

AGREEMENT FOR ACQUISITION SERVICES

This agreement, made this _____ day of _____, 20____, by and between the County of San Luis Obispo, hereinafter called "County", and Beacon Integrated Professional Resources Inc., dba Hamner, Jewell & Associates, hereinafter called "Consultant";

WITNESSETH:

WHEREAS, County has need of real property acquisition services in connection with the Templeton Road Widening Project (Project); and

WHEREAS, the County seeks the assistance of a qualified consulting right of way acquisition firm to undertake the right of way acquisition for Project within the established Project timeline under the oversight and general direction of the County's Right of Way Agent; and

WHEREAS, Consultant represents that it has the experience and expertise to provide the desired Right of Way Acquisition services, and is best qualified to provide such services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Waiver of Standard Request for Proposals Purchasing Procedures. The San Luis Obispo County Board of Supervisors hereby waives the Standard Request for Proposal Purchasing Procedures and authorizes the County to enter into a Sole Source Contract with Consultant for the Right of Way services described herein.
2. Scope of Services. Consultant shall provide services to County for the Project within the County of San Luis Obispo, as described herein.
 - a. Consultant shall review project plans and the listing of property interests and property owners, to be prepared and provided by County to Consultant, and Consultant shall assist the County Right of Way Agent and Project Team to refine and update said listing of property interests and owners as needed to assure that all such interests and ownerships required for the project are represented thereon.
 - b. Consultant shall prepare and organize files on each identified ownership and assemble title reports, legal descriptions and appraisals, which shall be obtained by County and provided to Consultant along with Project Plans, and other pertinent information, in preparation for making contact with and presenting purchase offers to owners on behalf of County.
 - c. Consultant shall prepare offers for presentation to property owners, including but not limited to Offer Letters, Appraisal Summary Statements, Deeds, and Real Property Transfer Agreements (or Right of Way Agreements), pursuant to Federal, State, and County real property acquisition and eminent domain statutes and regulations including, but not limited to, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), and in a format pre-approved by County and subject to recommendation for acceptance by County Counsel and subject to final acceptance by the County Board of Supervisors.
 - d. Consultant shall contact each affected property owner and offer to personally meet with them to present the above described offer on behalf of the County, and shall negotiate to secure the requisite agreements with, and conveyances from, said owners in conformance with said Federal, State, and County real property acquisition and eminent domain statutes and regulations including, but not limited to, the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as Amended

(Uniform Act). Consultant shall coordinate negotiations with the County Right of Way Agent as needed to assure efficient processing of agreements and conveyances through County Counsel, the County Board of Supervisors, the County Clerk-Recorder's Office, and Escrow. Negotiations warranting further eminent domain activities, as determined by the County Right of Way Agent or by County Counsel, are to be referred to the County for further action as soon as possible.

3. Organization and Staffing for Consultant. The following personnel will coordinate for Consultant at County's direction, all services described herein under Scope of Services: Lillian Jewell and Cathy Springford.

4. Compensation. Consultant shall bill County in accordance with the attached proposal and fee schedule (Exhibit A) and Consultant agrees to perform, in full, all services required of Consultant by this Agreement for not more than the total sum of \$38,300, provided however, that this maximum is based upon an the anticipated acquisition of property rights from no more than eight (8) properties in accordance with the attached parcel summary (Exhibit B) over a maximum two year term. The total sum hereinabove includes reimbursable expenses, such as mileage, postage and special delivery charges.

5. Billing. Consultant shall submit to County, on a monthly basis, a detailed statement of services and cost of services performed. The net amount due shown on such statements shall be due within thirty (30) days following the date of this statement.

6. Term of Contract. This contract shall commence upon execution by the San Luis Obispo County Board of Supervisors and terminate two (2) years after said date of execution, unless said work is completed on a date prior thereto or unless terminated earlier as provided herein. Termination of term of the Contract may be effectuated by the County Director of Public Works without the need for action, approval or ratification of the Board of Supervisors.

7. Termination of Agreement for Convenience. Notwithstanding any other paragraph or provision of this Agreement, County shall have the absolute right, at any time, to suspend or terminate this Agreement, or any work or portion thereof to be performed pursuant to this Agreement, upon giving thirty (30) days written notice of such suspension or termination to Consultant.

