

**AGREEMENT FOR
PROFESSIONAL ENGINEERING 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 North Coast Engineering, Inc., a corporation whose address is 725 Creston Road, Suite B, Paso Robles, CA 93446, herein called "ENGINEER." 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 Vineyard Drive Bicycle Lanes Project (hereafter, the "Project"); and

WHEREAS, the ENGINEER 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 ENGINEER shall, at its own cost and expense, provide all the services, equipment, and materials necessary to complete the work described in the ENGINEER's Scope of Work (hereafter, collectively "Work") attached hereto as Exhibit A. ENGINEER warrants and represents that said Work encompasses all professional engineering services necessary for the ENGINEER's preparation of final design plans, specifications, and estimate for the public bidding of the construction of the Project. All Work shall be performed to the highest professional standard.

ARTICLE 2. TIME FOR COMPLETION OF WORK. No Work shall be commenced prior to the ENGINEER's receipt of the COUNTY's Notice to Proceed. All Work shall be

completed no later than December 31, 2013, 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.

1. The COUNTY shall pay to the ENGINEER as compensation in full for all Work required by this Agreement a sum not to exceed the \$60,939.00.
2. The ENGINEER's compensation shall be based on actual services performed and costs incurred at the rates set forth for each task in the ENGINEER's Cost Proposal 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.
3. For those deliverables identified in Exhibit B as LUMP SUM, the lump sum amount shown in Exhibit B will be paid to the ENGINEER as each deliverable is accepted by the COUNTY as complete. The lump sum payment shall be the total compensation due to ENGINEER for all labor, materials, supervision, overhead, and profit provided by ENGINEER for that deliverable.
4. For those tasks identified in Exhibit B as TIME AND MATERIALS, ENGINEER shall be compensated for actual costs (including labor costs, employee benefits, travel, equipment rental costs, overhead, fee and other direct costs) incurred by the ENGINEER in accordance with the Rate Schedule included in Exhibit B. In no event will the ENGINEER be reimbursed for overhead costs at a rate that exceeds the COUNTY's approved overhead rate set forth in the ENGINEER's Cost Proposal.
5. If the County directs the Consultant to discontinue work on any Deliverable, the Consultant shall invoice the County and be paid on a time-and-materials basis for that Deliverable in an amount not to exceed the lump sum amount shown in Exhibit B for that individual Deliverable.

6. Progress payments will be made as set forth below based on deliverables accepted, portions of deliverables accepted, compensable services provided and allowable costs incurred pursuant to this Agreement. No payment will be made prior to approval of any work.

7. All subcontracts in excess of \$25,000 shall contain the above provisions.

B. **REPORTS.** The ENGINEER 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 ENGINEER'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 ENGINEER'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 ENGINEER 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 ENGINEER did not include said work in the attached Scope of Work.

C. **INVOICES.** Billing invoices shall be based upon the ENGINEER'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.

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

ARTICLE 4. ACCOUNTING RECORDS.

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

B. The ENGINEER shall record costs in a cost accounting system which clearly identifies the source of all costs. Agreement costs shall not be co-mingled with other project costs, but shall be directly traceable to contract billings to the 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 ENGINEER's cost accounting records.

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

D. The ENGINEER 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 ENGINEER's accounting records audited, at the ENGINEER's expense, by an accountant licensed by the State of California. The audit shall be presented to the County Auditor-Controller within thirty (30) calendar days after completion of the audit.

E. The State, the State auditor, BTA, or any authorized representative of the State government having jurisdiction under State law or regulations (including the Basis of State Funding in whole or in part) shall have access to any book, record, any documents of the ENGINEER that are pertinent to the Agreement for audits, examinations, excerpt, and transactions, and copies thereof shall be furnished if requested. The ENGINEER must also maintain records for five (5) years from the date of final payment.

F. Any subcontract entered into by ENGINEER 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 "ENGINEER" where it appears in this Article.

