County of San Luis Obispo
GENERAL SERVICES AGENCY
Janette D. Pell, Director

Helen McCann, Department Administrator

REQUEST FOR PROPOSALS PS-#1149
ENVIRONMENTAL SERVICES FOR THE
SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
OCEANO LAGOON AREA BIOLOGICAL INVESTIGATIONS

September 6, 2011

The San Luis Obispo County Flood Control and Water Conservation District (Flood Control District) is currently requesting proposals for environmental services for biological investigations in and around the Oceano Lagoon on Meadow Creek in Oceano California. 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 Flood Control District 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 Flood Control District, such action will not negate fair competition and will permit proper comparative evaluation of the proposals submitted.

This Request for Proposal is posted on San Luis Obispo 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 Proposals will be in the form of written addenda issued by the Flood Control District. Any addenda will be posted on the County website. Prospective proposers must check the website for addenda or other relevant new information during the response period. Neither the County nor the Flood Control District is 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 eight (8) hard copies and one (1) electronic copy (on CD or DVD) of your proposal on October 5, 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

All questions pertaining to the content of this Request for Proposal must be made in writing via e-mail to Mark Hutchinson at: mhutchinson@co.slo.ca.us. All questions will receive a response within five (5) business days. The question and its response will be posted (anonymously) on the County's Purchasing web site (link above). The Flood Control District reserves the right to determine the appropriateness of comments / questions that will be posted on the website.

Debbie Belt

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

LOCAL VENDOR PREFERENCE

The County and Flood Control District have established a local vendor preference. When quality, service, and other relevant factors are equal, responses to Requests for Proposals will be evaluated with a preference for local vendors. Note the following exceptions:

1. Those contracts which State Law or, other law or regulation precludes this local preference.
2. Public works construction projects.

A "local" vendor preference will be approved as such when, 1) The vendor conducts business in a fully staffed office with a physical address within the County of San Luis Obispo; 2) The vendor holds a valid business license issued by the County or a city within the County; and 3) The vendor has conducted business at the local address for not less than six (6) months prior to the due date of this Request for Proposal.

Proposals received in response to this Request for Proposal will be evaluated by the Selection Committee considering the local vendor preference described above when quality, service and other relevant factors are equal. The burden of proof will lie with proposers relative to verification of "local" vendor preference. Should any questions arise, please contact a buyer at (805) 781-5200.

	YES	NO
Do you claim local vendor preference?		
Do you conduct business in an office with a physical location within the District of San Luis Obispo?		
Business Address: _____ _____		
Years at this Address:_____		
Does your business hold a valid business license issued by the District or a City within the District?		
Name of Local Agency which issued license:_____		

Business Name: _____

Authorized Individual: _____ Title: _____

Signature: _____ Dated:_____

1. PROPOSAL SUBMITTAL PROCESS AND SELECTION

1. All proposals, consisting of eight (8) hard copies and one (1) electronic copy on CD must be received by mail, recognized carrier, or hand delivered no later than 3:00 p.m. on October 5, 2011. Late proposals will not be considered.

2. All correspondence should be directed to:

   San Luis Obispo County
   Department of General Services
   1087 Santa Rosa Street
   San Luis Obispo, CA 93408
   ATTENTION: DEBBIE BELT
   Telephone: (805) 781-5903

3. All costs incurred in the preparation and submission of proposals and related documentation will be borne by the proposer.

4. It is preferred that all proposals be submitted on recycled paper, printed on two sides.

5. 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 Flood Control District 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.

6. This Request for Proposal does not constitute an offer of employment or to contract for services.

7. The Flood Control District 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 Flood Control District may appear.

8. All documents submitted to the Flood Control District in response to this Request for Proposal will become the exclusive property of the Flood Control District and may be returned to the proposer or kept by the Flood Control District, in the Flood Control District's sole discretion.

9. All proposals shall remain firm for one hundred twenty, (120) days following closing date for receipt of proposals.

10. The Flood Control District reserves the right to award the contract to the firm who presents the proposal which in the judgment of the Flood Control District, best accomplishes the desired results, and shall include, but not be limited to, a consideration of the professional service fee.

11. 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 Flood Control District during subsequent negotiations.

12. The successful proposer is expected to execute a contract similar to the contract in Exhibit A. This sample contract is for reference to the anticipated terms and conditions governing the Flood Control District and the successful proposer. The proposer must take exception in their proposal to any section of the attached contract they do not agree with. Failing to do so will be deemed as acceptance by the proposer to the terms spelled out in the sample contract. The Flood Control District reserves the right, in its sole discretion, to add, delete, or modify, or negotiate additional terms and conditions to the attached contract. BEFORE BEGINNING ANY WORK OR SUBMITTING A PROPOSAL IT IS ADVISED THAT PROPOSERS READ THE DISTRICT INSURANCE AND INDEMNIFICATION REQUIREMENTS IN THE ATTACHED SAMPLE CONTRACT. The selected proposer will be asked to provide evidence that Flood Control District insurance requirements have been met. See Exhibit A – Sample District Contract.

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 Flood Control District, must be available for inspection and copying upon the request of any person. Under the Act, the Flood Control District 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 District considers proper under the law. If an agreement is entered into with the proposer, the District shall have the right to use or disclose the data as provided in the agreement, unless otherwise obligated by law.*

    The Flood Control District 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 Flood Control District 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**

2. PROPOSAL FORMAT

A qualifying proposal must address all of the following points and shall be in the format outlined in this section:

1. Project Title

2. Applicant or Firm Name

3. Firm Qualifications

    a. Type of organization, size, professional registration and affiliations.

    b. Names and qualifications of personnel to be assigned to this project.

    c. Outline of recent projects completed that are directly related to this project. Consultant is required to demonstrate specific expertise relating to the requirements of the Scope of Services. Provide a list and description of projects of similar scope and complexity completed within the last ten years. Identify how much experience the firm and subconsultant has had with public agencies, and working on projects located in the Coastal Zone.

    d. Qualifications of consultants, subcontractors, or joint venture firm, if appropriate.

    e. Client references from recent related projects, including name, address and phone number of individual to contact for referral.

4. Understanding of and Approach to the Project

    a. Summary of approach to be taken.

    b. Description of the organization and staffing to be used for the project.

    c. Indication of information and participation the proposer will require from Flood

Control District staff.

d. Indication of time frame necessary to complete the plan review once a Notice to Proceed is issued.