- a. In the event of termination of this Agreement by County in the absence of default of Consultant, County shall pay Consultant the reasonable value of the services determined by the County Director of Public Works of San Luis Obispo County to have been satisfactorily accomplished by Consultant up to the date of such termination; provided however, that in no event shall Consultant be entitled to receive more than the total lump sum payment provided herein.
- b. In the event of termination of this Agreement by County, Consultant hereby expressly waives any and all claims for damages or for compensation under this Agreement, except as set forth in this section.
- c. In the event of termination of this Agreement, and upon demand by County, Consultant shall deliver to County all draft reports, maps, plans, documents, materials, and other data prepared, collected, or obtained in the performance of this Agreement, and the ownership of all such reports, maps, plans, mailing lists, easement descriptions, exhibits, documents, materials and other data shall be vested in the County.

8. Termination of Contract for Cause. If Consultant fails to perform Consultant's duties to the satisfaction of County, or if Consultant fails to fulfill in a timely and professional manner Consultant's obligations under this Contract or if Consultant shall violate any of the terms or provisions of this Contract, or if Consultant or Consultant'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 County, the County shall have the right

to terminate this Contract effective immediately upon 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. Consultant shall be paid for all work satisfactorily completed prior to the effective date of such termination. If County's termination of the Contract for cause is defective for any reasons, including but not limited to County's reliance on erroneous facts concerning Consultant's performance, or any defect in notice thereof, the notice shall be deemed a notice of termination for convenience under Paragraph 7, and the County's maximum liability shall not exceed the amount payable to Consultant under Paragraph 7 above.

9. Equal Employment Opportunity. During the performance of this Contract, Consultant agrees that, relative to work under this Contract, Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national original, and hereby promises to comply with the provisions of Consultant agreements contained in Presidential Executive Order Number 11246.

10. Entire Agreement and Modification. This Contract constitutes the entire understanding of the parties hereto. Consultant shall be entitled to no other benefits than those specified herein. No changes, amendments or alternation shall be effective unless in writing and signed by both parties, Consultant specifically acknowledges that in entering into and executing this Contract, Consultant relies solely upon the provisions contained in this Contract and no others.

11. Non-Assignment of Contract. Inasmuch as this Contract is intended to secure the specialized services of Consultant, Consultant may not assign, transfer, delegate or sublet any interest herein without the prior written consent of County and any such assignment, transfer, delegation or sublease without County's prior written consent shall be considered null and void.

12. Covenant. This Contract has been executed and delivered in the State of California, and the validity and enforceability of this Contract and the interpretation of any of the clauses of this Contract 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 said County shall be venue for any action or proceeding that may be brought or arise out of, in connection with, or by reason of, this Contract.

13. Enforceability. If any term, covenant, condition or provision of this Contract 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.

14. Employment Status. Consultant shall, during the entire term of this Contract, be construed to be an independent contractor and nothing in this Contract is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow County to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Contract; provided always however, that the services to be provided by Consultant shall be provided in a manner consistent with all applicable standards and regulations governing such services.

Consultant understands and agrees that Consultant's personnel are not and will not be eligible for membership in or any benefits from any County group plan for hospital, surgical or medical insurance or for membership in any County retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for any other benefit which accrues to a County employee.

15. Warranty of Consultant. Consultant warrants that Consultant and each of the personnel employed or otherwise retained by Consultant for work under this Contract are properly certified and licensed under the laws and regulations of the State of California to provide the special services herein agreed to.

16. California Law. It is agreed that this Contract shall be governed by the laws of the State of California.

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

The preceding paragraph applies to any theory of recovery to said act or omission, including but not limited to the following:

- a) Violation of statute, ordinance, or regulation.
- b) Profession malpractice.
- c) Willful, intentional or other wrongful acts, or failures to act.
- d) Negligence or recklessness.
- e) Furnishing of defective or dangerous products.
- f) Premises liability.
- g) Violation of civil rights.
- h) Violation of any federal or state statute, regulation, or ruling resulting in a determination by the Internal Revenue Service, California Franchise Tax Board, or any other California public entity responsible for collecting payroll taxes, when the Consultant is not an independent contractor.

