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

This Agreement is entered into by and between the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, herein called "COUNTY," and Triple HS, Inc., a California corporation, d.b.a. HT Harvey and Associates whose address is 983 University Avenue, Building D, Los Gatos, CA 95032, herein called "CONSULTANT." This Agreement shall be effective as of the date it is fully executed by the parties.

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

WHEREAS, the COUNTY has need for special services and advice with respect to the work described herein for the Lopez Water Project Habitat Conservation Plan (hereafter, the "Project"); and

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

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

ARTICLE 1. <u>SCOPE OF WORK.</u> The CONSULTANT shall, at its own cost and expense, provide all the services, equipment, and materials necessary to complete the work described in the CONSULTANT's Scope of Work (hereafter, collectively "Work") attached hereto as Exhibit A. CONSULTANT warrants and represents that said Work encompasses all services, equipment, and materials necessary for the CONSULTANT's preparation of the Lopez Water Project Habitat Conservation Plan. All Work shall be performed to the highest professional standard.

ARTICLE 2. <u>TIME FOR COMPLETION OF WORK.</u> No Work shall be commenced prior to the CONSULTANT's receipt of the COUNTY's Notice to Proceed. All Work shall be completed no later than January 1, 2019, 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. <u>PAYMENT FOR SERVICES.</u>

A. **<u>COMPENSATION.</u>**

1. COUNTY shall pay to CONSULTANT as compensation in full for all Work required by this Agreement a sum not to exceed the total Agreement amount of $191,622 (one hundred ninety one thousand six hundred twenty two dollars).

2. Progress payments will be made to CONSULTANT based on compensable services provided and allowable costs incurred at the rates set forth in the CONSULTANT'S Cost Proposal attached hereto as Exhibit B. All payments to CONSULTANT 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 CONSULTANT's Scope of Work, but that such deletion must be in writing from the County's Public Works Director that expressly states that certain Work is being deleted. CONSULTANT shall be entitled to no compensation for any Work that is deleted.

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

explanation as to why the CONSULTANT did not include said Work in the attached Scope of Work.

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

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

ARTICLE 4. ACCOUNTING RECORDS.

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

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

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

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

ARTICLE 5. (INTENTIONALLY OMITTED)

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

ARTICLE 7. INSURANCE. The CONSULTANT, at its sole cost and expense, shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable) and shall provide products/completed operations coverage for four (4) years following completion of the CONSULTANT's Work under this Agreement and acceptance by the County. Any failure to comply with reporting provisions(s) of the policies referred to above shall not affect coverage provided to the County, its officers, employees, volunteers, and agents. For purposes of the insurance policies required hereunder, the term "County" shall include officers, employees, volunteers, and agents of the County of San Luis Obispo, California, individually or collectively.

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

1. **COMMERCIAL GENERAL LIABILITY ("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;

$1,000,000 for personal injury liability;

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

$1,000,000 general aggregate.

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

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

3. **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY ("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 ("PL").** This policy shall cover damages, liabilities, and costs incurred as a result of the CONSULTANT's professional errors and omissions or malpractice. This policy shall include a coverage limit of at least One-Million Dollars ($1,000,000) per claim, including the annual aggregate for all claims (such coverage shall apply during the performance of the services under this

Agreement and for three (3) years thereafter with respect to incidents which occur during the performance of this Agreement). The CONSULTANT shall notify the County if any annual aggregate is eroded by more than seventy-five percent (75%) in any given year.

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

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

1. A “Cross Liability”, “Severability of Interest” or “Separation of Insureds” clause (CGL & BAL);
2. The County of San Luis Obispo, its officers, employees, volunteers, and agents are hereby added as additional insureds with respect to all liabilities arising out of the CONSULTANT’s performance of Work under this Agreement (CGL & 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 (All Policies);

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

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

D. **ABSENCE OF INSURANCE COVERAGE.** The County may direct the CONSULTANT to immediately cease all activities with respect to this Agreement if it determines that the CONSULTANT fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of Work and change of insurance shall be considered the CONSULTANT's delay and expense. At the County's discretion, under conditions of lapse, the County may purchase appropriate insurance and charge all costs related to such policy to the CONSULTANT.

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

Kate Ballantyne, Public Works Department
Room 206, County Government Center
San Luis Obispo CA 93408

ARTICLE 8. INDEMNIFICATION.