5. Fees and Insurance

a. Propose total fixed fees to complete project as described under Project Scope.

b. The selected Consultant will be required to provide insurance coverage in the amount of $1,000,000 General Liability Insurance, $1,000,000 Business Automobile Liability Insurance, $1,000,000 Workers' Compensation and Employers' Liability Insurance, and $1,000,000 of Professional Liability Insurance. This amount of insurance coverage shall be reflected in your estimated professional fee. Because the project is located partly on land owned by the State of California, proposers must also carry all of the insurance required by the California Department of Parks and Recreation as described in Exhibit E to this RFP.

c. The Consultant shall provide within five (5) days after the Notice of Award is issued a certificate of liability insurance naming the San Luis Obispo County Flood Control and Water Conservation District 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 Flood Control District.

6. Indemnification

Consultant shall defend, indemnify and hold harmless the Flood Control District, its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities or other losses that may be asserted by any person or entity, and that arise out of or are made in connection with the acts or omissions relating to the performance of any duty, obligation, or work hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the Flood Control District, its officers and employees. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the Flood Control District, its officers and employees.

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

1. Violation of statute, ordinance, or regulation.

2. Professional malpractice.

3. Willful, intentional or other wrongful acts, or failures to act.

4. Negligence or recklessness.

5. Furnishing of defective or dangerous products.

6. Premises liability.

7. Strict Liability.

8. Violation of civil rights.

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

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

3. PROJECT INFORMATION

The San Luis Obispo County Flood Control and Water Conservation District (Flood Control District), is requesting a proposal for environmental services for the "Oceano Lagoon Area Biological Investigations".

In December of 2010 flood water from the Oceano Lagoon on Meadow Creek flowed into a number of adjacent residences and into the South San Luis Obispo County Sanitation District's wastewater treatment plant, causing substantial damage to buildings, personal property, and to the wastewater treatment plant. Depending on the outcome of environmental surveys, regulatory permit standards and requirements, negotiations with the California Department of Parks and Recreation, and available funding, the Flood Control District may propose one or more actions to prevent or reduce the potential for flood water elevations in the Oceano Lagoon to impact adjacent residential and industrial land uses.

The Oceano Lagoon is located on Meadow Creek in southern San Luis Obispo County, south of the City of Grover Beach, in the unincorporated community of Oceano. (See Exhibit B - Vicinity Map). The Lagoon is generally bounded by the Arroyo Grande Creek levee to the south, the Oceano Airport on the east, residential development on the west, and the Oceano State Park Campground on the north. The area occupied by the Lagoon is partly owned by the County of San of San Luis Obispo and partly by the California Department of Parks and Recreation.

4. SCOPE OF SERVICES

The intended outcome is for the Consultant to perform professional environmental services necessary for the District to determine the best course of action towards developing a project or projects that address flooding while complying with State and Federal regulations that protect wetlands, sensitive habitats, and listed species.

Part I environmental services shall include to the following, under contract to the Flood Control District:

- Preparation of a biological survey (both aquatic and terrestrial)
- Wetland delineations according to criteria established by the U.S. Army Corps of Engineers and by the California Coastal Commission
- Habitat mapping
- Final report

Part II environmental services consists of an optional task to assess the impacts of the discharge of untreated sewage from the South San Luis Obispo County Sanitation District's collection and treatment system during the December storm events.

General Requirements

All environmental documents prepared pursuant to this contract shall meet all of the requirements set forth in the following:

- ❑ California Environmental Quality Act (PRC 21000 et seq.)
- ❑ State CEQA guidelines (CCR, section 15000 et seq.)
- ❑ California Coastal Act
- ❑ Endangered Species Act (16 USC 1531 et seq.)
- ❑ Clean Water Act (33 USC 1251 et seq.) (emphasis on sections 401 and 404)
- ❑ California Water Code
- ❑ Fish and Wildlife Coordination Act (16 USC 661-666)
- ❑ California Endangered Species Act (Fish and Game Code 2050 et seq.)
- ❑ Migratory Bird Treaty Act (16 USC 703-712)
- ❑ Federal Executive Order 11990 (Wetlands)
- ❑ Federal Executive Order 11988 (Floodplains)
- ❑ Federal Executive Order 13112 (Invasive Species)
- ❑ California Water Code

Where the Consultant is required to prepare and submit studies, reports, plans, etc., to the District as required by this Scope of Work, these shall be submitted in draft as scheduled, and the opportunity provided for the District to direct revisions, prior to final submission.

Specific Requirements

Part I: San Luis Obispo County Flood Control and Water Conservation District Surveys and Reports

An initial literature search, informal contact with the State Department of Parks and Recreation, and a review of County and District records indicates that no comprehensive biological surveys have been completed for the Oceano Lagoon. Consequently, biological resource information is needed In order to better understand the resources present in the Lagoon, and the extent and distribution of various habitats in and around the Lagoon. At the same time, the Flood Control District believes that any potential actions to reduce flooding and its impacts would occur in the portion of the Lagoon that lies south of Pier Avenue. Therefore, all biological investigations, reports, and mapping should focus on the southern portion of the Lagoon, with lesser attention paid to that portion north of Pier Avenue (Except for the optional tasks in Part II of this scope).

Task A: Biological Surveys

Avoidance and/or mitigation of flooding may involve work within and/or adjacent to the Lagoon. A general and species specific biological survey must be conducted to properly characterize the Lagoon and areas immediately adjacent to it. While Arroyo Grande Creek and Lagoon, south of the levee on the south side of the Oceano Lagoon, are known to support populations of steelhead, red-legged frog, and tidewater goby, it is not known with any certainty whether these or other sensitive species are present in the Oceano Lagoon. Federal protocol surveys for these species must be conducted. All persons involved with elements of the biological survey that may affect any State of Federally listed species must be authorized by the appropriate resource agency to conduct the surveys. The Biological Survey will include an assessment of the entire project area, including but not limited to potential impacts to sensitive habitat and endangered and threatened plant and animal species.

Task B: Wetland Delineations

If a project is developed by the Flood Control District, permits and authorizations from the U.S. Army Corps of Engineers and from the California Coastal Commission may be required. Each agency will require detailed delineations of wetlands, as they are defined in the governing regulations of each agency. The consultant must prepare separate delineations for the Corps and Commission using the regulations and guidelines promulgated by each agency.

Task C: Mapping

The consultant will prepare GIS maps in a format compatible with the systems currently utilized by the County of San Luis Obispo Department of Public Works. Maps must illustrate:

- Wetlands, Environmentally Sensitive Habitat Areas, and Sensitive Resource Areas as defined by the California Coastal Act and the San Luis Obispo County Local Coastal Plan.

- Wetlands, Waters of United States, Other Waters and Clean Water Act Jurisdiction as defined by regulations adopted by the U.S. Army Corps of Engineers.