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 ENGINEER shall be made except through a signed written amendment to this Agreement. The amendment shall set forth the proposed changes in Work, adjustment of time, and adjustment of the sum to be paid by the COUNTY to the ENGINEER, if any.

ARTICLE 6. NON-ASSIGNMENT OF AGREEMENT. Inasmuch as this Agreement is intended to secure the specialized services of the ENGINEER, the ENGINEER 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 ENGINEER, 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 the related warranty period (if applicable) and shall provide products/completed operations coverage for four (4) years following completion of the ENGINEER'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 ENGINEER'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 ENGINEER 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:

- 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 ENGINEER'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 ENGINEER 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 ENGINEER and approved by the County before Work is begun pursuant to this Agreement. At the option of the County, the ENGINEER 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 ENGINEER’s performance of Work under this Agreement (CGL & BAL);
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 ENGINEER 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 ENGINEER to immediately cease all activities with respect to this Agreement if it determines that the ENGINEER 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 ENGINEER’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 ENGINEER.

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 ENGINEER, or each of the ENGINEER'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 ENGINEER shall have, and provide evidence of, a Best Rating Service rate of A VI or above. The Certificate of Insurance and coverage verification and all other notices related to cancellation or non-renewal shall be mailed to:

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

ARTICLE 8. INDEMNIFICATION.

A. The ENGINEER shall defend, indemnify and hold harmless the COUNTY, its officers, agents, and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, liabilities, or other losses (hereafter, collectively "claims") that may be asserted by any person or entity, and that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the ENGINEER. The parties agree that, in addition to the ENGINEER's general and professional duties of care, the ENGINEER has a duty of care to act in accordance with the terms of this Agreement. In addition to whatever other acts or omissions of ENGINEER that constitute negligence, recklessness, or willful misconduct under applicable law, the parties acknowledge that any act or omission of the ENGINEER that causes any damage to person or property, and constitutes a breach of any duty under, or pursuant to, this Agreement, shall at a minimum constitute negligence (and may constitute recklessness or willful conduct if so warranted by the facts).

B. The preceding paragraph applies to any and all such claims, regardless of the nature of the claim or theory of recovery. For purposes of the paragraphs found in this Article of the Agreement, "ENGINEER" shall include the ENGINEER, and/or its agents, employees, subcontractors, or other independent contractors hired by, or working under, the ENGINEER.

C. It is the intent of the parties to provide the COUNTY the fullest indemnification, defense, and "hold harmless" rights allowed under the law. No provisions of this Agreement shall be construed in a manner that would constitute a waiver or

modification of Civil Code section 2782.8. 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. Nothing contained in this Agreement shall be construed to require the ENGINEER to indemnify the COUNTY against any responsibility or liability in contravention of Civil Code or 2782.8.

ARTICLE 9. ENGINEER'S RESPONSIBILITY FOR ITS WORK.

A. The ENGINEER has been hired by the COUNTY because of the ENGINEER's specialized expertise in performing the Work described in the attached Scope of Work, Exhibit A. The ENGINEER shall be solely responsible for such Work. The COUNTY's review, approval, and/or adoption of any designs, plans, specifications, or any other Work shall be in reliance on the ENGINEER's specialized expertise and shall not relieve the ENGINEER 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 designs, plans, specifications, or any other Work, including but not limited to, any methods, procedures, tests, calculations, drawings, or other information used or created by the ENGINEER in performing any Work under this Agreement.

B. All information which the ENGINEER receives from the COUNTY should be independently verified by the ENGINEER. The ENGINEER 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 ENGINEER without the ENGINEER's independent verification. In such event, the ENGINEER is still obliged to promptly notify the COUNTY whenever the ENGINEER becomes aware of any information that is inconsistent with any information which the COUNTY has stated may be relied upon by the ENGINEER.

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

ARTICLE 10. INSURANCE AND INDEMNIFICATION AS MATERIAL PROVISIONS. The parties expressly agree that the indemnification and insurance clauses in this Agreement are an integral part of the performance exchanged in this Agreement. The compensation stated in this Agreement includes compensation for the risks transferred to the ENGINEER by the indemnification and insurance clauses.

