directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from Owner, Engineer shall: Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.~~
- ~~1. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities.~~
 - ~~2. Advise Owner of any adjustments to the opinion of probable Construction Cost known to Engineer.~~
 - ~~3. Perform or provide the following additional Final Design Phase tasks or deliverables:~~
 - ~~4. Prepare and furnish bidding documents for review by Owner, its legal counsel, and other advisors, and assist Owner in the preparation of other related documents. Within ___ days of receipt, Owner shall submit to Engineer any comments and, subject to the provisions of Paragraph 6.01.G, instructions for revisions.~~
 - ~~5. Revise the bidding documents in accordance with comments and instructions from the Owner, as appropriate, and submit ___ final copies of the bidding documents, a revised opinion of probable Construction Cost, and any other deliverables to Owner within calendar days after receipt of Owner's comments and instructions.~~
- B. Engineer's services under the Final Design Phase will be considered complete on the date when the submittals required by this Paragraph A1.023-A-6 have been delivered to Owner.
- C. In the event that the Work designed or specified by Engineer is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), Owner and Engineer shall, prior to commencement of the Final Design Phase, develop a schedule for performance of Engineer's services during the Final Design, Bidding or Negotiating, Construction, and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- D. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Agreement is five (5). If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Agreement.

A1.03 ~~Bidding or Negotiating Phase~~

- ~~A. After acceptance by Owner of the bidding documents and the most recent opinion of probable Construction Cost as determined in the Final Design Phase, and u~~
- A. Upon written authorization by Owner to proceed, and concurrence by Agency, Engineer shall:
- ~~1. Assist Owner in advertising for and obtaining bids or proposals for the Work and attend pre-bid conferences. (Up to five pre-bid conferences are assumed for general budget information purposes only, the actual work performed will be based on Standard Hourly Rates and Reimbursable Expenses in Exhibit C.) ; and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre bid conferences, if any, and receive and process contractor deposits or charges for the bidding documents.~~
 - ~~2. Issue addenda as appropriate to clarify, correct, or change the bidding documents.~~
 2. Provide information or assistance as needed by Owner in the course of evaluating, reviewing, or responding to submittals by any negotiations with prospective contractors. (Up to five prime contracts for the work are assumed for general budget information purposes only, the actual work performed will be based on Standard Hourly Rates and Reimbursable Expenses in Exhibit C.)
 3. Consult with Owner as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by prospective contractors for those portions of the Work as to which such acceptability is required by the bidding documents.
 - ~~4. If bidding documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders in a manner consistent with the bidding documents. , but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.~~
 5. Attend the Bid openings, prepare Bid tabulation sheets, and assist Owner in evaluating Bids or proposals. and in assembling and awarding contracts for the Work. (Up to five bid packages are assumed for general budget information purposes only, the actual work performed will be based on Standard Hourly Rates and Reimbursable Expenses in Exhibit C.)
 6. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables: [here list any such tasks or deliverables]
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase. or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Agreement).

A1.04 Construction Phase

- A. Upon successful completion of the ~~Bidding and Negotiating~~ Phase, and upon written authorization from Owner to proceed with Construction Phase work, and concurrence by Agency, Engineer shall:
1. *General Administration of Construction Contract(s):* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer as assigned in the Construction Contract shall not be modified, except as Engineer may otherwise agree in writing. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing. Up to five prime contracts for the work are assumed. Engineer shall conduct the General Administration of the Construction Contracts, coordinate the activities of the various prime Contractors, and complete the Construction Phase tasks with each Contractor.
 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. Engineer shall advise, notify, and report to Owner all matters which RPR is required to advise, notify, or report to Engineer under Exhibit D.
 3. *Inspectors and Selecting Independent Testing Laboratory:* Employ and provide the services of inspectors and independent testing laboratory to perform all such inspections, tests, and approvals of samples, materials, and equipment as deemed reasonably necessary or required by Laws and Regulations or the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Assist Owner in the selection of an independent testing laboratory to shall perform the services identified in Paragraph A1.04.A.13. Exhibit B, Paragraph B2.01.0.
 4. *Pre-Construction Conference:* Participate in a Pre-Construction Conference(s) prior to commencement of Work at the Site.
 5. *Schedules and Plan Submittals:* Receive, review, and determine the acceptability of any and all schedules and plans that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, ~~and~~ Schedule of Values, staking request schedule, project safety plan, hazardous materials handling plan, trench safety and shoring plan, and traffic control plan.
 6. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.

7. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
- a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified ~~design~~ engineering professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, ~~if any,~~ are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, ~~if any.~~ Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. Give prompt written notice to Owner whenever Engineer observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that may affect the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
 - c. The purpose of Engineer's visits to, and representation by the Resident Project Representative, ~~if any,~~ at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified ~~design~~ engineering professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Engineer shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.
8. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) will not produce a completed Project that conforms to the Contract Documents, or (c) will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.

9. *Clarifications and Interpretations; Field Orders:* Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Engineer may issue field orders authorizing minor variations in the Work from the requirements of the Contract Documents.
10. *Change Orders and Work Change Directives:* Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.
11. *Shop Drawings and Samples:* Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
12. *Substitutes and "or-equal":* Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor and notify Owner of acceptance of substitutes and "or-equals", but subject to the provisions of Paragraph A2.02.A.2 of this Exhibit A.
13. *Inspections and Tests:* Require such ~~special~~ inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ~~Engineer's shall review of such certificates and testing results to independently determine will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, results, or approvals comply with the requirements of the Contract Documents. Engineer shall be entitled to rely on the results of such tests.~~
14. *Disagreements between Owner and Contractor:* Render formal written ~~decisions~~ recommendations to the Owner, for Owner's final decision, on all claims and notices of potential claim ~~duly submitted~~ issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work; review each notice of potential claim ~~or duly submitted~~ claim by ~~Owner or Contractor,~~ and in writing either recommend denial of ~~deny~~ such claim in whole or in part, or recommend approval of ~~such claim, or decline to resolve such Claim if Engineer in its discretion concludes that to do so would be inappropriate.~~ In rendering such decisions, Engineer shall be fair and not show partiality to Owner or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

15. *Applications for Payment:* Based on Engineer's observations as an experienced and qualified ~~design~~ ~~professional~~ engineer and on review of Applications for Payment and accompanying supporting documentation:

- a. Determine the amounts that Engineer recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe Contractor's Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of Contractor's Work (subject to any subsequent adjustments allowed by the Contract Documents). Engineer's recommendation of payment shall include the proper withholding required by any stop notices or other liens which Engineer is aware of at the time of the recommendation.
- b. By recommending any payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control Contractor's Work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the Work in progress, materials, or equipment has passed to Owner free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.

16. *Contractor's Completion Documents:* Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under Paragraph A1.045.A.11, and transmit the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ~~The extent of such review by Engineer will be limited as provided in Paragraph A1.045.A.11.~~

17. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner, Designer, and Contractor, Engineer shall visit the Project to determine if the Work is substantially complete. If after considering any objections of concurrence by Owner, Engineer considers the Work substantially complete, Engineer shall deliver a certificate of Substantial Completion to Owner and Contractor, using form EJCDC C-625 (2009) with final content pre-approved by the Owner.
18. *Additional Tasks:* Perform or provide the following additional Construction Phase tasks or deliverables:
- a. Services required to determine and certify that to the best of the Engineer's knowledge and belief all iron, steel, and manufactured goods referenced in the plans, specifications, bidding documents, and change orders requiring design revisions are either produced in the United States or are the subject of a waiver according to the requirements of Section 1605 of the American Recovery and Reinvestment Act as approved by the Secretary of Agriculture and services required to determine to the best of the Engineer's knowledge and belief that approved substitutes, equals, and shop drawings are also either produced in the United States or are the subject of a waiver according to the requirements of Section 1605 of the American Recovery and Reinvestment Act as approved by the Secretary of Agriculture.
 - b. Services required in administering a labor compliance program to determine and certify that to the best of the Engineer's knowledge and belief all labor and payroll provisions of the Davis-Bacon Act and the American Recovery and Reinvestment Act referenced in the Contract Documents are strictly followed. Services include, but are not limited to, review of all certified payrolls or timesheets of contractors and their subcontractors, random interviews of employees, and submittal of certified payrolls for each application for payment.
 - c. Prepare Record Drawings based on the documents defined in Article 7.01.24, and deliver complete Record Drawings to the Owner. Engineer shall not rely upon any documents provided by the RPR or Contractor which the Engineer has reason to believe are inaccurate or incomplete.
 - d. *[To Be Developed...] [Here list any such tasks or deliverables]*
19. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of Paragraph A1.045.A.15.b) to the best of Engineer's knowledge, information, and belief and based on the extent of the services provided by Engineer under this Agreement.