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

18. Insurance. 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). Any failure to comply with reporting provision(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 or Required Insurance Policies. The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the County:

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

- a. \$1,000,000 each occurrence (combined single limit);
 - b. \$1,000,000 for personal injury liability;
 - c. \$1,000,000 aggregate for products-completed operations; and,
 - d. \$1,000,000 general aggregate.
 - e. \$1,000,000 non-owned auto coverage.
 - f. The general aggregate limits shall apply separately to Contractor's work, under this agreement.
2. Workers' Compensation and Employers' Liability Insurance Policy ("WC/EL") This policy shall include at least the following coverages and policy limits:
- a. Workers' Compensation insurance as required by the laws of the State of California; and
 - b. Employer's Liability Insurance Coverage B with coverage amounts 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.
3. Professional Liability Insurance Policy ("PL"). This policy shall cover damages, liabilities, and costs incurred as a result of Consultant's professional errors and omissions or malpractice. This policy shall include a coverage limit of at least one million (\$ 1,000,000) dollars per claim, including the annual aggregate for all claims. Consultant shall notify the County of any annual aggregate is eroded by more than seventy-five (75%) percent in any given year.

19. 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 Consultant and approved by the County before work is begun pursuant to this Agreement. At the option of the County, 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.

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

- a. A "Cross Liability", "Severality of Interest", or "Separation of Insureds" clause (CGL & BAL);
- b. The County of San Luis Obispo, its officers, employees, volunteers and agents are hereby added as additional insured with respect to all liabilities arising out of Consultant's performance of work under this Agreement (CGL & BAL);
- c. If the insurance policy covers an "accident" basis, it must be changed to "occurrence" (CGL & BAL);
- d. This policy shall be considered primary insurance with respect to any other valid and collectible insurance County may possess, including any self-insured retention County may have, and any other insurance County does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL, BAL & PL);

- e. 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) days prior to the effective date of such deduction or cancellation to County at the address set forth below (CGL, BAL, WC/EL & PL);
- f. Consultant and its insurers shall agree to waive all rights of subrogation against the County, its officers, employees, volunteers and agents for any loss arising under this Agreement (CGL); and
- g. Deductibles and self-insured retentions must be declared (All Policies).

21. Absence of Insurance Coverage. County may direct Consultant to immediately cease all activities with respect to this Agreement and may terminate this Agreement if it determines that Consultant fails to carry, in full force and effect, all insurance policies with coverages at or above the limits specified in this Agreement.

22. Proof of Insurance Coverage and Coverage Verification. Prior to commencement of work under this Agreement, and annually thereafter for the term of this Agreement, Consultant or each of Consultant'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 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 shall be mailed to County address below in paragraph 24, Notices .

23. Records.

- a. Consultant shall maintain books, papers, accounting records, and other relevant documents (hereinafter "Records") pertaining to the cost and performance of this Agreement. Consultant shall retain said Records and make them available for examination and audit by the State Auditor General, the County, the State, or the Federal Government, or their duly authorized representatives, during the contract term, and for a period of four (4) years after the date of final payment under this Agreement (Government Code Section 10532).
- b. Consultant shall assure the confidentiality of any records that are required by law to be so maintained.
- c. Consultant shall prepare and forward such additional or supplementary records as County may reasonably request.

24. 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 County at:

County of San Luis Obispo, Department of Public Works
 Room 207 County Government Center
 San Luis Obispo, California 93408
 Attention: County Right of Way Agent

to Consultant at:

Hamner, Jewell & Associates
 340 James Way Suite 150
 Pismo Beach, California 93449
 Attention: Lillian D. Jewell

25. Copyright. Any report, maps, documents or other materials produced in whole or part under this Contract shall be the property of County and none shall be subject to an application for copyright by or on behalf of Consultant.

26. Findings Confidential. No reports, maps, information, documents, or any other materials given to or prepared by Consultant under this Contract shall be made available to any individual or organization (other than County's contract legal counsel) by Consultant without the prior written approval of County.