A. The CONSULTANT 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 CONSULTANT. The parties agree that, in addition to the CONSULTANT's general and professional duties of care,

the CONSULTANT has a duty of care to act in accordance with the terms of this Agreement. In addition to whatever other acts or omissions of CONSULTANT that constitute negligence, recklessness, or willful misconduct under applicable law, the parties acknowledge that any act or omission of the CONSULTANT 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 of the Agreement, "CONSULTANT" shall include the CONSULTANT, and/or its agents, employees, subcontractors, or other independent contractors hired by, or working under, the CONSULTANT.

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 CONSULTANT to indemnify the COUNTY against any responsibility or liability in contravention of Civil Code 2782.8.

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

A. The CONSULTANT has been hired by the COUNTY because of the CONSULTANT's specialized expertise in performing the Work described in the attached Scope of Work, Exhibit A. The CONSULTANT shall be solely responsible for such Work. The COUNTY's review, approval, and/or adoption of any designs, plans, specifications, or any other Work shall be in reliance on the CONSULTANT's specialized expertise and shall not relieve the CONSULTANT of its sole responsibility for the Work. The COUNTY is under no duty or obligation to review or verify the appropriateness, quality, or accuracy of any 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 CONSULTANT in performing any Work under this Agreement.

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

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

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

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

ARTICLE 10. <u>INSURANCE AND INDEMNIFICATION AS MATERIAL PROVISIONS.</u> 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 CONSULTANT by the indemnification and insurance clauses.

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

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

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

ARTICLE 14. TERMINATION OF AGREEMENT FOR CAUSE. If the CONSULTANT fails to perform the CONSULTANT's duties to the satisfaction of the COUNTY; or if the CONSULTANT fails to fulfill in a timely and professional manner the CONSULTANT's obligations under this Agreement; or if the CONSULTANT violates any of the terms or provisions of this Agreement; or if the CONSULTANT, or the CONSULTANT's agents or employees fails to exercise good behavior either during or outside of working hours that is of such a nature as to bring discredit upon the COUNTY, then the COUNTY shall have the right to terminate this Agreement effective immediately upon the COUNTY giving written notice thereof to the CONSULTANT. Termination shall have no effect upon the rights and

obligations of the parties arising out of any transaction occurring prior to the effective date of such termination. The CONSULTANT shall be paid for all Work satisfactorily completed prior to the effective date of such termination. If the COUNTY's termination of the Agreement for cause is defective for any reason, including but not limited to the COUNTY's reliance on erroneous facts concerning the CONSULTANT's performance, or any defect in notice thereof, this Agreement shall automatically terminate without cause thirty (30) calendar days following the COUNTY's written notice of termination for cause to the CONSULTANT, and the COUNTY's maximum liability shall not exceed the amount payable to the CONSULTANT under Article 13 above.

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

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

ARTICLE 17. DISPUTES & CLAIMS.

A. **EXCLUSIVE REMEDY.** Any demand or assertion by CONSULTANT 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 CONSULTANT 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 CONSULTANT in compliance with the provisions of this Agreement, any such Claims must also be processed by CONSULTANT in accordance with the provisions of this Article 17.

The administration of a Claim as provided in this Article 17, including CONSULTANT's performance of its duties and obligations specified in this Article 17 is CONSULTANT'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 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. CONSULTANT 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 CONSULTANT shall strictly comply with these requirements. Strict compliance with these requirements is a condition precedent to CONSULTANT's ability to exercise any rights or remedies that may otherwise be available to CONSULTANT under the Agreement or any applicable Laws or Regulations relating to the Claim. No action or inaction by CONSULTANT and/or COUNTY to try to resolve any Claim(s) through agreement, amendment, mediation, settlement, or any other means shall excuse CONSULTANT from strictly complying with the requirements of this Article 17. CONSULTANT shall bear all costs incurred in complying with the provisions of this Article 17.

C. **NOTICE OF POTENTIAL CLAIM.** The CONSULTANT 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 CONSULTANT has provided the COUNTY's Public Works Director with timely written Notice of Potential Claim as hereinafter specified. The written Notice of Potential Claim shall set forth the reasons for which the CONSULTANT believes additional compensation 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 CONSULTANT 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 CONSULTANT 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 Director of Public Works.

D. **NOTICE OF FINAL CLAIM** As soon as reasonably practical upon completion of the Disputed Work, and no later than 30 days after completion of the Disputed Work, CONSULTANT 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. (Any applicable equipment rates shall be at the applicable State rental rate as listed in the Department of Transportation publication entitled "Labor Surcharge and Equipment Rental Rates," in effect when the Disputed Work was performed.)

c. Other categories as specified by COUNTY.