- B. *Duration of Construction Phase:* The Construction Phase will commence upon Owner's written authorization to proceed with Construction Phase work with the execution of the first Construction

~~Contract for the Project or any part thereof and will terminate upon Owner's written acceptance and concurrence of a recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Engineer's Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative services; if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in each of the Construction Contracts.~~

- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.05 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase Engineer shall:

1. Together with Owner and Designer, visit the Project to observe any apparent defects in the Work, assist Owner in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.
2. Together with Owner or Owner's representative, Designer, and Agency representative, visit the Project within one month before the end of the correction period to ascertain whether any portion of the Work is subject to correction.
3. Perform or provide the following additional Post-Construction Phase tasks or deliverables:
[Here list any such tasks or deliverables]

The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

PART 2 – ADDITIONAL SERVICES

A2.01 *Additional Services Requiring Owner's Written Authorization*

- A. If authorized in writing by Owner, and concurred with by Agency, Engineer shall furnish, or obtain from others, Additional Services of the types listed below.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Project; preparation or review of new environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining

- approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ~~Engineer-Designer~~ or its design requirements including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions, ~~beyond those identified in Paragraph A1.01.A.4.~~
 5. Services required as a result of Owner's providing incomplete or incorrect Project information to Engineer.
 6. Providing renderings or models for Owner's use.
 7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of financial feasibility and cash flow studies, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting Owner in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by Owner.
 8. Furnishing services of Consultants for other than Basic Services. Examples of Additional Services would include preparing or furnishing special environmental studies, environmental audits, hazardous materials investigations or plans, contractor dewatering plans, and shoring plans.
 9. Services attributable to more than five prime construction contracts ~~than~~ specified. in Paragraph A1.03.D.
 10. Services during out-of-town travel required of Engineer other than for visits to the Site or Owner's office that are provided under Basic Services.
 11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, ~~construction management, team building/partnering,~~ cost estimating, project peer review, value engineering, and constructibility review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.

12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by Owner for the Work or a portion thereof.
13. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
14. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.045.A.6, and any type of property surveys or related engineering services needed for the transfer of interests in real property; preparation or negotiation of easements and rights-of-way (either temporary or permanent) and providing other special field surveys.
15. Providing Construction Phase services beyond the original date provided in the Contract Documents for completion and readiness for final payment of Contractor.
16. Providing assistance in responding to the presence of any Constituent of Concern at the Site, in compliance with current Laws and Regulations.
- ~~17. Preparing Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing such Record Drawings to Owner.~~
17. Preparation of operation and maintenance manuals.
18. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, or other dispute resolution process related to the Project.
19. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
20. Assistance in connection with the adjusting of Project equipment and systems.
21. Assistance to Owner in training Owner's staff to operate and maintain Project equipment and systems.
22. Assistance to Owner in developing procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related record-keeping.
23. Overtime work for non-exempt employees requiring higher than regular rates in order to meet Owner's requests to accelerate schedule, but not for overtime work related to regular and reasonable administration of the Contractor's work under the Construction Contract.
24. Other services performed or furnished by Engineer not otherwise provided for in this Agreement.
25. Responding to changes in Laws and Regulations, or materials or engineering standards, that were not in effect at the time the Contract Documents were completed. Laws enacted prior

to the Effective Date of this Agreement, but not operative until after the Effective Date, do not constitute a change in Laws and Regulations. (For example, California Senate Bill 189 which was adopted and chaptered on September 30, 2010 does not constitute a change in law for the purposes of this agreement, even though many of its provisions, including the addition of Part 6 to the California Civil Code at §§ 8000 et. seq., are not operative until July 1, 2012.)

~~A2.02 Additional Services Not Requiring Owner's Written Authorization~~

~~A. Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner.~~

- ~~26. Services in connection with work change directives and change orders to reflect changes requested by Owner. Unilateral work changes and change orders that are in response to a proposed change or inquiry by the Contractor do not constitute a change requested by Owner.~~
- ~~27. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.~~
- ~~28. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.~~
- ~~29. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work (advance notice not required), (2) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.~~
- ~~30. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by Owner prior to Substantial Completion.~~
- ~~6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.~~
- ~~31. Services rendered after the duration specified under Construction Phase above. during the Construction Phase rendered after the original date for completion of the Work referred to in A1.05.B.~~

32. Reviewing a Shop Drawing more than three times, as a result of repeated inadequate submissions by Contractor.
33. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, state, or local safety authorities for similar construction sites.

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This Appendix 1 to EXHIBIT A, consisting of 1 pages, referred to in and part of the Agreement for Professional Engineering Services dated , 2011.

