

AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

This AGREEMENT is entered into this _____ day of _____, 20____, by and between the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, herein called "COUNTY," and CANNON, a corporation whose address is 1050 Southwood Drive, San Luis Obispo, CA 93401, herein called "ENGINEER."

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

WHEREAS, the COUNTY has a need for special services and advice with respect to the Work described herein for designing an intertie between the CSA / Atascadero Mutual Water Company / Garden Farms Community Water District water systems (hereafter, the "Project"); and

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

WHEREAS, the San Luis Obispo County Flood Control and Water Conservation District (Flood Control District) has applied for an Integrated Regional Water Management Drought Implementation Grant (Grant) pursuant to the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 to fund the Project; and

WHEREAS, if the Flood Control District receives the Grant, the COUNTY will be required to enter into a Funding Agreement with the Flood Control District (Funding Agreement) incorporating the terms and conditions set forth in the Grant Agreement between the Flood Control District and the Department of Water Resources (DWR)

(Grant Agreement), including terms and conditions related to subcontractor obligations; and

WHEREAS, the COUNTY intends to apply for additional funding for the Project from the United States Department of Agriculture (USDA); and

WHEREAS, if the COUNTY receives USDA funding for the Project, the COUNTY will be required to enter into an agreement with the USDA (USDA Agreement) placing certain terms and conditions on any work funded pursuant to the USDA Agreement.

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

ARTICLE 1. SCOPE OF WORK. ENGINEER shall, at its own cost and expense, provide all services, equipment and materials necessary to complete the work described in the ENGINEER'S Scope of Work (hereafter, collectively the "Work"), attached hereto as Exhibit A. ENGINEER warrants and represents that said Work encompasses all services, equipment and materials necessary for the ENGINEER'S preparation of final design plans and specifications 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 ENGINEER'S receipt of the COUNTY'S written Notice to Proceed. Upon receipt of the Notice to Proceed, ENGINEER is only authorized to commence the Work included in Phase I, Tasks 1 through 3, as described in Exhibit A. The remaining items in Phase I, and the Work included in Phases II, III and IV, as described in Exhibit A, shall not be commenced prior to the ENGINEER'S receipt of a separate subsequent Notice to Proceed specifically authorizing commencement of said Work. Because time is of the essence on this Project, Phase I, Tasks 1 through 3, shall be completed no later than October 15, 2014. The remainder of Work included in Phases I, II, III and IV shall be completed no later than the completion of the construction phase of the Project by the construction contractor. Notwithstanding the foregoing, extensions of time to the

above-described deadlines may be granted in writing by the COUNTY's Director of Public Works 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 COUNTY's Director of Public Works to be good and sufficient cause for such extensions.

ARTICLE 3. PAYMENT FOR SERVICES.

A. COMPENSATION.

1. COUNTY shall pay to ENGINEER as compensation in full for all Work required by this Agreement a sum not to exceed the total Agreement amount of eighty six thousand eight hundred ten dollars (\$86,810).

2. Progress payments will be made to ENGINEER based on compensable services provided and allowable costs incurred at the rates set forth in the ENGINEER'S Cost Proposal attached hereto as Exhibit B, and incorporated herein by this reference. All payments to ENGINEER shall be based on actual services performed and costs incurred at the rates set forth in Exhibit B.

3. The COUNTY reserves the right to delete Work from ENGINEER's Scope of Work, but such deletion must be in writing from the COUNTY's Director of Public Works expressly stating that certain Work is being deleted. The ENGINEER shall not be entitled to any compensation for Work that is deleted.

B. REPORTS. ENGINEER shall submit to the COUNTY, on a monthly basis, a detailed statement of services performed and Work accomplished during that preceding period, including the number of hours of Work performed and the personnel involved. 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 or services, and an explanation as to why the ENGINEER did not include said work in the attached Scope of Work.

C. INVOICES. ENGINEER will be reimbursed, as promptly as fiscal procedures will permit, upon receipt by COUNTY's Contract Administrator of itemized invoices. Invoices

shall be submitted no later than 45 calendar days after the performance of work for which ENGINEER is billing. Invoices shall follow the format stipulated for the Cost Proposal and shall reference this contract number and project title. The final invoice must contain the final cost and all credits due the COUNTY that include any equipment purchased under the provisions of Article 24 Equipment Purchase of this Agreement. The final invoice should be submitted within sixty (60) calendar days of completion of the ENGINEER's work. Invoices shall be mailed to the COUNTY's Contract Administrator at the following address:

County of San Luis Obispo
Jeff Lee, Project Manager
County Government Center, Room 206,
San Luis Obispo, CA 93408

D. **PROMPT PAYMENT OF FUNDS.** No retainage will be withheld by the COUNTY from progress payments due the ENGINEER. Retainage by the ENGINEER or subcontractors is prohibited, and no retainage will be held by the ENGINEER from progress due subcontractors. Any violation of this provision shall subject ENGINEER or subcontractors to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the ENGINEER or subcontractor in the event of a dispute involving late payment or nonpayment by the ENGINEER or deficient subcontractor performance, or noncompliance by a subcontractor. This provision applies to both disadvantaged business enterprise (DBE) and non-DBE prime consultants and subconsultants. Any subcontract entered into by ENGINEER relating to this Agreement, shall incorporate the provisions of this paragraph in a manner that binds the subcontractor to all of the provisions of this paragraph.

E. **ASSIGNED PERSONNEL.** All work performed under this Agreement shall be performed by the personnel identified in the Organizational Chart, attached hereto as Exhibit C, and incorporated herein by this reference. Any changes to the key personnel designated on this Organizational Chart must be approved in writing by the COUNTY's Contract Administrator. The Contract Administrator for COUNTY will be Jeff Lee.

ARTICLE 4. ACCOUNTING RECORDS.

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

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

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

E. DWR, the State auditor, USDA, or any authorized representative of the State or Federal Government having jurisdiction under Federal or State law or regulations (including the basis of any Federal or 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, excerpts, 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 incorporate the provisions of this Article in a manner that binds the subcontractor to all of the provisions of this Article.

ARTICLE 5. NON-ASSIGNMENT OF AGREEMENT. Inasmuch as this Agreement is intended to secure the specialized services of the ENGINEER, ENGINEER may not assign, transfer, delegate or sublet any interest herein without the COUNTY's prior written consent and any such assignment, transfer, delegation, or sublease without the COUNTY's prior written consent shall be considered null and void.