- Habitat types, species specific habitat, special areas and other mapping as required to fully illustrate and present the information developed by the Biological Survey.

Task D: Biological Survey Report

Consultant will document the background, methods and results of all research and field surveys in a Biological Survey Report that complies with generally accepted standards for work of this type. The consultant will include the results of all background work, field surveys, delineations and mapping in a comprehensive report suitable for the Flood Control District's use in determining further course(s) of action and suitable for released to other agencies and the public. The report will support the development of any follow-up surveys and the development of environmental documents pursuant to CEQA. The report will be submitted to the San Luis Obispo County Department of Public Works.

Part II: Optional Task, South San Luis Obispo County Sanitation District

The South San Luis Obispo County Sanitation District (Sanitation District) is interested in sharing biological information developed through this RFP in order to respond to a Notice of Violation issued to the Sanitation District by the State Water Resources Control Board (SWRCB). The SWRCB requires to Sanitation District to assess the biological impacts of the wastewater spill that occurred in December 2010 and provide a technical report to the SWRCB for their consideration. The Sanitation District will provide the bidders, if needed, a copy of the spill report submitted to the SWRCB, floodwater elevations, and quantities. Specific tasks include:

<u>Task E: Impact Assessment</u>
An assessment of the potential short- and long-term impacts of the discharge on public health, animal and plant communities (including sensitive and/or endangered species), and on the overall ecosystem downstream of the discharge. The assessment must include:

1. Summary of all threatened and endangered species located downstream of the spill site within or adjacent to Arroyo Grande creek on Strand Way, Oceano lagoon along Maui Circle, Aloha Place, Pismo State Beach and the Pacific Ocean.

2. A description of all observations and sampling activities conducted by or on behalf of the Discharger associated with potential short-term and long-term impacts to human health, vegetation and wildlife from the spill and an evaluation of these impacts.

This assessment must be prepared by a technical professional qualified to evaluate the short and long term impacts of the discharge on ecological receptors.

<u>Task F: Impact Report</u>
Consultant will document the results of the impact assessment in separate report in a format acceptable to the Regional Water Quality Control Board. The Impact Report will provide all of the information necessary for the Water Board to carry out its duties with respect to the assessment of the environmental effects of the spill. The report will be submitted to the San Luis Obispo County Department of Public Works; the Department of Public Works will forward the completed.

<u>Permits and Access</u>
The consultant must ensure that all persons involved in the survey, handling or disposition of listed species are properly permitted and authorized to undertake such activities for this survey effort.

The majority of the Oceano Lagoon is under the ownership of the California Department of Parks of Recreation or the County of San Luis Obispo. Consultant will work with the Flood Control District to secure the necessary permissions to enter and survey on public properties. If access to private properties is required, the Flood Control District will secure rights-of-entry from landowners.

Exhibits:

A. Sample Contract (19 pages)
B. Vicinity Map (1 page)
C. Aerial Photo (1 page)
D. USGS Map (1 page)
E. CDPR Insurance Requirements (2 pages)

EXHIBIT A

AGREEMENT FOR
PROFESSIONAL ENVIRONMENTAL CONSULTING SERVICES
(NON-FEDERAL FUNDING)

This Agreement is entered into by and between the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, herein called "COUNTY," and _____, a corporation whose address is _____, herein called "CONSULTANT." This Agreement shall be effective as of the date it is fully executed by the parties

The COUNTY department responsible for administering this Agreement is the Department of Public Works ("Public Works"), and all written communications hereunder with the COUNTY shall be addressed to the Director of Public Works ("Director").

WHEREAS, the COUNTY has need for special services and advice with respect to the work described herein for the _____Project (hereafter, the "Project"); and

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

NOW, THEREFORE, the parties agree with the above recitals, and hereby further agree as follows:

ARTICLE 1. **SCOPE OF WORK.** The CONSULTANT shall, at its own cost and expense, provide all the services, equipment, and materials necessary to complete the work described in the CONSULTANT's Scope of Work (hereafter, collectively "Work") attached hereto as Exhibit A. CONSULTANT warrants and represents that said Work encompasses all professional services necessary for the CONSULTANT's preparation of [Note: Summary description of consultant work.] All Work shall be performed to the highest professional standard.

EXHIBIT A

ARTICLE 2. TIME FOR COMPLETION OF WORK. No Work shall be commenced prior to the CONSULTANT's receipt of the COUNTY's Notice to Proceed. All Work shall be completed no later than _____, ____, 20____, provided, however, that extensions of time may be granted in writing by the Director of Public Works of San Luis Obispo County, which said extensions of time, if any, shall be granted only for reasons attributable to inclement weather, acts of God, or for other cause determined in the sole discretion of the Director of Public Works of San Luis Obispo County to be good and sufficient cause for such extensions.

ARTICLE 3. PAYMENT FOR SERVICES.

A. **COMPENSATION.** The COUNTY shall pay to the CONSULTANT as compensation in full for all Work required by this Agreement a sum not to exceed the $ _____ The CONSULTANT's compensation shall be based on actual services performed and costs incurred at the rates set forth for each task in the CONSULTANT's Cost Proposal attached hereto as Exhibit B. Progress payments will be made as set forth below based on compensable services provided and allowable costs incurred pursuant to this Agreement.

B. **REPORTS.** The CONSULTANT shall submit to the COUNTY, on a monthly basis, a detailed statement of all services performed and all Work accomplished under this Agreement since the CONSULTANT's last monthly statement, including the number of hours of Work performed and the personnel involved. For the purpose of timely processing of invoices, the CONSULTANT's invoices are not regarded as received until the monthly report is submitted. Any anticipated problems in performing any future Work shall be noted in the monthly reports. The CONSULTANT shall also promptly notify the County of any perceived need for a change in the scope of work , and an explanation as to why the CONSULTANT did not include said work in the attached Scope of Work.

C. **INVOICES.** Billing invoices shall be based upon the CONSULTANT's Cost Proposal, attached hereto as Exhibit B. Invoices shall detail the Work performed on each task and each project as applicable. Invoices shall follow a format based upon the Cost Proposal and shall reference this Agreement number and project title. Final invoice must contain the final cost and all credits due the COUNTY including any equipment purchased under the provisions of Article 24 Equipment Purchase of this Agreement.