Organizational Chart

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This **Appendix 2 to EXHIBIT A**, consisting of 1 pages, referred to in and part of the **Agreement for Professional Engineering Services** dated _____, 2011.

Project Schedule

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This is **APPENDIX 3** of **EXHIBIT A**, consisting of 3 pages, referred to in and part of the **Agreement for Professional Engineering Services** dated _____, 2011.

Anticipated Construction Duties of Designer and Engineer: The following is a general summary of anticipated duties of the Designer, relative to the duties of the Engineer during and after the Construction Phase under this Agreement. This Appendix is a summary table required by the funding Agency and does not diminish in any way the duties and responsibilities of the Engineer set forth in this Agreement.

<u>DUTY</u>	<u>DESIGNER</u>	<u>ENGINEER</u>
<u>Construction Phase Services</u>		
<u>General Administration of Construction Contract</u>	<u>None.</u>	<u>Authorized to act as Owner's Representative by performing all duties and responsibilities on Engineer included in the Contract Documents.</u>
<u>Resident Project Representative (Resident Inspector)</u>	<u>None.</u>	<u>Provide the services of an RPR at the Site to provide extensive observation of Contractor's work.</u>
<u>Testing Laboratory Services</u>	<u>None.</u>	<u>Employ and provide the services of an independent testing laboratory and coordinate the activities of the materials testing consultant.</u>
<u>Pre-Construction and other Conferences</u>	<u>Attend Pre-Construction Conference and periodic progress meetings during the Construction Phase.</u>	<u>Attend Pre-Construction Conference and chair periodic progress meetings during the Construction Phase and prepare and circulate copies of minutes thereof.</u>
<u>Schedules</u>	<u>Review and comment on the acceptability of schedules submitted by Contractors, as requested by Engineer.</u>	<u>Receive, review, and determine the acceptability of any and all schedules that Contractors are required to submit, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.</u>
<u>Visits to Site and Observation of Construction</u>	<u>Make monthly visits to site, as requested by Engineer, to observe the progress of the Work.</u>	<u>Make continuous, ongoing observations of the site and the Work to determine if Work is proceeding in accordance with Contract Documents.</u>
<u>Defective Work</u>	<u>None.</u>	<u>Reject work if the RPR believes that any part of Contractor's Work in progress will not conform generally to the Contract Documents or should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.</u>

<u>Clarifications and Interpretations; Field Orders</u>	<u>Work with Engineer to prepare clarifications and interpretations of the Contract Documents, as requested by Engineer.</u>	<u>Issue necessary clarifications and interpretations of the Contract Documents as appropriate for the orderly completion of the Contractor's Work.</u>
<u>Change Orders and Work Change Directives</u>	<u>Work with Engineer to prepare change orders and work change directives that involve design intent, as requested by Engineer.</u>	<u>Recommend change orders and work change directives to Owner, as appropriate, and prepare change orders and work change directives as required.</u>
<u>Shop Drawings and Samples</u>	<u>Review shop drawings and samples and take appropriate action, as requested by Engineer.</u>	<u>Review all shop drawings and samples submitted by the Contractor and take appropriate action.</u>
<u>Substitutes and "or equal"</u>	<u>Evaluate and determine the acceptability of substitute and "or equal" materials and equipment, as requested by Engineer.</u>	<u>Evaluate and determine the acceptability of all substitute and "or equal" materials and equipment proposed by the Contractor.</u>
<u>Inspections and Tests</u>	<u>None.</u>	<u>Require such inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents.</u>
<u>Disagreements between Owner and Contractor</u>	<u>None.</u>	<u>Render formal written recommendations to the Owner on all duly submitted issues relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution, performance, or progress of Contractor's Work.</u>
<u>Applications for Payment</u>	<u>None.</u>	<u>Determine the amounts that Contractor is recommended to be paid. Such recommendations will be in writing and will include supporting documentation.</u>
<u>Contractor's Completion Documents</u>	<u>None.</u>	<u>Receive, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data.</u>
<u>Substantial Completion</u>	<u>Visit the site with Owner</u>	<u>Determine if the Work is substantially</u>