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

ARTICLE 12. DOCUMENTS, INFORMATION AND MATERIALS OWNERSHIP.

A. All documents, information, and materials of any and every type prepared by the ENGINEER (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 ENGINEER (or any subcontractor) in performing Work under this Agreement, whether completed or in process. The ENGINEER shall assume no responsibility for the unintended use by others of any such documents, information, or materials on project(s) which are not related to the scope of services described under this Agreement.

B. ENGINEER understands and agrees that the applicable patent rights provisions described in 41 CFR 1-91, shall be used to determine rights to inventions.

C. Any subcontract entered into by ENGINEER 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 "ENGINEER" where it appears in this Article.

ARTICLE 13. TERMINATION OF AGREEMENT WITHOUT CAUSE. The COUNTY may terminate this Agreement at any time by giving the ENGINEER 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 ENGINEER shall be entitled to no further compensation or payment of any type from the COUNTY.

ARTICLE 14. TERMINATION OF AGREEMENT FOR CAUSE. If the ENGINEER fails to perform the ENGINEER's duties to the satisfaction of the COUNTY; or if the ENGINEER fails to fulfill in a timely and professional manner the ENGINEER's obligations under this Agreement; or if the ENGINEER violates any of the terms or provisions of this Agreement; or if the ENGINEER, or the ENGINEER's agents or 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 ENGINEER. Termination shall have no effect upon the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. The ENGINEER 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 ENGINEER'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 ENGINEER, and the COUNTY's maximum liability shall not exceed the amount payable to the ENGINEER under Article 13 above.

ARTICLE 15. COMPLIANCE WITH LAWS. The ENGINEER 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 prevailing wage rates and their payment in accordance with the California Labor Code. The ENGINEER acknowledges that labor performed on site to support any Work required under this Agreement is a public work within the meaning of Labor Code Section 1720. The ENGINEER will comply, or cause its subconsultant(s) to comply, with the provisions of Labor Code Section 1774.

ARTICLE 16. COVENANT AGAINST CONTINGENT FEES. The ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working for the ENGINEER, 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.

ARTICLE 17. DISPUTES & CLAIMS.

A. **NOTICE OF POTENTIAL CLAIM.** The ENGINEER shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the COUNTY, or for the happening of any event, thing, occurrence, or other cause, unless the ENGINEER 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 ENGINEER believes additional compensation will or may be due, the nature of the cost involved, and, insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the COUNTY prior to the time that the ENGINEER shall have performed the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the 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 ENGINEER hereby agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written Notice of Potential Claim as herein required was filed with the 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

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

ARTICLE 18. ENGINEER IS AN INDEPENDENT CONTRACTOR. It is expressly understood that in the performance of the services herein provided, the ENGINEER shall be, and is, an independent contractor, and is not an agent or employee of the COUNTY. The ENGINEER has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons assisting the ENGINEER in the performance of the services rendered hereunder. The ENGINEER 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 ENGINEER shall be entitled to no other compensation and/or benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both parties. Any changes increasing the ENGINEER'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 ENGINEER specifically acknowledges that in entering into and executing this Agreement, the ENGINEER 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 Agreement and anything in any of the Exhibits attached hereto, the text in the body of this Agreement 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.

ARTICLE 21. WARRANTY OF ENGINEER. The ENGINEER warrants that the ENGINEER and each of the personnel employed or otherwise retained by the ENGINEER for Work under this Agreement are properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to.

ARTICLE 22. SUBCONTRACTORS.

A. Other than Work designated in Exhibits A and B to be performed by other persons or entities, the ENGINEER shall perform the Work contemplated with resources available within its own organization and no portion of the Work shall be subcontracted without written authorization by the 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 ENGINEER 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 ENGINEER of its responsibilities and obligations hereunder. The ENGINEER 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 ENGINEER. The ENGINEER's obligation to pay its subcontractors is an independent obligation from the COUNTY's obligation to make payments to the ENGINEER.