E. **CONSULTANT'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 CONSULTANT from full and timely performance in accordance with the terms of this Agreement. CONSULTANT shall promptly respond to any requests for further information or documentation regarding CONSULTANT's potential or final Claim. If CONSULTANT fails to provide an adequate written response to COUNTY within 15 days of COUNTY's written request for such further documentation or information, CONSULTANT shall be deemed to have waived its Claim. If the further documentation or information requested by COUNTY, in the opinion of the COUNTY, reasonably take the CONSULTANT more than 15 days to comply with, the written request shall provide the CONSULTANT 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 60 days of receipt thereof Claim, or may request, in writing, within 45 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 CONSULTANT. CONSULTANT 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 CONSULTANT 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 CONSULTANT

within 30 days after receipt of such further information and documentation, or within a period of time no greater than that taken by the CONSULTANT in producing the additional information or documentation, whichever is greater. CONSULTANT may request an informal conference to meet and confer for settlement of the issues in dispute, but CONSULTANT shall have no right to demand such a conference. Neither the requesting of any such conference by CONSULTANT 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 CONSULTANT 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 Public Works Director or his authorized representative. In the event a valid written decision is not provided to CONSULTANT 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, CONSULTANT 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 CONSULTANT 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 Counsel's Office.

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

ARTICLE 19. ENTIRE AGREEMENT AND MODIFICATION. This Agreement supersedes all previous agreements and constitutes the entire understanding of the parties hereto. The CONSULTANT shall be entitled to no other compensation and/or benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both parties. Any changes increasing the CONSULTANT's compensation and/or benefits must be approved by the COUNTY's Board of Supervisors; any other changes may be signed by the County Director of Public Works on behalf of the COUNTY. The CONSULTANT specifically acknowledges that in entering into and executing this Agreement, the CONSULTANT relies solely upon the provisions contained in this Agreement and no others. To the extent there is any inconsistency between the text in the body of this 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. <u>WARRANTY OF CONSULTANT.</u> The CONSULTANT warrants that the CONSULTANT and each of the personnel employed or otherwise retained by the CONSULTANT for Work under this Agreement are properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to.

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

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

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

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

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

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

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

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

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

ARTICLE 25. 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. Wade Horton, Director
San Luis Obispo County
Department of Public Works
County Government Center, Room 206
San Luis Obispo, CA 93408

And to the CONSULTANT:

Triple HS, Inc., a California Corporation
d.b.a. HT Harvey and Associates
Mr. Scott Terrill, PhD. – Principal in Charge
983 University Avenue
Los Gatos, CA 95032

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

ARTICLE 27. CONFIDENTIALITY OF DATA.

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

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

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

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

ARTICLE 29. QUALITY CONTROL AND QUALITY ASSURANCE. The CONSULTANT 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 CONSULTANT's Scope of Work under this Agreement, and additional information or assistance from the CONSULTANT's personnel is requested by the COUNTY in order to evaluate or defend against such claims, the CONSULTANT agrees to cooperate with and provide timely response to any reasonable requests for information submitted to the CONSULTANT by the COUNTY relating to such claims. To the extent the information requested by the COUNTY only seeks documents or other factual information relating to Work performed by the CONSULTANT, the CONSULTANT will only be compensated for any clerical costs associated with providing the COUNTY the requested documents or factual information.

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

CONSULTANT reserves the right to charge other party a different rate for deposition or trial testimony.

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

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

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

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

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

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

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

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

on any contract to provide construction inspection for any construction project resulting from this Agreement.

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

COUNTY OF SAN LUIS OBISPO

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

ATTEST:

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

CONSULTANT

By: SBTerrill Date: 5/20/15

Name: Scott B. Terrill

Title: Vice President

CONSULTANT

By: _____ Date: 21 May 2015

Name: Karin Hunsicker

Title: CEO

APPROVED AS TO FORM AND LEGAL EFFECT:
RITA L. NEAL
County Counsel

By: _____ Date: 5/28/15
Chief Deputy County Counsel

V:\ADM_SERV\Trisha\AGREEMENTS\Lopez WTP Habitat Consv Plan Triple HS Prof Engr Agmt_nonfed funds_061013 (2).doc

EXHIBIT A

DESCRIPTION OF TASKS

Task 1: Scoping meeting. Sharon Kramer would travel to San Luis Obispo to assist the County in conducting a public scoping meeting. Susan Christopher (local amphibian/California red-legged frog expert) would also attend the meeting; she is located in our San Luis Obispo office and her local expertise and knowledge of the Arroyo Grande watershed would be beneficial. Christine Hamilton would assist in preparation for the public scoping meeting, including preparing handouts and/or presentation materials. Costs could be reduced if travel is coordinated with travel for other meetings (e.g., Task 2 or Task 10, below).