	<u>and Engineer for a pre-final inspection of substantial completion.</u>	<u>complete and provide a certificate of Substantial Completion to Owner, Agency and Contractor.</u>
<u>Record Drawings</u>	<u>None.</u>	<u>Prepare and deliver complete Record Drawings to the Owner.</u>
<u>Final Notice of Acceptability of the Work</u>	<u>Work with Engineer to review acceptability of the work, as requested by Engineer.</u>	<u>Conduct a final visit to the Project to determine if the completed Work of Contractor is acceptable and provide a notice that the Work is acceptable.</u>
<u>Post-Construction Phase Services</u>		
<u>Completion Inspection</u>	<u>Visit the site with Owner and Engineer to observe any apparent defects in the Work, assist Owner in consultations with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.</u>	<u>Visit the site with Owner and Engineer to observe any apparent defects in the Work, assist Owner in consultations with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of defective Work, if any.</u>
<u>Warranty Inspection</u>	<u>Within one month before the end of the correction period, visit the Project with Owner and Engineer to ascertain if any portion of the Work is subject to correction.</u>	<u>Within one month before the end of the correction period, visit the Project with Owner and Engineer to ascertain if any portion of the Work is subject to correction.</u>

This is **EXHIBIT B**, consisting of ___ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Engineering Services** dated _____, 2011.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the construction of the Project, including design notes, right of way agreements, utility agreements, regulatory permits, objectives and constraints, space, capacity and performance requirements; flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in Contract Documents, including the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the administration of the Construction Contract, Bidding Documents, when applicable.
- ~~B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.~~
- B. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.

7. Any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.

- C. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- D. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- E. Make Contractor responsible under the Contract Documents to Arrange for safe access to the site and make all provisions for Engineer to enter upon public and private property where the Work is being completed as required for Engineer to perform services under the Agreement.
- F. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- G. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- H. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the moneys paid.
- I. Place and pay for advertisement for Bids in appropriate publications, and print and distribute bid documents.
- J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructibility review.
- ~~L. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.~~

- K. If Owner designates ~~a construction manager~~ or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- ~~N. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.~~
- L. Attend and chair the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- M. Upon award of the Construction Contract, the Owner shall prepare the necessary executed copies of the Contract Documents.
- ~~P. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.~~
- N. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- O. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- ~~S. Preparation of temporary storm water pollution prevention plan (SWPPP) or qualified SWPPP developer (QSD) plans required by agencies.~~
- P. The Owner shall pay the Contractor any amounts due under the Construction Contract, but must obtain Agency concurrence prior to issuing such payment.
- Q. Perform or provide the following additional services:
1. Provide, as Appendix 1 to this Exhibit B, a list of "Owner Information" of requirements, policies, procedures, programs, instructions, reports, data, and other information.

This is **APPENDIX 1** of **EXHIBIT B**, consisting of 1 pages, referred to in and part of the **Agreement for Professional Engineering Services** dated May 17, 2011.

Owner Information

1. To Be Developed

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This is **EXHIBIT C**, consisting of 3 pages, referred to in and part of the Agreement for Professional Engineering Services dated _____, 2011.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET RUS-CA: Basic Services, Resident Project Representative, and Additional Services – Standard Hourly Rates

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Services – Standard Hourly Rates Method of Payment

A. Owner shall pay Engineer for Basic Services, including Resident Project Representative (RPR) Services, and for Additional Services as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and Engineer’s Consultant’s charges, if any, not to exceed the total compensation sum set forth below.
2. Engineer’s Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit C as Appendix 1. A detailed breakdown of the estimated hours and fee for each sub-task of the individual phases is attached to this Exhibit C as Appendix 2.
3. The total compensation for Basic Services under Paragraph C2.01 is not to exceed \$ _____, with an Additional Services Contingency fund of \$ _____, based on the following assumed distribution of compensation:

BASIC SERVICES

<u>a. Final Design Phase</u>	<u>\$</u>
<u>b. Bidding Phase</u>	<u>\$</u>
<u>c. Construction Phase (excluding RPR Services)</u>	<u>\$</u>
<u>d. Resident Project Representative Services</u>	<u>\$</u>
<u>e. Post-Construction Phase</u>	<u>\$</u>
<u>f. Project Management</u>	<u>\$</u>
<u>Total – Basic Services</u>	<u>\$</u>

Additional Services Contingency \$

Owner’s approval of this Agreement does not constitute written authorization of the Additional Services listed above. Engineer shall obtain Owner’s written authorization.

and Agency concurrence, prior to furnishing any Additional Services pursuant to Paragraph A2.01.