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D. **RETAINAGE FROM PROGRESS PAYMENTS** The COUNTY shall withhold retainage from each progress payment due CONSULTANT in the sum of 10 percent until [Insert Final Report description - the final design plans and specifications for the construction of the Project] are accepted by the County. Once said final report is accepted by the County, all retainage shall be released within 60 days. The County reserves the right to withhold from any payment to CONSULTANT, including but not limited to any release of retainage, any sums attributable to any costs, damages or claims incurred or experienced by the County that arise from any breach of this Agreement by CONSULTANT.

E. **CONSULTANT'S ASSIGNED PERSONNEL.** All Work performed under this Agreement shall be performed by the CONSULTANT's personnel indentified in the organizational chart, attached hereto as Exhibit C. Any changes to the any personnel designated on this organizational chart must be approved in writing by the COUNTY's Project Manager.

ARTICLE 4. ACCOUNTING RECORDS.

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

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

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

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

ARTICLE 5. CONTINGENCY FUND FOR CHANGES IN SCOPE OF SERVICE. No change in the character or extent of the Work to be performed by the CONSULTANT shall be made except through a signed written amendment to this Agreement. The amendment shall set forth the proposed changes in Work, adjustment of time, and adjustment of the sum to be paid by the COUNTY to the CONSULTANT, if any. A contingency fund of $_____ is hereby created to address such changes to the scope of services and/or completion date. The COUNTY's Board of Supervisors hereby delegates to the Director of Public Works and Transportation the authority to sign amendments to this Agreement that make reasonable modifications to the time of performance or the scope of services, provided that all such amendments do not cumulatively exceed the contingency fund. Any other amendments must be approved by the Board. These additional funds are intended to provide the COUNTY with flexibility to respond to unanticipated events or conditions, and the CONSULTANT has no right to make any claim against these funds except as so expressly provided in a written amendment to this Agreement.

ARTICLE 6. NON-ASSIGNMENT OF AGREEMENT. Inasmuch as this Agreement is intended to secure the specialized services of the CONSULTANT, the CONSULTANT may not assign, transfer, delegate, or sublet any interest herein without the prior written consent of the COUNTY and any such assignment, transfer, delegation, or sublease without the County's prior written consent shall be considered null and void.

ARTICLE 7. INSURANCE. The CONSULTANT, at its sole cost and expense, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. Such policies shall be maintained for the full term of this Agreement and

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shall provide products/completed operations coverage for four (4) years following completion of the CONSULTANT's Work under this Agreement and acceptance by the County. Any failure to comply with reporting provisions(s) of the policies referred to above shall not affect coverage provided to the County, its officers, employees, volunteers, and agents. For purposes of the insurance policies required hereunder, the term "County" shall include officers, employees, volunteers, and agents of the County of San Luis Obispo, California, individually or collectively.

A. **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.** The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the County:

1. **COMMERCIAL GENERAL LIABILITY INSURANCE POLICY ("CGL").** Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage. (Occurrence Form CG0001) with policy limits not less than the following:

   $1,000,000 each occurrence (combined single limit);

   $1,000,000 for personal injury liability;

   $1,000,000 aggregate for products-completed operations; and

   $1,000,000 general aggregate.

   The general aggregate limits shall apply separately to the CONSULTANT's Work under this Agreement.

2. **BUSINESS AUTOMOBILE LIABILITY POLICY ("BAL").** Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability Coverage, Code 1 "Any Auto" (Form CA 0001). This policy shall include a minimum combined single limit of not less than One-million ($1,000,000) dollars for each occurrence, for bodily injury and/or property damage. Such policy shall be applicable to vehicles used in pursuit of any of the activities associated with this Agreement. The CONSULTANT shall not provide a Comprehensive Automobile Liability policy which specifically lists scheduled vehicles without the express written consent of County.

3. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY ("WC / EL").** This policy shall include at least the following coverages and policy limits:

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a. Workers' Compensation insurance as required by the laws of the State of California; and

b. Employer's Liability Insurance Coverage B with coverage amount not less than one-million ($1,000,000) dollars each accident / Bodily Injury (herein "BI"); one-million ($1,000,000) dollars policy limit BI by disease; and, one-million ($1,000,000) dollars each employee BI by disease.

4. **PROFESSIONAL LIABILITY INSURANCE POLICY ("PL").** This policy shall cover damages, liabilities, and costs incurred as a result of the CONSULTANT's professional errors and omissions or malpractice. This policy shall include a coverage limit of at least One-Million Dollars ($1,000,000) per claim, including the annual aggregate for all claims (such coverage shall apply during the performance of the services under this Agreement and for two (2) years thereafter with respect to incidents which occur during the performance of this Agreement). The CONSULTANT shall notify the County if any annual aggregate is eroded by more than seventy-five percent (75%) in any given year.

B. **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS.** Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by the CONSULTANT and approved by the County before Work is begun pursuant to this Agreement. At the option of the County, the CONSULTANT shall either reduce or eliminate such deductibles or self-insured retentions as respect the County, its officers, employees, volunteers, and agents, or shall provide a financial guarantee satisfactory to the County guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

C. **ENDORSEMENTS.** All of the following clauses and endorsements, or similar provisions, are required to be made a part of insurance policies indicated in parentheses below:

1. A "Cross Liability", "Severability of Interest" or "Separation of Insureds" clause (CGL & BAL);

2. The County of San Luis Obispo, its officers, employees, volunteers, and agents are hereby added as additional insureds with respect to all liabilities arising out of the CONSULTANT's performance of Work under this Agreement (CGL & BAL);

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3. If the insurance policy covers an "accident" basis, it must be changed to "occurrence" (CGL & BAL);

4. This policy shall be considered primary insurance with respect to any other valid and collectible insurance County may possess, including any self-insured retention County may have, and any other insurance County does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL, BAL, & PL);

5. No cancellation or non-renewal of this policy, or reduction of coverage afforded under the policy, shall be effective until written notice has been given at least thirty (30) calendar days prior to the effective date of such reduction or cancellation to County at the address set forth below (All Policies);

6. The CONSULTANT and its insurers shall agree to waive all rights of subrogation against the County, its officers, employees, volunteers, and agents for any loss arising under this Agreement (CGL); and

7. Deductibles and self-insured retentions must be declared (All Policies).

D. **ABSENCE OF INSURANCE COVERAGE.** The County may direct the CONSULTANT to immediately cease all activities with respect to this Agreement if it determines that the CONSULTANT fails to carry, in full force and effect, all insurance policies with coverages 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 the CONSULTANT's delay and expense. At the County's discretion, under conditions of lapse, the County may purchase appropriate insurance and charge all costs related to such policy to the CONSULTANT.

E. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.** Prior to commencement of Work under this Agreement, and annually thereafter for the term of this Agreement, the CONSULTANT, or each of the CONSULTANT's insurance brokers or companies, shall provide the County a current copy of a Certificate of Insurance, on an Accord or similar form, which includes complete policy coverage verification, as evidence of the stipulated coverages. All of the insurance companies providing insurance for the CONSULTANT shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage

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verification and all other notices related to cancellation or non-renewal shall be mailed to:

[Insert Project Mgr.} , Public Works Department
Room 207, County Government Center
San Luis Obispo CA 93408

ARTICLE 8. INDEMNIFICATION.

Consultant shall defend, indemnify and hold harmless the COUNTY, its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities or other losses that may be asserted by any person or entity, and that arise out of or are made in connection with the acts or omissions relating to the performance of any duty, obligation, or work hereunder. The obligation to indemnify shall be effective and shall extend to all such claims and losses, in their entirety, even when such claims or losses arise from the comparative negligence of the County, its officers and employees. However, this indemnity will not extend to any claims or losses arising out of the sole negligence or willful misconduct of the County, its officers and employees.

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

1. Violation of statute, ordinance, or regulation.
2. Professional malpractice.
3. Willful, intentional or other wrongful acts, or failures to act.
4. Negligence or recklessness.
5. Furnishing of defective or dangerous products.
6. Premises liability.
7. Strict Liability.
8. Violation of civil rights.
9. Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board or any other California public entity responsible for collecting payroll taxes, when the Consultant is not an independent contractor.

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

ARTICLE 9. <u>CONSULTANT'S RESPONSIBILITY FOR ITS WORK.</u>

A. The CONSULTANT has been hired by the COUNTY because of the CONSULTANT's specialized expertise in performing the Work described in the attached Scope of Work, Exhibit A. The CONSULTANT shall be solely responsible for such Work. The COUNTY's review, approval, and/or adoption of any Work product shall be in reliance on the CONSULTANT's specialized expertise and shall not relieve the CONSULTANT of its sole responsibility for the Work. The COUNTY is under no duty or obligation to review or verify the appropriateness, quality, or accuracy of any Work product, including but not limited to, any methods, procedures, tests, calculations, drawings, or other information used or created by the CONSULTANT in performing any Work under this Agreement.

B. All information which the CONSULTANT receives from the COUNTY should be independently verified by the CONSULTANT. The CONSULTANT should not rely upon such information unless it has independently verified its accuracy. The only exception to the foregoing arises when the COUNTY has expressly stated in writing that certain information may be relied upon by the CONSULTANT without the CONSULTANT's independent verification. In such event, the CONSULTANT is still obliged to promptly notify the COUNTY whenever the CONSULTANT becomes aware of any information that is inconsistent with any information which the COUNTY has stated may be relied upon by the CONSULTANT.

C. Pursuant to the provisions of this Article, the CONSULTANT is responsible for all Work under this Agreement, including the work performed by any subcontractors or any other independent contractors which CONSULTANT hires or contracts with regarding the Work.

ARTICLE 10. <u>INSURANCE AND INDEMNIFICATION AS MATERIAL PROVISIONS.</u> The parties expressly agree that the indemnification and insurance clauses in this Agreement

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are an integral part of the performance exchanged in this Agreement. The compensation stated in this Agreement includes compensation for the risks transferred to the CONSULTANT by the indemnification and insurance clauses.

ARTICLE 11. CONSULTANT'S ENDORSEMENT ON REPORTS, ETC. The CONSULTANT shall endorse all reports, maps, plans, documents, materials, and other data in accordance with applicable provisions of the laws of the State of California.

ARTICLE 12. DOCUMENTS, INFORMATION AND MATERIALS OWNERSHIP. All documents, information, and materials of any and every type prepared by the CONSULTANT (or any subcontractor) pursuant to this Agreement shall be the property of the COUNTY. Such documents shall include but not be limited to data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the CONSULTANT (or any subcontractor) in performing Work under this Agreement, whether completed or in process. The CONSULTANT shall assume no responsibility for the unintended use by others of any such documents, information, or materials on project(s) which are not related to the scope of services described under this Agreement.

ARTICLE 13. TERMINATION OF AGREEMENT WITHOUT CAUSE. The COUNTY may terminate this Agreement at any time by giving the CONSULTANT thirty (30) calendar days written notice of such termination. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. Other than payments for services satisfactorily rendered prior to the effective date of said termination, the CONSULTANT shall be entitled to no further compensation or payment of any type from the COUNTY.

ARTICLE 14. TERMINATION OF AGREEMENT FOR CAUSE. If the CONSULTANT fails to perform the CONSULTANT's duties to the satisfaction of the COUNTY; or if the CONSULTANT fails to fulfill in a timely and professional manner the CONSULTANT's obligations under this Agreement; or if the CONSULTANT violates any of the terms or provisions of this Agreement; or if the CONSULTANT, or the CONSULTANT's agents or

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employees fails to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the COUNTY, then the COUNTY shall have the right to terminate this Agreement effective immediately upon the COUNTY giving written notice thereof to the CONSULTANT. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. The CONSULTANT shall be paid for all Work satisfactorily completed prior to the effective date of such termination. If the COUNTY's termination of the Agreement for cause is defective for any reason, including but not limited to the COUNTY's reliance on erroneous facts concerning the CONSULTANT's performance, or any defect in notice thereof, this Agreement shall automatically terminate without cause thirty (30) calendar days following the COUNTY's written notice of termination for cause to the CONSULTANT, and the COUNTY's maximum liability shall not exceed the amount payable to the CONSULTANT under Article 13 above.

ARTICLE 15. COMPLIANCE WITH LAWS. The CONSULTANT shall comply with all Federal, State, and local laws and ordinances that are applicable to the performance of the Work of this Agreement. This includes compliance with applicable prevailing wage rates and their payment in accordance with the California Labor Code. The CONSULTANT will comply, or cause its subconsultant(s) to comply, with the applicable provisions of Labor Code Section 1774.

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

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EXHIBIT A

ARTICLE 17. DISPUTES & CLAIMS.

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

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

C. **CLAIM IS NO EXCUSE.** Neither the filing of a Notice of Potential Claim or of a Notice of Actual Claim, nor the pendency of a dispute or claim, nor its consideration by

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the COUNTY, shall excuse the CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

ARTICLE 18. CONSULTANT IS AN INDEPENDENT CONTRACTOR. It is expressly understood that in the performance of the services herein provided, the CONSULTANT shall be, and is, an independent contractor, and is not an agent or employee of the COUNTY. The CONSULTANT has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons assisting the CONSULTANT in the performance of the services rendered hereunder. The CONSULTANT shall be solely responsible for all matters relating to the payment of its employees, including compliance with Social Security, withholding, and all other regulations governing such matters.