ARTICLE 6. INSURANCE. 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 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 ("CGL").** This policy shall include coverage at least as broad as set forth in Insurance Services Office (herein "ISO") Commercial General Liability coverage (Occurrence Form CG 0001) 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 ENGINEER's Work under this Agreement.

2. **BUSINESS AUTOMOBILE POLICY ("BAP")**. This 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 dollars (\$1,000,000) for each accident, 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. 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 ("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 dollars (\$1,000,000) each accident / Bodily Injury (herein "BI"); one-million dollars (\$1,000,000) policy limit BI by disease; and one-million dollars (\$1,000,000) each employee BI disease.

4. **PROFESSIONAL LIABILITY ("PL")**. This policy shall cover damages, liabilities, and costs incurred as a result of 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 three (3) years thereafter with respect to incidents which occur during the performance of this Agreement). 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 ENGINEER and approved by the COUNTY before Work is begun pursuant to this Agreement. At the option of the COUNTY, 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 & BAP);
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 ENGINEER’s performance of Work under this Agreement (CGL & BAP);
3. 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, BAP, & PL);
4. 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 (CGL, BAP, WC / EL & PL);
5. 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 (WC); and
6. Deductibles and self-insured retentions must be declared (All Policies).

D. **ABSENCE OF INSURANCE COVERAGE.** COUNTY may direct ENGINEER to immediately cease all activities with respect to this Agreement if it determines that ENGINEER fails to carry, in full force and effect, all insurance policies with 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 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 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, ENGINEER, or each of ENGINEER's insurance brokers or companies, shall provide 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 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:

San Luis Obispo County
Jeff Lee, Public Works Department
County Government Center, Room 206
San Luis Obispo CA 93408

ARTICLE 7. INDEMNIFICATION.

A. ENGINEER shall defend, indemnify, and hold harmless the COUNTY, its officers, agents, and employees from any and 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 damages or monetary losses, 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 7 of the Agreement, "ENGINEER" shall include the ENGINEER, and/or its agents, employees, sub-contractors, or other independent contractors hired by, or directly responsible to, 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 Agreement and the remaining language shall be given full force and effect. Nothing contained in the foregoing indemnity provisions shall be construed to require ENGINEER to indemnify COUNTY against any responsibility or liability in contravention of Civil Code Section 2782.8.

ARTICLE 8. ENGINEER'S RESPONSIBILITY FOR ITS WORK.

A. ENGINEER has been hired by the COUNTY because of ENGINEER's specialized expertise in performing the Work described in the Scope of Work attached as Exhibit A. 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 of the ENGINEER shall be in reliance on ENGINEER's specialized expertise and shall not relieve the ENGINEER of its sole responsibility for its Work. Similarly, if the COUNTY approves any designs, plans, or specifications prepared by ENGINEER that vary from the requirements of this Agreement, such approval shall not excuse the ENGINEER for failing to comply with this Agreement. 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 of the ENGINEER, including but not limited to, any methods, procedures, tests, calculations, drawings, or other information used or created by ENGINEER in performing any Work under this Agreement.

B. All information which ENGINEER receives from COUNTY should be independently verified by ENGINEER. 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 obligated 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.

D. The ENGINEER accepts the relationship of trust and confidence established with COUNTY by this Agreement, and covenants with the COUNTY to furnish the ENGINEER's reasonable skill and judgment in furthering the interests of the COUNTY. The ENGINEER shall use its best efforts to perform in an expeditious and economical manner consistent with the interests of the COUNTY.

E. If ENGINEER ever has reason to believe that any of its general or professional duties of care conflict with any requirements of this Agreement, the ENGINEER shall promptly so notify the COUNTY in writing.

ARTICLE 9. INSURANCE AND INDEMNIFICATION AS MATERIAL PROVISIONS.

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

ARTICLE 10. ENGINEER'S ENDORSEMENT ON REPORTS, ETC. ENGINEER shall

endorse all reports, maps, plans, documents, materials, and other data in accordance with applicable provisions of the laws of the State of California.

ARTICLE 11. DOCUMENTS, INFORMATION, AND MATERIALS OWNERSHIP.

A. All documents, information and materials of any and every type prepared by the ENGINEER 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 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 48 CFR 27 shall be used to determine rights to inventions.

C. Any subcontract entered into by ENGINEER relating to this Agreement shall incorporate the provisions of this Article in a manner that binds the subcontractor to all of the provisions of this Article.

ARTICLE 12. TERMINATION OF AGREEMENT WITHOUT CAUSE. 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, ENGINEER shall be entitled to no further compensation or payment of any type from the COUNTY.

ARTICLE 13. TERMINATION OF AGREEMENT FOR CAUSE. If ENGINEER fails to perform ENGINEER'S duties to the satisfaction of the COUNTY, or if ENGINEER fails to fulfill in a timely and professional manner ENGINEER'S obligations under this Agreement, or if ENGINEER violates any of the terms or provisions of this Agreement, or if ENGINEER, ENGINEER'S agents or employees fail to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the COUNTY, then 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. ENGINEER shall be paid for all Work satisfactorily completed prior to the effective date of such termination. If COUNTY's termination of the Agreement for cause is defective for any reason, including but not limited to, COUNTY's reliance on erroneous facts concerning 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 ENGINEER under Article 12 above.

ARTICLE 14. COMPLIANCE WITH LAWS. ENGINEER shall comply with all Federal, State, and local laws and ordinances that are applicable to the performance of the Work under this Agreement. This includes compliance with prevailing wage rates and their payment in accordance with the California Labor Code. 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. ENGINEER will comply, or cause its subconsultant to comply, with the provisions of Labor Code Section 1774.

ARTICLE 15. COVENANT AGAINST CONTINGENT FEES. ENGINEER warrants that it has not employed or retained any company or person, other than a bona fide employee working for ENGINEER, to solicit or secure this Agreement, and that 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, 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 16. NON-DISCRIMINATION.