4. Engineer may alter the distribution of compensation between individual Design and Bidding Phases (Items a through d, above) of the work noted herein, with concurrence of Owner and Agency, to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount for those phases unless approved in writing by Owner, with Agency concurrence.
5. The Additional Services Contingency fund is created to address changes to the scope of services. The Owner 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 Owner's County Board of Supervisors.
6. The total estimated compensation for Engineer's services included in the breakdown by phases as noted in Paragraph C2.01.A.3 incorporates all labor, overhead, profit, Reimbursable Expenses and Engineer's Consultant's charges.
7. The amounts billed for Engineer's services under Paragraph C2.01 will be based on the cumulative hours charged to the Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and Engineer's Consultant's charges. Billing invoices shall list hourly charges and expenses by each sub-task and phase listed in Appendix 2 to this Exhibit C.
8. The Standard Hourly Rates and Reimbursable Expenses Schedule may be adjusted annually by Amendment to the Agreement (as of _____) to reflect equitable changes in the compensation payable to Engineer. Modifications to fees shall be made by Amendment.

C2.02 Compensation for Reimbursable Expenses

- A. Owner shall pay Engineer for all Reimbursable Expenses at the rates set forth in Appendix 1 to this Exhibit C.
- B. Reimbursable Expenses include the following categories: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; toll telephone calls and mobile phone charges; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Exhibit A, and, if authorized in advance by Owner, overtime work requiring higher than regular rates. In addition, if authorized in advance by Owner, Reimbursable Expenses will also include expenses incurred for computer time and the use of other highly specialized equipment.

C. The amounts payable to Engineer for Reimbursable Expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced external Reimbursable Expenses allocable to the Project, the latter multiplied by a Factor of 10%. External expenses are limited to sub-consultant or subcontracted services.

C2.03 Other Provisions Concerning Payment

A. Whenever Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a Factor of 10%.

B. Factors. The external Reimbursable Expenses and Engineer's Consultant's factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C. Estimated Compensation Amounts. Engineer is responsible for monitoring charges being generated under this Agreement. When estimated amounts for total compensation or individual phases of the work have been stated herein and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer, so that total compensation for such services will not exceed said estimated amount when such services are completed. Modifications to fees shall be made by Amendment.

D. To the extent necessary to verify Engineer's charges and upon Owner's timely request, Engineer shall make copies of such records available to Owner at cost.

This **Appendix 1 to EXHIBIT C**, consisting of 2 pages, referred to in and part of the **Agreement ~~between Owner and Engineer~~ for Professional Engineering Services** dated _____, 2011.

Reimbursable Expenses Schedule

Current agreements for engineering services stipulate that the Reimbursable Expenses are subject to review and adjustment per Exhibit C. Reimbursable expenses for services performed on the date of the Agreement are listed below:

Standard Hourly Rates Schedule

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 1 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Article C2.

B. Schedule:

Hourly rates for services performed on or after the date of the Agreement are listed below:

This **Appendix 2 to EXHIBIT C**, consisting of 1 pages, referred to in and part of the **Agreement for Professional Engineering Services** dated _____, 2011.

Task Breakdown

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This is **EXHIBIT D**, consisting of _____ pages, referred to in and part of the **Agreement ~~between Owner and Engineer for Professional Engineering Services~~** dated _____, 2011.

Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

Article 1 of the Agreement is supplemented to include the following agreement of the parties:

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative (“RPR”) to assist Engineer in observing progress and quality of the Work. The RPR ~~may shall~~ provide full time representation, ~~or may provide representation to a lesser degree.~~
- B. Through RPR's observations of Contractor's work in progress and field checks of materials and equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, during such RPR field checks or as a result of such RPR observations of Contractor's work in progress, supervise, direct, or have control over Contractor's Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for security or safety at the Site, for safety precautions and programs incident to any contractor's work in progress, or for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's performing and furnishing of its work. The Engineer (including RPR) neither guarantee the performances of any contractor nor assumes responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific terms set forth in Paragraph A1.045 (*Construction Phase*) of Exhibit A of the Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
1. *General:* RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with Engineer concerning acceptability.
 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.

4. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor, ~~when Contractor's operations affect Owner's on-Site operations.~~
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
5. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
6. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and approved Shop Drawings.
 - b. Receive Samples which are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by Engineer.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
8. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.

9. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups.
- b. Coordinate the services of inspectors and independent testing laboratory and have responsibility for ensuring all inspections and tests deemed reasonably necessary and all inspections, tests, and approvals required by Laws and Regulations or the Contract Documents are completed in a timely and professional manner, in accordance with standard protocols and procedures.
- c. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- d. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- e. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.