ARTICLE 19. ENTIRE AGREEMENT AND MODIFICATION. This Agreement supersedes all previous agreements and constitutes the entire understanding of the parties hereto. The CONSULTANT shall be entitled to no other compensation and/or benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both parties. Any changes increasing the CONSULTANT's compensation and/or benefits must be approved by the COUNTY's Board of Supervisors; any other changes may be signed by the County Director of Public Works on behalf of the COUNTY. The CONSULTANT specifically acknowledges that in entering into and executing this Agreement, the CONSULTANT relies solely upon the provisions contained in this Agreement and no others. To the extent there is any inconsistency between the text in the body of this Contract and anything in any of the Exhibits attached hereto, the text in the body of this Contract shall prevail.

ARTICLE 20. ENFORCEABILITY. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

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ARTICLE 21. <u>WARRANTY OF CONSULTANT.</u> The CONSULTANT warrants that the CONSULTANT and each of the personnel employed or otherwise retained by the CONSULTANT for Work under this Agreement where required by law and regulation are properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to.

ARTICLE 22. <u>SUBCONTRACTORS.</u>

A. Other than Work designated in Exhibits A and B to be performed by other persons or entities, the CONSULTANT shall perform the Work contemplated with resources available within its own organization and no portion of the Work shall be subcontracted without written authorization by the COUNTY. In the event the COUNTY provides written authorization for Work to be performed by a subcontractor, the use of the words "subcontractor" and "subcontract" in this Article shall refer to such authorized subcontracting to a subcontractor of the first tier or any other tier. . The terms "subcontract" and "subcontractor" include any and all contracts or arrangements by which CONSULTANT hires or enters into a contract with any subconsultants regarding any Work.

B. Nothing contained in this Agreement or otherwise, shall create any contractual relation between the County and any subcontractors, and no subcontract shall relieve the CONSULTANT of its responsibilities and obligations hereunder. The CONSULTANT agrees to be as fully responsible to the COUNTY for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them as it is for the acts and omissions of persons directly employed by the CONSULTANT. The CONSULTANT's obligation to pay its subcontractors is an independent obligation from the COUNTY's obligation to make payments to the CONSULTANT.

C. Any subcontract entered into by the CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "CONSULTANT" where it appears in this Article.

D. Any substitution of subcontractors must be approved in writing by the COUNTY's Project Manager in advance of assigning work to a substitute subcontractor.

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ARTICLE 23. <u>EQUIPMENT PURCHASE.</u>

A. Prior authorization in writing, by the COUNTY's Project Manager, shall be required before the CONSULTANT enters into any unbudgeted purchase order or subcontract exceeding $5,000 for equipment. The CONSULTANT shall provide an evaluation of the necessity or desirability of incurring such costs and three competitive quotations must be submitted with the request, or the absence of bidding must be adequately justified.

B. Any equipment purchased as a result of this Agreement is subject to the following: "The CONSULTANT shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of $5,000 or more. If the purchased equipment needs replacement and is sold or traded in, the COUNTY shall receive a proper refund or credit at the conclusion of the Agreement, or if the Agreement is terminated, the CONSULTANT may either keep the equipment and credit the COUNTY in an amount equal to its fair market value, or sell such equipment at the best price obtainable at a public or private sale, in accordance with established COUNTY procedures; and credit the COUNTY in an amount equal to the sales price. If the CONSULTANT elects to keep the equipment, fair market value shall be determined at the CONSULTANT's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable to by the COUNTY and the CONSULTANT, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY."

ARTICLE 24. <u>APPLICABLE LAW AND VENUE.</u> This Agreement has been executed and delivered in the State of California and the validity, enforceability, and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. All duties and obligations of the parties created hereunder are performable in San Luis Obispo County and such County shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

ARTICLE 25. <u>NOTICES</u>. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by first class mail to the County at:

Mr. Paavo Ogren, Director

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San Luis Obispo County
Department of Public Works
County Government Center, Room 207
San Luis Obispo, CA 93408

and to the CONSULTANT:

_____

_____

_____

_____

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

ARTICLE 27. CONFIDENTIALITY OF DATA.

A. All financial, statistical, personal, technical, or other data and information relative to the COUNTY's operations, which are designated confidential by the COUNTY and made available to the CONSULTANT in order to carry out this Agreement, shall be protected by the CONSULTANT from unauthorized use and disclosure, and shall not be made available to any individual or organization by the CONSULTANT without the prior written approval of the COUNTY.

B. Permission to disclose information on one occasion, or public hearing held by the COUNTY relating to this Agreement, shall not authorize the CONSULTANT to further disclose such information, or disseminate the same on any other occasion.

C. All information related to the construction estimate is confidential, and shall not be disclosed by the CONSULTANT to any entity other than the COUNTY.

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ARTICLE 28. RESTRICTIVE COVENANT. The CONSULTANT agrees that it will not, during the continuance of this Agreement, perform or otherwise exercise the services described in Exhibit A for anyone except for the COUNTY, unless and until the COUNTY waives this restriction.

ARTICLE 29. CLAIMS FILED BY COUNTY'S CONSTRUCTION CONTRACTOR.

A. If claims are filed against the COUNTY by the COUNTY's construction contractor or any other third party that relates in any way to any Work product within the CONSULTANT's Scope of Work under this Agreement, and additional information or assistance from the CONSULTANT's personnel is requested by the COUNTY in order to evaluate or defend against such claims, the CONSULTANT agrees to cooperate with and provide timely response to any reasonable requests for information submitted to the CONSULTANT by the COUNTY relating to such claims. To the extent the information requested by the COUNTY only seeks copies of documents or other factual information relating to Work performed by the CONSULTANT, the CONSULTANT will only be compensated for any clerical costs associated with providing the COUNTY the requested factual information.

B. The CONSULTANT's personnel that the COUNTY considers essential to assist in defending against such claims will be made available for consultation with the COUNTY upon reasonable notice from the COUNTY. In the event the expert opinions of the CONSULTANT's personnel is sought by the COUNTY through such consultation or through testimony, and only in such event, such consultation or testimony will be reimbursed at the same rates, including travel costs that are being paid for the CONSULTANT's personnel services under this Agreement. In the event the testimonies of any of the CONSULTANT's personnel are sought by another party, the CONSULTANT reserves the right to charge other party a different rate for deposition or trial testimony.

C. Services of the CONSULTANT's personnel in connection with the COUNTY's construction contractor claims will be performed pursuant to a written contract amendment, if necessary, extending the termination date of this agreement in order to finally resolve the claims.