A. During the performance of this Agreement, ENGINEER and its subconsultant(s) shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex (gender), sexual orientation, race, color, ancestry, religion, creed, national origin (including language use restriction), pregnancy, physical disability (including HIV and AIDS), mental disability, medical condition (cancer/genetic characteristics), age (over 40), marital status, and denial of medical and family care leave or pregnancy disability leave. ENGINEER and subconsultant(s) shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. ENGINEER and subconsultant(s) shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. ENGINEER and its subconsultant(s) shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

B. Any subcontract entered into by the ENGINEER relating to this Agreement, shall incorporate the provisions of this Article in a manner that binds the subcontractor to all of the provisions of this Article.

ARTICLE 17. DISPUTES & CLAIMS.

A. **EXCLUSIVE REMEDY.** Any demand or assertion by ENGINEER seeking any additional compensation and/or time extension, or other relief, for any reason whatsoever (hereafter collectively "Claim"), must be in strict compliance with the requirements of this Article 17. For purposes of this Article 17, any and all Work relating to any such demand or assertion shall be referred to as "Disputed Work", regardless of whether the basis of the demand or assertion arises from an interpretation of the Agreement, an action or inaction of ENGINEER or COUNTY, or any other event, issue,

or circumstance. If the Disputed Work relates to any Work performed by any subcontractors or subconsultants hired by ENGINEER in compliance with the provisions of this Agreement, any such Claims must also be processed by ENGINEER in accordance with the provisions of this Article 17. The administration of a Claim as provided in this Article 17, including ENGINEER's performance of its duties and obligations specified in this Article 17 is ENGINEER's sole and exclusive remedy for disputes of all types pertaining to the payment of money, extension of time, the adjustment or interpretation of the Agreement or other contractual or tort relief arising from this Agreement. Compliance with the procedures described in this Article 17 is a condition precedent to the right to file a Government Code Claim, commence litigation, or commence any other legal action. ENGINEER waives the right to pursue or submit any Claims not processed in accordance with Article 17.

B. MANDATORY PROCEDURE AND CONDITION PRECEDENT. The requirements set forth in this Article 17 are mandatory, and ENGINEER shall strictly comply with these requirements. Strict compliance with these requirements is a condition precedent to ENGINEER's ability to exercise any rights or remedies that may otherwise be available to ENGINEER under the Agreement or any applicable Laws or Regulations relating to the Claim. No action or inaction by ENGINEER and/or COUNTY to try to resolve any Claim(s) through agreement, amendment, mediation, settlement, or any other means shall excuse ENGINEER from strictly complying with the requirements of this Article 17. The ENGINEER shall bear all costs incurred in complying with the provisions of this Article 17.

C. NOTICE OF POTENTIAL CLAIM. The ENGINEER shall not be entitled to any additional compensation and/or time under this Agreement 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's Director of Public Works 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 and/or time will or may be due, the nature of the cost involved, and, insofar as possible, the full amount of additional compensation and/or time extension sought in relation to 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 any Disputed Work. 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 and/or time regarding any Claim for which no written Notice of Potential Claim as herein required was filed with the COUNTY's Director of Public Works.

D. **NOTICE OF FINAL CLAIM.** As soon as reasonably practical upon completion of the Disputed Work, and no later than thirty (30) calendar days after completion of the Disputed Work, ENGINEER shall provide to COUNTY a Notice of Final Claim containing a full and final documentation of the Claim that provides the following information:

1. A detailed factual narration of events fully describing the nature and circumstances that caused the dispute, including, but not limited to, necessary dates, locations, and items of Work affected by the dispute.
2. The specific provisions of the Agreement that support the Claim and a statement of the reasons these provisions support and provide a basis for entitlement of the Claim.
3. When additional monetary compensation is requested, the exact amount requested, including an itemized breakdown of individual costs. These costs shall be segregated into the following cost categories:
 - a. Labor – A listing of individuals, classifications, hours and dates worked, hourly labor rates, and other pertinent information related to the requested reimbursement of labor costs.
 - b. Materials/ Equipment – Invoices, purchase orders, location of materials/ equipment used to perform the Disputed Work, dates they were used, and other pertinent information related to the requested reimbursement of material/ equipment costs.
 - c. Other categories as specified by COUNTY.

E. **ENGINEER'S CONTINUING OBLIGATIONS.** Neither the filing of a Notice of Potential Claim or of a Notice of Final 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. ENGINEER shall promptly respond to any requests for further information or documentation regarding ENGINEER's potential or final Claim. If ENGINEER fails to provide an adequate written response to COUNTY within fifteen (15) calendar days of COUNTY's written request for such further documentation or information, ENGINEER shall be deemed to have waived its Claim. If the further documentation or information requested by COUNTY, in the opinion of the COUNTY, reasonably takes the ENGINEER more than fifteen (15) calendar days to comply with, the written request shall provide the ENGINEER a specific response deadline that is commensurate to a reasonable response time.

F. **RESPONSE TO NOTICE OF FINAL CLAIM.** The COUNTY shall respond in writing to the Notice of Final Claim within sixty (60) calendar days of receipt thereof Claim, or may request, in writing, within forty five (45) calendar days of said receipt, any additional information or documentation relating to the Claim or any defenses to the Claim the COUNTY may have against the ENGINEER. ENGINEER shall comply with the request within the reasonable time deadline provided by COUNTY in the request. If any additional information is thereafter requested by COUNTY, it shall likewise be provided by ENGINEER within the reasonable time deadline provided by COUNTY in such follow-up request. The written response to the Notice of Final Claim shall be submitted to the ENGINEER within thirty (30) calendar days after receipt of such further information and documentation, or within a period of time no greater than that taken by the ENGINEER in producing the additional information or documentation, whichever is greater. ENGINEER may request an informal conference to meet and confer for settlement of the issues in dispute, but ENGINEER shall have no right to demand such a conference. Neither the requesting of any such conference by ENGINEER or COUNTY, nor the holding of such conference shall affect the date of the final decision on the Claim. No written communications of COUNTY sent to ENGINEER after any such conference will change the date of the final decision on the Claim unless the

writing expressly states that the date of the final decision is being changed to a new specific date.

A Claim may be granted in whole or in part only by a written response that contains the signature of the COUNTY's Director of Public Works or his authorized representative. In the event a valid written decision is not provided to ENGINEER within the time prescribed in this Article 17, the Claim shall be deemed denied on the last day a written response was due. The date upon which the Claim is approved or denied pursuant to the provisions of this Article 17, shall constitute the date of the final decision on the Claim under the provisions of this Article 17. The date of the final decision on a Claim can only be changed by a subsequent writing signed by COUNTY that expressly states that the date of the final decision on the Claim has been changed to a new specific date.