10. *Records:*

- a. Maintain at the Site orderly files for correspondence, reports of job conferences, reproductions of original Contract Documents including all change orders, field orders, work change directives, addenda, additional Drawings issued subsequent to the execution of the Construction Contract, Engineer's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project-related documents.
- b. Prepare a daily report ~~or~~ and keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of change orders, field orders, work change directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
- c. Record names, addresses, fax numbers, e-mail addresses, web site locations, and telephone numbers of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.

11. *Reports:*

- a. Furnish to Engineer ~~periodic~~ weekly and monthly reports as ~~required~~ of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Draft and recommend to Engineer proposed change orders, work change directives, and field orders. Obtain backup material from Contractor.
- c. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports.
- d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern.

12. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

13. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

14. *Completion:*

- a. Participate in visits to the Project to determine Substantial Completion, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
- b. Participate in a final visit to the Project in the company of Engineer, Owner, and Contractor, and prepare a final list of items to be completed and deficiencies to be remedied.
- c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance and issuance of the Notice of Acceptability of the Work (Exhibit E).

D. Resident Project Representative shall not:

1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).

2. Exceed limitations of Engineer's authority as set forth in this Agreement.
3. Undertake any of the responsibilities of Contractor, Subcontractors or Suppliers.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept shop drawing or sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

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This is **EXHIBIT E**, consisting of _____ pages, referred to in and part of the **Agreement ~~between Owner and Engineer for Professional Engineering Services~~** dated _____, 2011.

NOTICE OF ACCEPTABILITY OF WORK

PROJECT:

OWNER:

CONTRACTOR:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

NOTICE DATE:

To: _____
Owner

And To: _____
Contractor

From: _____
Engineer

The Engineer hereby gives notice to the above Owner and Contractor that the completed Work furnished and performed by Contractor under the above Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated _____, _____, and the terms and conditions set forth in this Notice.

By: _____

Title: _____

Dated: _____

CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK

The Notice of Acceptability of Work (“Notice”) is expressly made subject to the following terms and conditions to which all those who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer’s knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Project (including observation of the Contractor’s work) under Engineer’s Agreement with Owner and under the Construction Contract referred to in this Notice, and applies only to facts that are within Engineer’s knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement and Construction Contract.
5. This Notice is not a guarantee or warranty of Contractor’s performance under the Construction Contract referred to in this Notice, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Contract Documents.

This is **EXHIBIT G**, consisting of 4 pages, referred to in and part of the **Agreement ~~between Owner and Engineer~~ for Professional Engineering Services** dated _____, 2011.

Insurance

~~Paragraph~~Article 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

a. Workers' Compensation:

Statutory

b. Employer's Liability --

1) Each Accident:

\$1,000,000

2) Disease, Policy Limit:

\$1,000,000

3) Disease, Each Employee:

\$1,000,000

c. General Liability --

1) Each Occurrence (Bodily Injury and Property Damage):

\$1,000,000

2) General Aggregate:

\$2,000,000

d. Excess or Umbrella Liability --

1) Each Occurrence:

\$5,000,000

2) General Aggregate:

\$5,000,000

e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):

Each Accident

\$1,000,000

f. Professional Liability --

1) Each Claim Made

\$3,000,000

2) Annual Aggregate

\$8,000,000

g. Other (specify):

\$ _____

2. By Owner:

- | | |
|--|--------------------|
| a. Workers' Compensation: | Statutory |
| b. Employer's Liability -- | |
| 1) Each Accident | <u>\$1,000,000</u> |
| 2) Disease, Policy Limit | <u>\$1,000,000</u> |
| 3) Disease, Each Employee | <u>\$1,000,000</u> |
| c. General Liability -- | |
| 1) General Aggregate: | <u>\$1,000,000</u> |
| 2) Each Occurrence (Bodily Injury and Property Damage): | <u>\$2,000,000</u> |
| d. Excess Umbrella Liability -- | |
| 1) Each Occurrence: | <u>\$5,000,000</u> |
| 2) General Aggregate: | <u>\$5,000,000</u> |
| e. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage): | |
| Each Accident: | <u>\$1,000,000</u> |
| f. Other (specify): | \$ _____ |

B. *Additional Insureds:*

1. The following persons or entities are to be listed on Owner's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in Paragraph 6.04.B:

- a. _____
Engineer
- b. _____
Engineer's Consultant
- c. _____
Engineer's Consultant

2. During the term of this Agreement the Engineer shall notify Owner of any other Consultant to be listed as an additional insured on Owner's general liability and property policies of insurance.
3. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

C. Engineer, at its sole cost, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. All of the insurance companies providing insurance for Engineer shall have, and provide evidence of, an A.M. Best & Co. rating of A:VII or above, unless exception is granted by Owner's Risk Manager. Further, all policies shall be maintained for the full term of this Agreement and related warranty period if applicable.