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D. Any subcontract entered into by the CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "CONSULTANT" where it appears in this Article.

ARTICLE 31. <u>CONFLICT OF INTEREST.</u>

A. The CONSULTANT shall disclose any financial, business, or other relationship with the COUNTY that may be affected by the outcome of this Agreement, or any ensuing COUNTY construction project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing COUNTY construction project, which will follow.

B. The CONSULTANT hereby certifies that it does not now have, nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

C. Any subcontract entered into by the CONSULTANT relating to this Agreement, shall bind the subcontractor to all of the provisions of this Article by incorporating the provisions of this Article in any such subcontract, and substituting the name of the subcontractor in place of the word "CONSULTANT" where it appears in this Article.

D. The CONSULTANT hereby certifies that neither the CONSULTANT, nor any firm affiliated with the CONSULTANT will bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement. An affiliated firm is one, which is subject to the control of one or more of the same persons through joint-ownership, or otherwise.

E. Except for subcontractors whose services are limited to providing surveying or materials testing information, no subcontractor who has provided design services in connection with this Agreement shall be eligible to bid on any construction contract, or on any contract to provide construction inspection for any construction project resulting from this Agreement.

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

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EXHIBIT A

COUNTY OF SAN LUIS OBISPO

By: _____ Date: _____
Chairperson of the Board
County of San Luis Obispo
State of California

ATTEST:

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

CONSULTANT

By: _____ Date: _____

Name: _____

Title: _____

APPROVED AS TO FORM AND LEGAL EFFECT:
WARREN R. JENSEN
County Counsel

By: _____ Date: _____
Deputy County Counsel

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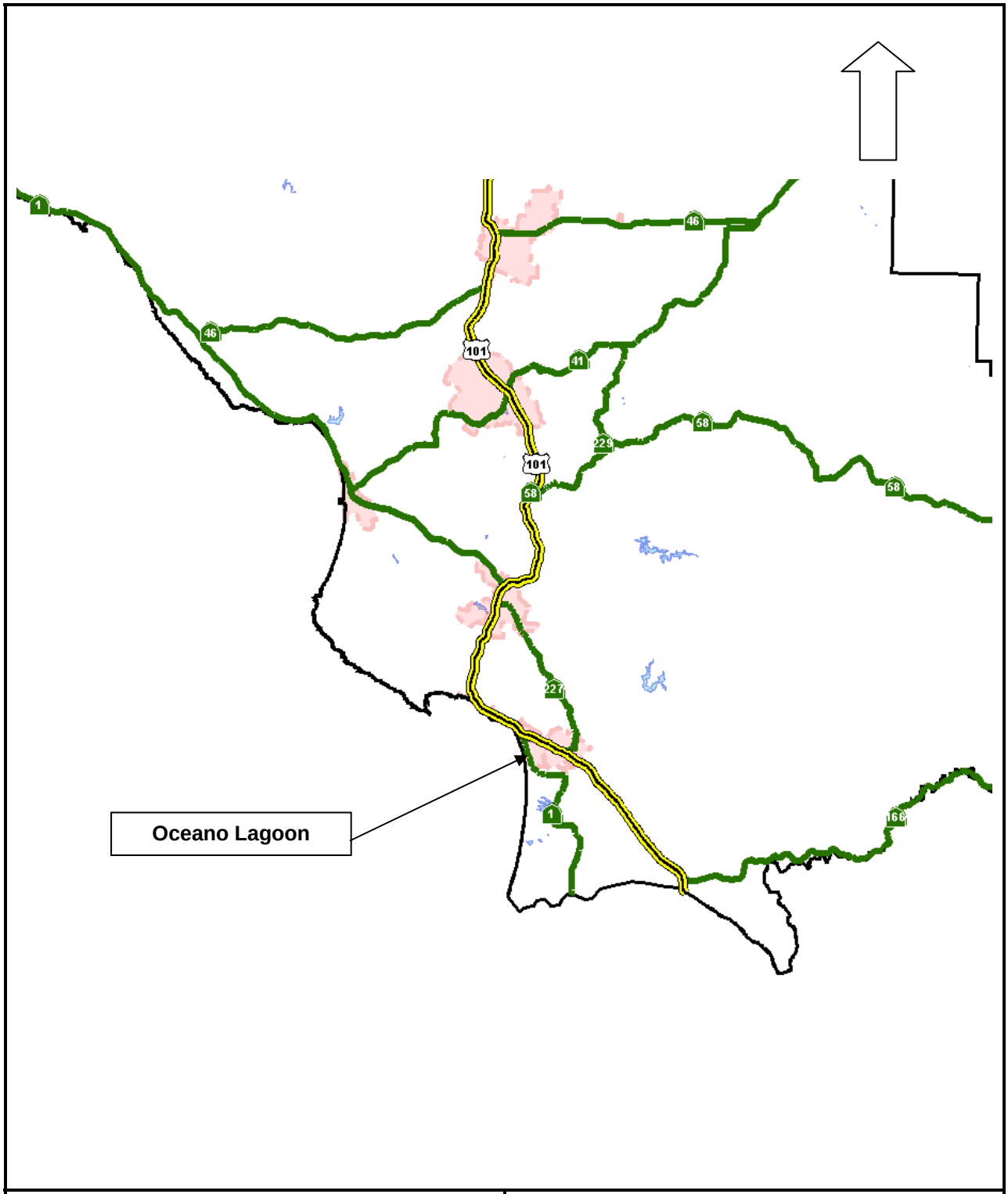
EXHIBIT B - VICINITY MAP