Task 2: Updates for Zone 3 and TAC. Sharon would travel to San Luis Obispo three times over the course of a year to attend three Zone 3, and three TAC meetings (assumes attendance at one Zone 3 and one TAC meeting per trip). Susan would also attend these meetings as needed. The cost of travel between Arcata and San Luis Obispo is significant and is included in the Task 2 budget. Costs can be reduced by participating by conference call, and/or by having Susan attend these meetings in lieu of Sharon.

Task 3: Draft HCP. We have completed, or nearly completed, the following sections of the HCP: Introduction and Background, Project Description, Covered Activities, and Environmental Setting, Implementation, and Alternatives. Sections with significant remaining work to complete include the Conservation Plan, Biological Impacts and Take Assessment, and Funding. Sharon will play a significant role in drafting the Conservation Plan and the Take Assessment sections based on potentially lengthy discussions with the County and the agencies. Christine is playing a lead role in gathering and incorporating this information into all sections of the HCP. Advice and reviews (based on expertise) would be conducted by Susan Christopher (amphibian expert), with a technical editor to provide technical editing. We included time for our GIS staff to create high-quality maps to help convey the covered area. Dr. Scott Terrill (Principal and Division Head) would conduct a final review for consistency and quality.

Task 4: Administrative Draft HCP Review and Revisions. A complete draft HCP will be submitted to the County for review. After County review, we would revise the HCP and provide the revised version ("Administrative Review Draft") to the County for agency review. After receiving agency comments, we would work with the County to respond. If the County does not agree with agency comments, it may be necessary to have additional meetings with the agencies to work through their comments: we did not provide a budget for these meetings. Ultimately, HTH will prepare a revised HCP for public review. Christine would play a lead role in editing the HCP based on the County and agency comments, with reviews (based on expertise) by Susan and Sharon. Dr. Scott Terrill would conduct a final review for consistency and quality.

Task 5: Draft HCP and NOA. HTH will prepare a Notice of Availability that the draft HCP is ready for public review. Christine would play a lead role in preparing the notice, with assistance and review by Sharon.

Task 6: Draft IA. HTH will prepare a draft Implementing Agreement for review by the County and the agencies. Christine would play a lead role in preparing the notice, with assistance and review by Sharon and Susan.

Task 7: Final HCP and IA. HTH will work with the County to respond to public comments and revise the HCP and IA; this version of the HCP would go back to the County and agencies for a final review. Christine would play a lead role in organizing and responding to public comments and agency and County comments, with assistance and review by Sharon and Susan.

Task 8: Prepare Final HCP and IA. HTH will work with the County to prepare the final HCP and IA based on a final review from the County and agencies.

Task 9: NEPA/CEQA Coordination. Sharon and Christine would provide assistance to the County and the NEPA/CEQA consultant to aid with NEPA/CEQA documentation and coordination with the HCP.

Task 10: Site Visit and Meetings. Sharon would conduct a site visit to gain an understanding of the dam and its components and to have a face-to-face meeting with the County and/or with agency personnel. After the site visit, Sharon would play a lead role in meeting with the agencies and with the County to gather additional information and reach agreement on remaining issues, such as mitigation and minimization measures, covered species, and funding. We would anticipate scheduling approximately monthly phone meetings to coordinate with the County, provide an update on our progress, work with the County to finalize any minimization and mitigation measures before they are presented to the agencies for review, and discuss strategies for finalizing the HCP and obtaining agency approval. We would anticipate scheduling bi-monthly meetings with the agencies to present and discuss various options for mitigation and minimization measures, and to reach consensus on the measures. Christine would assist Sharon in preparing for these meetings, generating hand-outs, and could also document meeting decisions and action items. Due to the high cost of travel, we have budgeted for only one in-person meeting during the site visit; we believe the other meetings can be conducted via conference call. Susan is local to San Luis Obispo and can attend any of the meetings in-person.

Task 11: Project Management. Sharon would conduct the project management aspects of the project, including budget, schedule management, and coordination and phone conversations with the County. A few hours for project management were also included for Susan. Time for quality control and document preparation has been budgeted for in Tasks 4-8.

Task 12: Coordination/Meetings with WAA Contractor. Sharon and Susan, along with the WAA contractor, would participate in up to four meetings led by the County, to coordinate with the contractor to ensure seamless integration with the HCP, including evaluating potential effects of instream flow alternatives on the covered species. Once the WAA is completed, Sharon, Christine, and Susan would review the WAA and incorporate the information into the draft HCP.