G. **GOVERNMENT CODE CLAIM REQUIREMENTS.** For all Claims not resolved as a result of these Article 17 procedures, ENGINEER must submit each Claim in a Government Code Section 910 form of claim for final investigation and consideration of its settlement prior to initiation of any litigation on any such Claim, as required by Government Code Section 945.4. Pursuant to Government Code Section 930.2, the one-year period in Government Code Section 911.2 is hereby reduced to 150 days. This time deadline is measured from the accrual date of each separate cause of action. The time deadline for filing a Government Code claim shall not be tolled by any action or inaction by ENGINEER or COUNTY, including but not limited to, any action or inaction to try to resolve the Claim through negotiation, mediation, settlement, agreement (including Change Order), or by any other means, other than by a separate written tolling agreement expressly approved as to form (on the face of the agreement) by the COUNTY's Counsel Office.

ARTICLE 18. AUDIT REVIEW PROCEDURES.

A. Any dispute arising under an interim or post audit of this Agreement that is not disposed of by agreement, shall be reviewed by COUNTY's Chief Financial Officer.

B. Not later than thirty (30) calendar days after issuance of the final audit report, ENGINEER may request a review by COUNTY's Chief Financial Officer of unresolved audit issues. The request for review shall be submitted in writing.

C. Neither the pendency of a dispute nor its consideration by COUNTY will excuse ENGINEER from full and timely performance, in accordance with the terms of this Agreement.

ARTICLE 19. ENGINEER IS AN INDEPENDENT CONTRACTOR. It is expressly understood that in the performance of the services herein provided, ENGINEER shall be, and is, an independent contractor, and is not an agent or employee of the COUNTY. ENGINEER has and shall retain the right to exercise full control over the employment, direction, compensation, and discharge of all persons assisting ENGINEER in the performance of the services rendered hereunder. ENGINEER shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with Social Security, withholding, and all other regulations governing such matters.

ARTICLE 20. ENTIRE AGREEMENT AND MODIFICATION. This Agreement supersedes all previous agreements and constitutes the entire understanding of the parties hereto. ENGINEER shall be entitled to no other compensation and/or benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Any changes increasing 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's Director of Public Works on behalf of the COUNTY. ENGINEER specifically acknowledges that in entering into and executing this Agreement, ENGINEER relies solely upon the provisions contained in this Agreement and no others. If there is any conflict between the language in the body of this Agreement and any exhibits attached hereto, the body of this Agreement shall take precedence.

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

ARTICLE 22. WARRANTY OF ENGINEER. ENGINEER warrants that ENGINEER and each of the personnel employed or otherwise retained by ENGINEER for Work under this Agreement are properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to.

ARTICLE 23. SUBCONTRACTORS.

A. Other than Work designated in Exhibits A and B to be performed by other persons, the ENGINEER shall perform the Work contemplated with resources available within its own organization and no portion of the Work shall be subcontracted without written authorization by the COUNTY. In the event the COUNTY provides written authorization for Work to be performed by a lower tier subcontractor the use of the words “subcontractor” and “subcontract” in this Article shall refer to subcontracting by a subcontractor of the first tier or any other tier.

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 his/her 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 ENGINEER relating to this Agreement, shall incorporate the provisions of this Article in a manner that binds the subcontractor to all of the provisions of this Article.

D. ENGINEER shall pay its subcontractors within ten (10) calendar days from receipt of each payment made to the ENGINEER by the COUNTY.

E. Any substitution of subcontractors must be approved in writing by the COUNTY's Contract Administrator in advance of assigning Work to a substitute subcontractor.

F. 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.

G. For purposes of this Agreement, the term "subcontractor" includes subconsultants.

ARTICLE 24. EQUIPMENT PURCHASE.

A. Before ENGINEER enters into any unbudgeted purchase order, or subcontract exceeding \$5,000 for supplies, equipment, or engineering services, ENGINEER shall (1) provide the COUNTY's Contract Administrator an evaluation of the necessity or desirability of incurring such costs, and (2) obtain prior written authorization from the COUNTY's Contract Administrator for such cost. Three (3) competitive quotations must be submitted with ENGINEER's request for prior authorization, or the absence of such competitive bidding must be adequately justified.

B. ENGINEER shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two (2) years and an acquisition cost of \$5,000 or more. If the purchased equipment needs replacement and is sold or traded in, COUNTY shall receive a proper refund or credit at the conclusion of the contract, or if the Agreement is terminated, ENGINEER may either keep the equipment and credit 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 COUNTY in an amount equal to the sales price. If ENGINEER elects to keep the equipment, fair market value shall be determined at 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 COUNTY and ENGINEER, if it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY. 49 CFR, Part 18 requires a credit to Federal funds when participating equipment with a fair market value greater than \$5,000 is credited to the project.

C. Any subcontract entered into by ENGINEER relating to this Agreement shall incorporate the provisions of this Article in a manner that binds the subcontractor to all of the provisions of this Article.

ARTICLE 25. 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 26. 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:

San Luis Obispo County
Department of Public Works
Jeff Lee, P.E., Contract Administrator
County Government Center, Room 206
San Luis Obispo, CA 93408

and to the ENGINEER:

Cannon
Keone Kauo, P.E., Project Manager
1050 Southwood Drive
San Luis Obispo, CA 93401

ARTICLE 27. 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 28. 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 ENGINEER without the prior written approval of 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 incorporate the provisions of this Article in a manner that binds the subcontractor to all of the provisions of this Article.

ARTICLE 29. RESTRICTIVE COVENANT. ENGINEER agrees that ENGINEER 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 said COUNTY waives this restriction.

ARTICLE 30. CERTIFICATIONS. ENGINEER hereby warrants and represents that it has accurately completed and executed the "Certification of Consultant, Commission and Fee" and "Consultant Certification of Contract Costs and Financial Management

System” which are attached hereto as Exhibits D and E, respectively, and are incorporated by reference and made a part of this Agreement.

ARTICLE 31. 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 32. 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, ENGINEER agrees to cooperate with and provide timely response to any reasonable requests for information submitted to ENGINEER by the COUNTY relating to such claims. To the extent the information requested by the COUNTY only seeks documents or other factual information relating to Work performed by ENGINEER, the ENGINEER will only be compensated for any clerical costs associated with providing the COUNTY the requested documents or factual information.