D. Scope of Required Insurance Policies

1. Commercial General Liability: Policy shall include coverage at least as broad as set forth in Insurance Services Office Commercial General Liability Coverage (CG 00 01) with policy limits not less than provided in Paragraph 6.04.A. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:
 - a. The Owner, named as the County of San Luis Obispo, its officers and employees, is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement.
 - b. The insurance provided herein shall be considered primary coverage to the Owner with respect to any insurance or self insured retention maintained by the Owner. Further, the Owner's insurance shall be considered excess insurance only and shall not be called upon to contribute to this insurance.
 - c. The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the Owner's designated representative listed in Paragraph 8.03.A.
 - d. If the policy includes a general aggregate, either the general aggregate shall apply separately to this Project, service or location or the minimum required aggregate limit shall be twice the per occurrence limit.
2. Business Automobile Policy: Policy shall include coverage at least as broad as set forth in the liability section of Insurance Services Office Business Auto Coverage (CA 00 01) with policy limits of no less than provided in Paragraph 6.04.A. Said insurance shall include coverage for owned, non-owned, and hired vehicles. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:
 - a. The Owner, named as the County of San Luis Obispo, its officers and employees, is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement. ISO form CG 10 20 (11/85) or it equivalent is required. The endorsement must not exclude products and completed operations coverage. If it does then CG 20 37 (10/01) is also required.
 - b. The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the Owner's designated representative listed in Paragraph 8.03.A.
3. Workers' Compensation: Policy shall provide statutory limits as required by State of California. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:

- a. Engineer and its insurer shall waive all rights of subrogation against the Owner, its officers and employees for workers' compensation losses arising out of this Agreement.
- b. The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the Owner's designated representative listed in Paragraph 8.03.A.
4. Employer's Liability: Policy shall provide limits of no less than provided in Paragraph 6.04.A per accident for bodily injury or disease.
5. Professional Liability or Errors & Omissions Liability: Policy shall be appropriate to the Engineer's profession, with a limit of no less than provided in Paragraph 6.04.A.
- E. Deductibles and Self-Insurance Retentions: All deductibles and/or self-insured retentions which apply to the insurance policies required herein will be declared in writing and approved by the Owner prior to commencement of this Agreement.
- F. Documentation: Prior to commencement of work and annually thereafter for the term of this Agreement, Engineer will provide to the Owner's designated representative listed in Paragraph 8.03.A properly executed certificates of insurance clearly evidencing the coverage, limits, and endorsements specified in this Agreement. Further, at the Owner's request, the Engineer shall provide certified copies of the insurance policies within thirty days of request.
- G. Absence of Insurance Coverage: In accordance with Article 6.05, Owner may direct Engineer to immediately cease all activities with respect to this Agreement if it determines that Engineer fails to carry, in full force and effect, all insurance policies with coverage levels at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Engineer's delay and expense.

This is **EXHIBIT H**, consisting of 1 pages, referred to in and part of the **Agreement ~~between Owner and Engineer for Professional Engineering Services~~** dated _____, 2011.

Dispute Resolution

~~Paragraph~~Article 6.08 of the Agreement is amended and supplemented to include the following agreement of the parties:

H6.08 *Dispute Resolution*

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof (“Disputes”) to mediation by *Creative Mediation Services*. Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, then (1) the parties may mutually agree to a dispute resolution of their choice, or (2) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement ~~between Owner and Engineer for Professional Engineering Services~~** dated _____, 2011.

AMENDMENT TO OWNER-ENGINEER AGREEMENT

Amendment No. _____

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: _____
- b. Owner: County of San Luis Obispo
- c. Engineer: _____
- d. Project: Los Osos Wastewater Project Collection System, Los Osos, California

2. *Description of Modifications:*

[NOTE TO USER: Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

[List other Attachments, if any]

5. Agreement Summary (Reference only)

Page 1

(Exhibit K – (Amendment to Owner-Engineer Agreement) – Attachment 1)
EJCDC E-500 Agreement ~~Between Owner and Engineer for Professional Engineering Services.~~
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- a. Original Agreement amount: \$ _____
- b. Net change for prior amendments: \$ _____
- c. This amendment amount: \$ _____
- d. Adjusted Agreement amount: \$ _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