EXHIBIT B

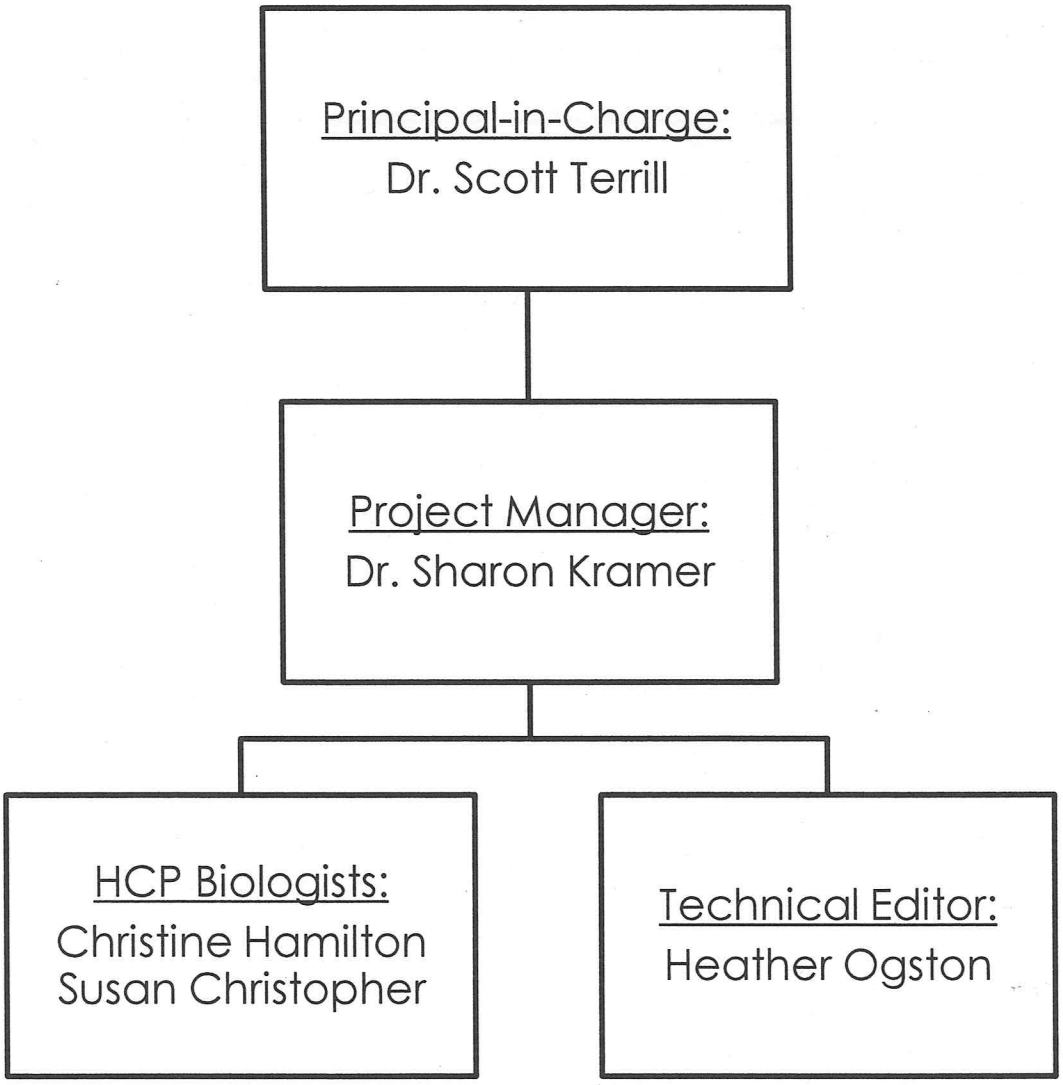
Project Name: Lopez Water Project HCP

Project Number: 3239-03
Date: 19 May 2015

BUDGET UPDATE/REVISION

Task	Cost
Task 1. Scoping meeting	$6,664
Task 2. Updates for Zone 3 and TAC	$12,618
Task 3. Draft HCP	$27,288
Task 4. Admin draft HCP plan rev	$28,312
Task 5 Draft HCP and NOA	$3,620
Task 6 Draft IA	$8,548
Task 7 final HCP and IA	$32,392
Task 8. Prepare final HCP/IA	$6,336
Task 9. NEPA/CEQA coordination	$5,424
Task 10. Site Visits and Meetings	$30,631
Task 11. Project management	$5,177
Task 12. Coordination/meetings with WAA contractor	$24,612
TOTAL BUDGET	**$191,622**

EXHIBIT C


Principal-in-Charge:
Dr. Scott Terrill
Project Manager:
Dr. Sharon Kramer
HCP Biologists:
Christine Hamilton
Susan Christopher
Technical Editor:
Heather Ogston