B. ENGINEER’s personnel that the COUNTY considers essential to assist in defending against construction contractor claims will be made available on 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 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 any of ENGINEER’s personnel are deposed by another party, the ENGINEER reserves the right to charge said other party a different rate for deposition 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 ENGINEER relating to this Agreement shall incorporate the provisions of this Article in a manner that binds the subcontractor to all of the provisions of this Article.

ARTICLE 33. NATIONAL LABOR RELATIONS BOARD CERTIFICATION. In accordance with Public Contract Code Section 10296, the ENGINEER hereby states under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the ENGINEER within the immediately preceding two-year period, because of the ENGINEER's failure to comply with an order of a federal court that orders the ENGINEER to comply with an order of the National Labor Relations Board.

ARTICLE 34. EVALUATION OF CONSULTANT. The ENGINEER's performance will be evaluated by the COUNTY. A copy of the evaluation will be sent to the ENGINEER for comments. The evaluation together with the comments shall be retained as part of the contract record.

ARTICLE 35. DEBARMENT AND SUSPENSION CERTIFICATION.

A. The ENGINEER's signature affixed herein shall constitute a certification under penalty of perjury under the laws of the State of California, that the ENGINEER has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that he/she or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency; has not been suspended, debarred, voluntarily excluded, or determined ineligible by any federal agency within the past three (3) years; does not have a proposed debarment pending; and has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exceptions to this

certification must be disclosed in writing to the COUNTY, prior to ENGINEER's execution of this Agreement.

B. Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining ENGINEER's responsibility. Disclosures must indicate to whom exceptions apply, initiating agency, and dates of action.

ARTICLE 36. CONFLICT OF INTEREST.

A. The ENGINEER shall disclose any financial, business, or other relationship with 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 ENGINEER relating to this Agreement shall incorporate the provisions of this Article in a manner that binds the subcontractor to all of the provisions of this Article.

D. The ENGINEER hereby certifies that neither 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 37. 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.

ARTICLE 38. NONLOBBYING CERTIFICATION.

A. The ENGINEER certifies to the best of his/ her knowledge and belief that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; the ENGINEER shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

This form is attached hereto as Exhibit F and incorporated herein by this reference.

B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

C. The ENGINEER also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

ARTICLE 39. INSPECTION OF WORK. ENGINEER and any subconsultant shall permit COUNTY, DWR, and USDA to review and inspect all work related activities, documents, and files (including electronically stored documents and files) at all reasonable times during the performance period of this Agreement including review and inspection on a daily basis.

ARTICLE 40. COMPLIANCE WITH FUNDING AGREEMENT, GRANT AGREEMENT AND USDA AGREEMENT. ENGINEER acknowledges and agrees that this Agreement will become subject to the obligations and limitations imposed on COUNTY by the Grant Agreement, Funding Agreement and USDA Agreement in the event that the COUNTY receives Grant or USDA funds for the Project. ENGINEER agrees that it will be bound by the provisions of the Grant Agreement, Funding Agreement and USDA Agreement and agrees to take all actions necessary for the COUNTY to satisfy its obligations thereunder, including entering into any amendments to this Agreement deemed necessary by the COUNTY. ENGINEER further agrees that the COUNTY has the right to enter into amendments to the Funding Agreement and USDA Agreement and shall not be restricted or impaired, in any way, by this Agreement. COUNTY will provide ENGINEER with copies of said agreements upon execution. Without limiting the foregoing or any other terms herein, ENGINEER expressly agrees that the following provisions shall become a part of this Agreement upon execution of the Grant Agreement:

A. ENGINEER shall maintain books, records and other documents pertinent to the Work performed hereunder in accordance with generally accepted accounting principles and practices. Records are subject to inspection by the COUNTY and DWR at any and all reasonable times.

B. All records of ENGINEER in connection with the performance of this Agreement shall be preserved for at least three (3) years after project completion or final billing under the Grant Agreement, whichever comes later but nothing in this paragraph shall serve to decrease any document retention requirements otherwise set forth herein, including, without limitation those contained within Article 4 of this Agreement.

C. ENGINEER acknowledges that employees and consultants or subcontractors to ENGINEER may be required by the State to file a Statement of Economic Interests (Fair Political Practices Form 700) if it is determined that an individual is a consultant for Political Reform Act purposes.

D. ENGINEER certifies, under penalty of perjury under the laws of the State of California, compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and has or will provide a drug-free workplace by taking the actions described in the Funding Agreement.

E. ENGINEER shall name DWR, its officers, agents and employees as additional insureds on its liability insurance for activities undertaken pursuant to this Agreement.

F. ENGINEER, and the agents and employees of ENGINEER, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees or agents of DWR.

G. DWR shall have the right to inspect the work being performed at any and all reasonable times during the term of the Grant Agreement.

H. ENGINEER agrees that all data, plans, drawings, specifications, reports, computer programs, operating manuals, notes and other written or graphic work produced in the performance of this Agreement shall be made available to DWR and shall be in the public domain to the extent to which release of such material is required under the California Public Records Act (Government Code Section 6250 et seq.).

I. ENGINEER affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and ENGINEER agrees that it will comply with such provisions before commencing the performance of work under this Agreement and will make its contractors and subcontractors aware of this provision.

In addition, without limiting the general obligations of the ENGINEER under this Article 40 set forth above, ENGINEER expressly agrees that upon the execution of the USDA Agreement, this Agreement will become subject to, without limitation (1) 49 CFR, Part 26 entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Program" and (2) Federal acquisition regulations,

including 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq. and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. ENGINEER agrees to enter into any amendments to this Agreement deemed necessary by the COUNTY to meet the requirements thereunder.