C. Any subcontract entered into by the ENGINEER 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 “ENGINEER” 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.

E. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, shall contain all the provisions stipulated in this Agreement to be applicable to subcontractors.

F. For purposes of this Agreement, the term “subcontractor” includes subconsultants.

ARTICLE 23. EQUIPMENT PURCHASE.

A. Prior authorization in writing, by the COUNTY’s Project Manager, shall be required before the ENGINEER enters into any unbudgeted purchase order or subcontract exceeding \$5,000 for equipment. The ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER elects to keep the equipment, fair market value shall be determined at the ENGINEER’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 ENGINEER, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by the COUNTY.”

C. All subcontracts in excess \$25,000 shall contain the above provisions.

ARTICLE 24. APPLICABLE LAW AND VENUE. 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. NOTICES. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by first class mail to the County at:

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

and to the ENGINEER:

Steven Sylvester, Principal in Charge
North Coast Engineering, Inc.
725 Creston Road, Suite B
Paso Robles, CA 93446

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 ENGINEER shall include in all final documents and in all written reports submitted a written summary of costs, which shall set forth the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of such documentation or written report. The Agreement and subagreement numbers and dollar amounts shall be contained in a separate section of such document or written report.

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 ENGINEER in order to carry out this Agreement, shall be protected by the ENGINEER from unauthorized use and disclosure, and shall not be made available to any individual or organization by the ENGINEER 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 ENGINEER 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 ENGINEER to any entity other than the COUNTY.

D. Any subcontract entered into by ENGINEER 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 "ENGINEER" where it appears in this Article.

ARTICLE 28. RESTRICTIVE COVENANT. The ENGINEER 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. QUALITY CONTROL AND QUALITY ASSURANCE. The ENGINEER shall provide a description of its Quality Control procedure. The process shall be implemented for all facets of Work and a QC-QA statement and signature shall be placed on all submittals to the COUNTY.

ARTICLE 30. 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 subject, plans, designs, or other Work within the ENGINEER's Scope of Work under this Agreement, and additional information or assistance from the ENGINEER's personnel is requested by the COUNTY in order to evaluate or defend against such claims, the ENGINEER agrees to cooperate with and provide timely response to any reasonable requests for information submitted to the ENGINEER 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 ENGINEER, the ENGINEER will only be compensated for any clerical costs associated with providing the COUNTY the requested factual information.

B. The ENGINEER'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 ENGINEER'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 ENGINEER's personnel services under this Agreement. In the event the testimonies of any of the ENGINEER's personnel are sought by another party, the ENGINEER reserves the right to charge other party a different rate for deposition or trial testimony.

C. Services of the ENGINEER'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.

D. Any subcontract entered into by the ENGINEER 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 "ENGINEER" where it appears in this Article.

ARTICLE 31. CONFLICT OF INTEREST.

A. The ENGINEER 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 ENGINEER 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 ENGINEER 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 ENGINEER 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 "ENGINEER" where it appears in this Article.

D. The ENGINEER hereby certifies that neither the ENGINEER, nor any firm affiliated with the ENGINEER 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.

ARTICLE 32. REBATES, KICKBACK, OR OTHER UNLAWFUL CONSIDERATION. The ENGINEER warrants that this Agreement was not obtained or secured through rebates kickbacks or other unlawful consideration, either promised or paid to any COUNTY employee. For breach or violation of this warranty, COUNTY shall have the right in its discretion; to terminate the Agreement without liability; to pay only for the value of the work actually performed; or to deduct from the contract price; or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

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.

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

ENGINEER

By: Christy A Gabler

Date: 5/15/12

Name: Christy Gabler, PE

Title: Vice President, RCE# : 64821

APPROVED AS TO FORM AND LEGAL EFFECT:

WARREN R. JENSEN
County Counsel

By: Warren R. Jensen
Deputy County Counsel

Date: 5/17/12

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