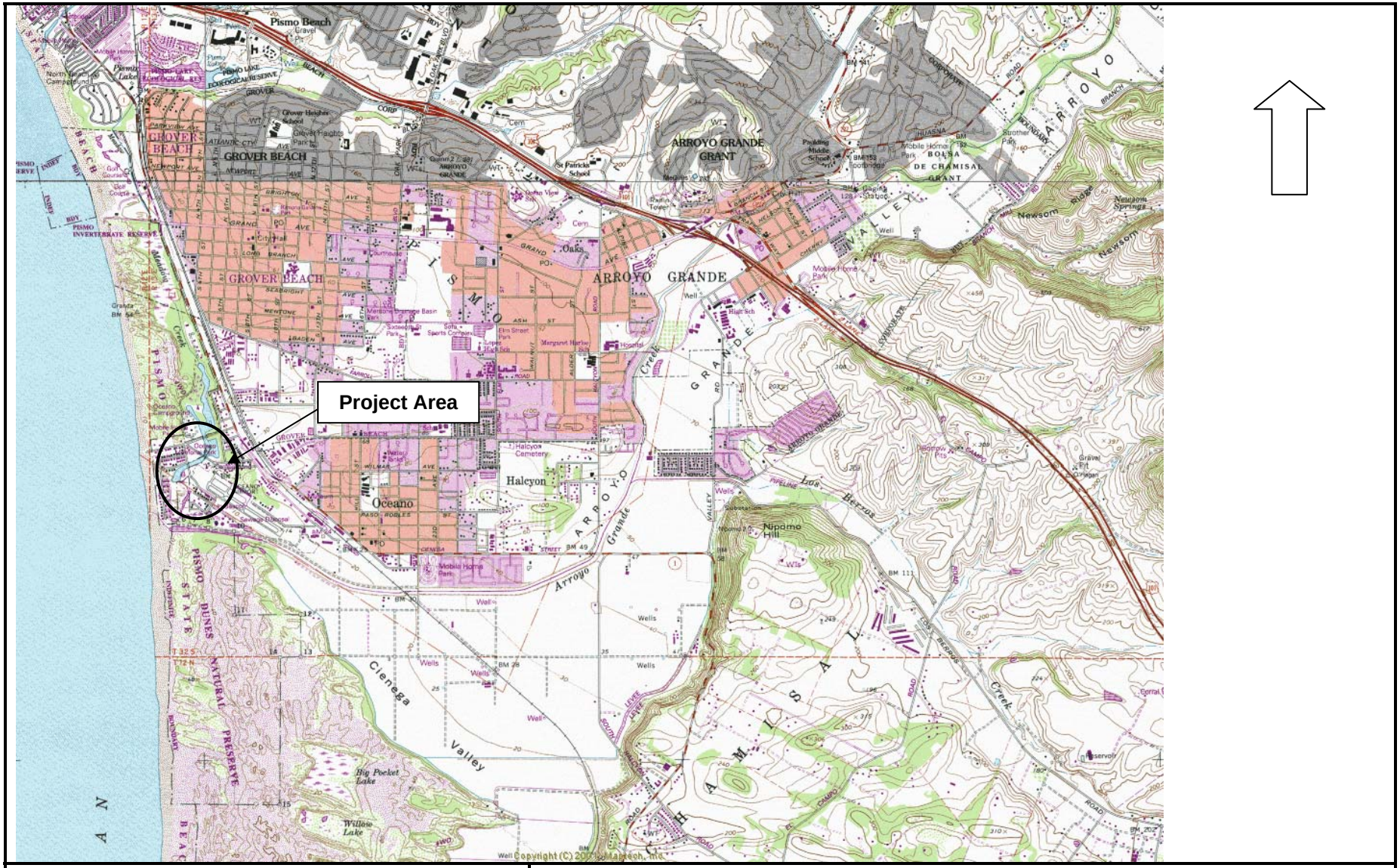


Oceano Lagoon Biological Investigations	EXHIBIT B - VICINITY MAP

EXHIBIT C - AERIAL PHOTO

Oceano Lagoon Biological Investigations	EXHIBIT C - AERIAL

EXHIBIT D - USGS MAP



Oceano Lagoon Biological Investigations	EXHIBIT D – USGS 7.5 MINUTE OCEANO QUAD

EXHIBIT E

Oceano Lagoon Biological Investigations Exhibit E	California Department of Parks and Recreation Right of Entry Permit Insurance Requirements

As a condition of this Permit and in connection with its indemnification and waiver of claims for the project, Permittee will provide, and/or cause its contractors to provide, a policy or policies of insurance as follows:

Permittee shall procure commercial general liability insurance at least as broad as the most commonly available ISO policy form CG 0001 covering bodily injury, property damage and personal injury and with limits not less than $1,000,000 per occurrence and $2,000,000 general aggregate. Said policy shall apply separately to each insured against whom any claim is made or suit is brought subject to the Permittee limits of liability.

Permittee shall also procure property insurance at least as broad as the most commonly available special form policy with a limit of not less than $500,000. Said policy shall contain an endorsement naming CALIFORNIA STATE DEPARTMENT OF PARKS AND RECREATION as loss payable and provide that payments for any losses be made to CALIFORNIA STATE DEPARTMENT OF PARKS AND RECREATION and Permittee as co-payees and shall be used to repair, rebuild, restore or replace the insured property at State's direction for any damage resulting from the installation or operation of Permittee's equipment. If payments are not used, they shall be made payable directly to CALIFORNIA STATE DEPARTMENT OF PARKS AND RECREATION for rebuilding or repair as necessary in the discretion of the State.

Permittee shall maintain motor vehicle liability with limits of not less than $1,000,000 per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non- owned motor vehicles in use by Permittee.

Permittee shall maintain statutory worker's compensation, and employer's liability coverage in the amount of $1,000,000/employee/disease/each accident, for all its employees who will be engaged in the performance of work on the Property, including special extensions where applicable.

Each policy of insurance required by this provision shall: (a) be in a form, and written by an insurer, reasonably acceptable to State; (b) be maintained at Permittee's sole expense; and (c) require at least thirty (30) days written notice to State prior to any cancellation, nonrenewal or material modification of insurance coverage.

Insurance companies issuing such policies shall have a rating classification of "A-" or better and financial size category ratings of "VII" or better according to the latest edition of the A.M. Best Key Rating Guide. All Insurance companies issuing such policies shall be licensed to do business in the State of California.

EXHIBIT E

Such policies shall contain an endorsement naming the CALIFORNIA STATE DEPARTMENT OF PARKS AND RECREATION as an additionally named insured at no cost to State.

Permittee shall provide to State evidence that the insurance required to be carried by this provision, including any endorsement affecting the additional insured status, is in full force and effect and that premiums therefore have been paid. Such evidence shall, at State's discretion, be in either the form of an ACORD Form (Certificate of Insurance) or DPR Form 169A (Certificate of Insurance for Concession Contracts/Special Events), or a certified copy of the original policy, including all endorsements.

Permittee is responsible for any deductible or self-insured retention contained within the insurance program.

Should Permittee fail to keep the specified insurance in effect al all times, State may, in addition to any other remedies it has, terminate this Permit. If any policy of insurance required by this
provision lapses, evidence of a new policy shall be provided to State within ten (10) working days of such lapse.

Permittee is required to ensure all contractors and subcontractors have adequate insurance meeting the coverage requirements in this provision.

Any insurance required to be carried shall be primary and not excess to any other insurance carried by State. Coverage shall be in force for the complete term of this Permit and the work being done for which this Permit is required.