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: _____
Chairperson of the Board

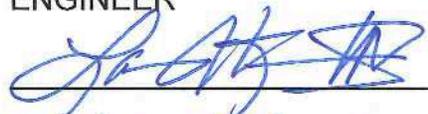
Date: _____

ATTEST:

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

Date: _____

ENGINEER

 _____

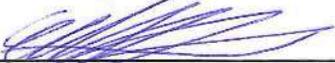
By: Larry P. Kraemer

Title: Director, Public Infrastructure Division

Date: 8/27/14

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: 
Deputy County Counsel

Date: AUGUST 27, 2014

V:\ADM_SERV\Trisha\AGREEMENTS\CSA 23_AMWC_Garden Farms Community Wtr Dist Intertie Proj Cons_Fed Funding_081313.docx.jl.taw



**FINAL DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR
CSA23 INTERTIE IMPROVEMENTS
COUNTY OF SAN LUIS OBISPO
PUBLIC WORKS DEPARTMENT**

EXHIBIT A – SCOPE OF SERVICES

PHASE I. DESIGN AND CONSTRUCTION DOCUMENTS

TASK 1 – KICK-OFF MEETING

Cannon (ENGINEER) will coordinate and attend a project kick-off meeting with the County of San Luis Obispo Public Works Department (COUNTY) staff. The meeting agenda will focus on project understanding, team involvement, and project constraints. This meeting will include a project introduction, review of background information and project scope and an overview of the project schedule. This meeting represents a key opportunity for representatives from the COUNTY to steer the project team and further clarify critical elements of the project scope. Administrative Assistant will prepare kickoff meeting materials and write-up of meeting minutes.

DELIVERABLE:

- Kick-off Meeting Agenda and Materials
- Meeting Minutes

TASK 2 – UTILITY RESEARCH AND BASE MAPPING

ENGINEER will conduct utility research with the public and private utility providers who have existing facilities within the proposed project areas and obtain record drawings and as-built information. Potential utility conflicts and/or relocation requirements will be identified and evaluated as needed to minimize unexpected design modifications or construction delays. If potholing of existing utilities becomes necessary for design purposes, pothole locations will be provided with sufficient lead time to the COUNTY.

We will compile, review and modify the documents for inclusion into the electronic base map to use in the design and related tasks defined below.

TASK 3 – PIPE BRIDGE STRUCTURAL REVIEW

ENGINEER will review COUNTY provided existing pipe bridge drawings and calculations to verify the structural integrity of the pipe bridge for the attachment of the additional 8-inch waterline. ENGINEER will provide a memo to the COUNTY summarizing the analysis and findings.

DELIVERABLE:

- Technical Memo – Pipe Bridge Structural Review

TASK 4 – 90% CONSTRUCTION DOCUMENTS (PLANS AND COST ESTIMATE)

ENGINEER will submit a Design Plan Package at a design and detail level at approximately 90 percent of the anticipated final construction documents for COUNTY review and comment. The submittal package will include the construction plans, details and an engineer's cost estimate for use in the public bidding process.



**FINAL DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR
CSA23 INTERTIE IMPROVEMENTS
COUNTY OF SAN LUIS OBISPO
PUBLIC WORKS DEPARTMENT**

ENGINEER assumes the proposed waterline will attach to the floor beam opposite to the existing Nacimiento pipe on the existing pipe bridge. ENGINEER assumes the horizontal clearance between the two pipes will be adequate for COUNTY maintenance uses.

The plans will consist of approximately 23 drawing sheets (24" x 36"). The plans will include a Title Sheet, Water Plan and Profile Sheets, Mechanical and Structural Details, Civil Details, Erosion Control, and Traffic Control Sheets.

Monthly status updates will be provided to the COUNTY in written form with monthly invoices.

DELIVERABLE:

- 90% Design Plans in PDF format
- 90% Engineer's Cost Estimate

TASK 5 – 90% DESIGN REVIEW MEETING

ENGINEER will attend one meeting with the COUNTY staff to review and discuss the design submittal at the 90% completion stage.

Administrative Assistant will prepare meeting materials and write-up of meeting minutes.

DELIVERABLE:

- 90% Design Review Meeting Agenda and Materials
- Meeting Minutes

TASK 6 – FINAL PLANS AND COST ESTIMATE

Based on the finalized project design issues resolved during the preceding tasks, ENGINEER will prepare and submit a Final Construction Documents Bid package. This submittal package will contain complete Construction Plans and an Opinion of Probable Construction Costs. The plans will incorporate review comments of the 90% Design Plans Package, and provide construction level designs sufficient for final project approvals.

DELIVERABLE:

- Final signed & stamped Design Plans in PDF format and two (2) hard copies
- Final signed & stamped Engineer's Cost Estimate

PHASE II. SPECIFICATIONS

TASK 7 – SPECIFICATIONS

ENGINEER will prepare and submit the technical specifications to the COUNTY for incorporation into the Final Construction Documents Bid package.



**FINAL DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR
CSA23 INTERTIE IMPROVEMENTS
COUNTY OF SAN LUIS OBISPO
PUBLIC WORKS DEPARTMENT**

ENGINEER assumes technical specifications will be formatted and follow the 2010 Caltrans specifications.

DELIVERABLE:

- Final signed & stamped Technical Specifications in PDF format

PHASE III. CONTRACT BIDDING ASSISTANCE

TASK 8 – CONTRACT BIDDING ASSISTANCE

With respect to interpreting the plans and technical specifications, ENGINEER will assist the COUNTY during the bid period. Upon request of the COUNTY, ENGINEER will interpret bid documents for prospective bidders, provide responses to COUNTY for up to four requests for information (RFI) and prepare and deliver to COUNTY up to two addenda.

PHASE IV. CONSTRUCTION SUPPORT SERVICES

TASK 9 - CONSTRUCTION SUPPORT SERVICES

ENGINEER will assist the COUNTY with review of the Contractor's technical construction submittals. This task assumes up to six Contractor technical construction submittal reviews.



**FINAL DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR
CSA23 INTERTIE IMPROVEMENTS
COUNTY OF SAN LUIS OBISPO
PUBLIC WORKS DEPARTMENT**

ASSUMPTIONS AND EXCLUSIONS

The following assumptions and exclusions apply to this proposal:

ASSUMPTIONS

- ENGINEER is not responsible and cannot be held accountable for the accuracy of As-Builts or Record Drawings provided by the Agencies or utility providers. ENGINEER has no means of determining whether subsurface features were constructed per the construction / improvement drawings and does not claim to do so. Potholing of utilities should be performed by others, if there are concerns or uncertainties regarding the subsurface utilities.
- All data prepared by others and provided to ENGINEER will be made available in a digital format, compatible with our systems. It is also understood that the information and technical data provided and prepared by others, on the Client's behalf or Property Owner's behalf, may be used by ENGINEER in performing its services and is entitled to rely upon the accuracy and completeness thereof.
- The COUNTY will provide ENGINEER with the topographic survey in AutoCAD format along the Project alignment.
- Right-of-way and property boundary information will be provided to ENGINEER in AutoCAD format from the COUNTY.
- Utility as-built information from the Nacimiento Water Project will be provided to ENGINEER in AutoCAD format from the COUNTY.
- A geotechnical report prepared by a licensed Geotechnical engineer will be provided to ENGINEER from the COUNTY.
- Potholing activities, if required, will be performed by COUNTY crews.
- CEQA documentation is complete.

Exclusions

Items not specifically identified in the scope of service sections of this proposal are to be excluded from this work effort and would be considered additional services. Such services would include, but are not limited to, the following:

- Agency Submittal Fees
- Coordination of any encroachment permits
- Survey services



EXHIBIT B - FEE PROPOSAL
FINAL DESIGN AND CONSTRUCTION SUPPORT SERVICES FOR
CSA23 INTERTIE IMPROVEMENTS
COUNTY OF SAN LUIS OBISPO PUBLIC WORKS DEPARTMENT

Phase	Task / Subtask	Description	Cannon												Reimbursables		Total			
			Senior Principal Engineer		Senior Civil Associate Engineer		Senior Structural Associate Engineer		Senior Project Engineer		Administrative Assistant II		Chief Surveyor		Cost	Hrs	Cost	Hrs		
			Hrs	Cost	Hrs	Cost	Hrs	Cost	Hrs	Cost	Hrs	Cost	Hrs	Cost						
I	1	Kick off Meeting	4	\$740	4	\$620		\$0												
	2	Utility Research and Base Mapping		\$0	20	\$3,100	40	\$3,100	40	\$5,200										
	3	Pipe Bridge Structural Review		\$0	2	\$310	24	\$3,360		\$0										
	4	90% Construction Documents (Plans and Cost Estimate)	4	\$740	60	\$9,300	24	\$3,360	120	\$15,600										
	5	90% Design Review Meeting		\$0	4	\$620		\$0												
	6	Final Plans and Cost Estimate	4	\$740	40	\$6,200	8	\$1,120	80	\$10,400										
	Subtotal:		12	\$2,220	130	\$20,150	56	\$7,840	240	\$31,200										
II	7	Specifications	8	\$1,480	40	\$6,200	8	\$1,120		\$0										
	Subtotal:		8	\$1,480	40	\$6,200	8	\$1,120	0	\$0										
III	8	Contract Bidding Assistance	2	\$370	16	\$2,480	8	\$1,120	12	\$1,560										
	Subtotal:		2	\$370	16	\$2,480	8	\$1,120	12	\$1,560										
IV	9	Construction Support Services	2	\$370	16	\$2,480	8	\$1,120	24	\$3,120										
	Subtotal:		2	\$370	16	\$2,480	8	\$1,120	24	\$3,120										
	Total:		24	\$4,440	202	\$31,310	80	\$11,200	276	\$35,880	20	\$1,400	8	\$1,280						

Reimbursables

COUNTY shall reimburse ENGINEER's expenses incurred in connection with this Agreement as follows:

- a) incidental and out-of-pocket expenses including but not limited to:
 - costs for postage, shipping, overnight courier, reproduction services, plotting, photocopies, computer expenses, parking fees and tolls
- b) travel expenses

EXHIBIT C – PERSONNEL ORG CHART

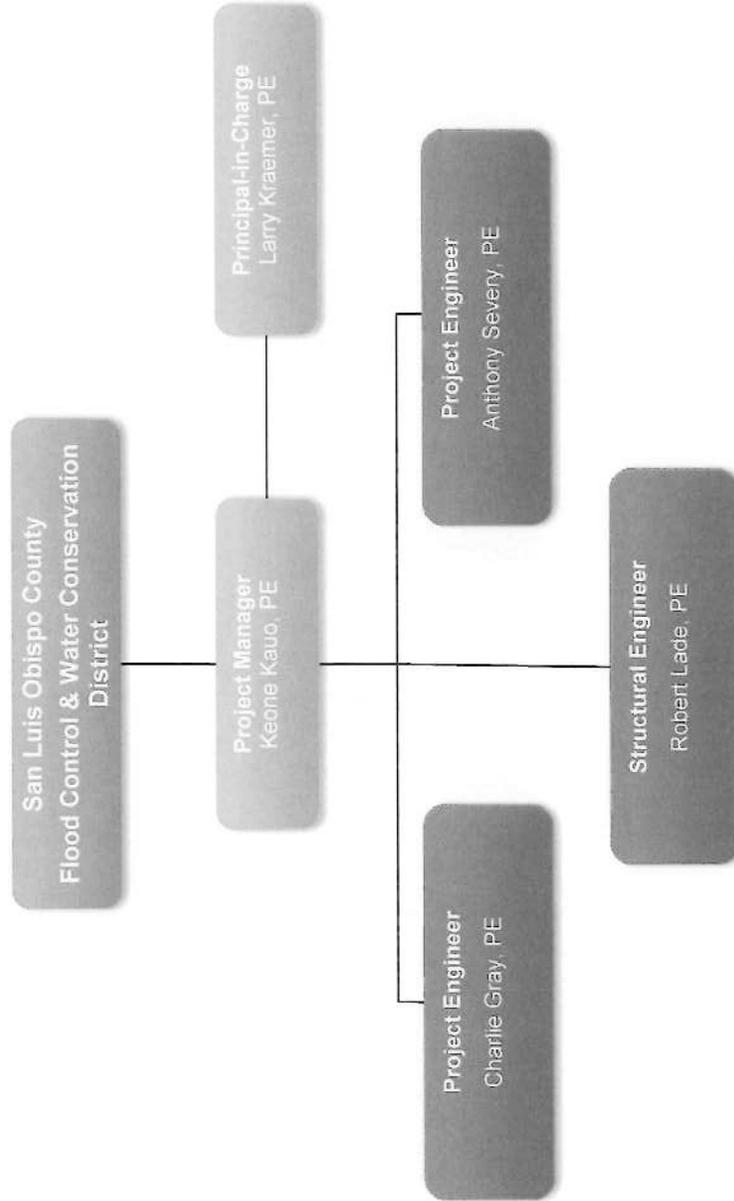


EXHIBIT D

CERTIFICATION OF CONSULTANT, COMMISSIONS & FEES

I HEREBY CERTIFY that I am the Director, Public Infrastructure Division, and duly authorized representative of the firm of Cannon Corporation, whose address is 1050 Southwood Drive, San Luis Obispo, CA 93401, and that, except as hereby expressly stated, neither I nor the above firm that I represent have:

- (a) employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for me or the above consultant) to solicit or secure this contract; nor
- (b) agreed, as an express or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract; nor
- (c) paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above consultant) any fee, contribution, donation, or consideration of any kind, for or in connection with, procuring or carrying out this contract.

I acknowledge that this Certificate is to be made available to the California Department of Transportation (Caltrans) in connection with this contract involving participation of federal-aid highway funds, and is subject to applicable state and federal laws, both criminal and civil.

8/26/14

(Date)



(Signature)

EXHIBIT E

CONSULTANT CERTIFICATION OF CONTRACT COSTS AND FINANCIAL MANAGEMENT SYSTEM

Certification of Final Indirect Costs:

Consultant Firm Name: Cannon

Indirect Cost Rate: 139.94%

Date of Proposal Preparation (mm/dd/yyyy): 08/12/2014

Fiscal Period Covered (mm/dd/yyyy to mm/dd/yyyy): 01/01/2013 to 12/31/2013

I, the undersigned, certify that I have reviewed the proposal to establish final indirect cost rates for the fiscal period as specified above and to the best of my knowledge and belief:

1. All costs included in this proposal to establish final indirect cost rates are allowable in accordance with the cost principles of the Federal Acquisition Regulations (FAR) of Title 48, Code of Federal Regulations (CFR), Part 31.
2. This proposal does not include any costs which are expressly unallowable under the cost principles of the FAR of 48 CFR, Part 31.

All known material transactions or events that have occurred affecting the firm's ownership, organization, and indirect cost rates have been disclosed as of the date of proposal preparation noted above.

Certification of Financial Management System:

I, the undersigned, certify to the best of my knowledge and belief that our financial management system meets the standards for financial reporting, accounting records, internal and budget control as set forth in the FAR of Title 49, CFR, Part 18.20 to the extent applicable to Consultant.

Certification of Dollar Amount for all A&E contracts:

I, the undersigned, certify that the approximate dollar amount of all A&E contracts awarded by Caltrans or a California local agency to this firm within the last three (3) calendar years for all State DOT and Local Agencies is \$2,031,935.00 and the number of States in which the firm does business is 1.0.

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are reasonable, allowable and allocable to the contract in accordance with the cost principles of the FAR of Title 48, CFR, Part 31. Allowable direct costs to a Government contract shall be:

1. Compliant with Generally Accepted Accounting Principles (GAAP) and standards promulgated by the Cost Accounting Standards Board (when applicable).
2. Compliant with the terms of the contract and is incurred specifically for the contract.
3. Not prohibited by 23 CFR, Chapter 1, Part 172 –Administration of Engineering and Design Related Service Contracts to the extent requirements are applicable to Consultant.

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files.

Subconsultants (if applicable)

Proposed Contract Amount (or amount not to exceed if on-call contract): \$ 0

Prime Consultants (if applicable)

Proposed **Total** Contract Amount (or amount not to exceed if on-call contract): \$ 86,810.00

Prime, list all subconsultants and proposed subcontract dollar amounts (attach additional page if necessary):

_____	\$	_____
_____	\$	_____
_____	\$	_____
_____	\$	_____

* Consultant Certification Signature: 

Consultant Certifying (Print Name and Title):

Name: Larry Kraemer

Title: Director, Public Infrastructure Division

Consultant Contact Information:

Email: LarryK@CannonCorp.us

Phone number: (805) 544-7407

Date of Certification (mm/dd/yyyy): 8/26/14

*An individual executive or financial officer of the consultant's organization at a level no lower than a Vice President or Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the indirect cost rate proposal submitted in conjunction with the contract.

Note: Per 23 U.S.C. 112(b)(2)(B), Subconsultants must comply with the FAR Cost Principles contained in 48 CFR, Part 31. 23 CFR Part 172.3 Definitions state: Consultant means the individual or firm providing engineering and design related services as a party to the contract. Therefore, subconsultants as parties of a contract must complete a certification and send originals to A&I and keep copies in Local Agency Project Files.

EXHIBIT F

DISCLOSURE OF LOBBYING ACTIVITIES

COMPLETE THIS FORM TO DISCLOSE LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action:
 a. contract
 b. grant
 c. cooperative agreement
 d. loan
 e. loan guarantee
 f. loan insurance

2. Status of Federal Action:
 a. bid/offer/application
 b. initial award
 c. post-award

3. Report Type:
 a. initial
 b. material change
 For Material Change Only:
 year _____ quarter _____
 date of last report _____

4. Name and Address of Reporting Entity
 Prime Subawardee
 Tier _____, if known
 Congressional District, if known _____

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
 Congressional District, if known _____

6. Federal Department/Agency: _____

7. Federal Program Name/Description:
 CEDEA Number, if applicable _____

8. Federal Action Number, if known: _____

9. Award Amount, if known: _____

10. Name and Address of Lobby Entity (if individual, last name, first name, MI)
 (attach Continuation Sheet(s) if necessary)

11. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI)
 (attach Continuation Sheet(s) if necessary)

12. Amount of Payment (check all that apply)
 \$ _____ actual planned

13. Form of Payment (check all that apply):
 a. cash
 b. in-kind; specify: nature _____
 Value _____

14. Type of Payment (check all that apply)
 a. retainer
 b. one-time fee
 c. commission
 d. contingent fee
 e. deferred
 f. other, specify _____

15. Brief Description of Services Performed or to be performed and Date(s) of Service, including officer(s), employee(s), or member(s) contacted, for Payment Indicated in Item 11:
 (attach Continuation Sheet(s) if necessary)

16. Continuation Sheet(s) attached: Yes No

17. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying reliance was placed by the tier above when his transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: _____
 Print Name: _____
 Title: _____
 Telephone No.: _____ Date: _____

Authorized for Local Reproduction
 Standard Form - LLL

Federal Use Only:

Standard Form LLL Rev. 04-28-06