27. Equipment and Supplies. Consultant will provide all necessary equipment and supplies in order to carry out the terms of this Contract.

IN WITNESS WHEREOF, County and Consultant have executed this Contract on the day and year first herein above set forth.

CONSULTANT

By: 
Lillian D. Jewell, President
Beacon Integrated Professional Resources Inc.
d.b.a. Hamner, Jewell & Associates

COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson of the Board of Supervisors

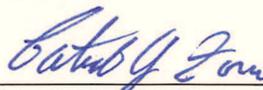
ATTEST:

Julie L Rodewald, County Clerk-Recorder
And Ex-Officio Clerk of the Board of Supervisors

By: _____
Deputy Clerk

**APPROVED AS TO FORM
AND LEGAL EFFECT**

WARREN R. JENSEN
County Counsel

By: 
Deputy County Counsel

Dated: 12/21/11
T:\PWA\zz Templeton Rd\ Templeton Rd Acq Svcs Contract 12 2011

HAMNER, JEWELL & ASSOCIATES
a division of BEACON INTEGRATED PROFESSIONAL RESOURCES, INC.

2012

(Same rate for 4 consecutive years – 2009, 2010, 2011, and again for 2012)

TIME AND MATERIALS FEE SCHEDULE
(Project Based)

Managing Senior Associate	\$175 an hour
Legal Support *	\$175 an hour*
Senior Associate II	\$160 an hour
Senior Associate I	\$130 an hour
Associates II	\$110 an hour
Associates I	\$ 95 an hour
Assistants	\$ 75 an hour

These rates are inclusive of secretarial support and general office expenses, overhead, and profit. Reimbursable costs that may be passed through to the client as additional expenses include travel expenses (based upon the standard IRS mileage reimbursement rate, or actual expenses for travel outside of the tri-county area of Ventura, Santa Barbara, and San Luis Obispo), special handling fees such as certified, express mail, and delivery charges, photography and third party photocopy expenses, certain project/client-specific telephone expenses, and other charges made by third parties in connection with performing the scope of services. Such third party expenses may include, but are not limited to, such costs as moving bid fees, title and escrow company charges, and appraisal fees. Fees charged by insurance companies for issuing insurance certificates for client per contract requirements will also be billed through to client for reimbursement.

All third party expenses will be billed to the client at cost plus 10%, with appropriate invoices or other appropriate documentation provided for reference. Mileage and travel costs will be passed through without mark-up.

Statements for work shall be rendered monthly. Payments are due within 30 days. Payments not received within said period will accrue interest at a rate of 10% per annum.

At all times, by pre-directive, our clients may structure and direct our efforts and general time expenditures so as to maintain control of the course and cost of our services.

If Hamner, Jewell & Associates (“HJA”) is called upon or compelled to provide support for litigation or other proceedings, or respond to subpoenas in any way whatsoever related to the work HJA has completed on client’s behalf, client shall pay HJA for required time in accordance with the hourly rates and fees specified in this Fee Schedule, except, however, any time for court testimony and depositions shall be paid at a rate of \$250/hour for HJA Senior Associates, \$200/hour for HJA Associates, and \$135/hour for HJA Assistants. HJA shall additionally be reimbursed for all out-of-pocket and overhead expenses in connection with such proceedings. This provision shall survive the term of the contract.

Rates may be adjusted annually, with thirty days advance written notice.

* At the request of several of our clients, this billing rate category has been added specifically in relation to the qualifications and services of Robert McDowell and Cathy Springford who, as licensed attorneys, can provide cost effective support and coordination with client legal counselors. Hamner, Jewell & Associates does not, however, provide legal representation or counsel; we work closely with the legal counsel of our clients to cost effectively assist in resolving any legal matters associated with services we provide.

Templeton Road
 State Highway 41 to South El Pomar
 WBS 300386

Parcels on Westerly Side

APN:	Owner	Parent Parcel Size	Proposed Take Area	Comments
034-421-034	Heilmann	49.12 acres	0.094 acres	Lot 157 (A Maps 1), need slope and road easement. Will replace a portion of R/W fence & redo both driveway approaches. Also need 0.050 acres of temporary construction easement (TCE) for staging.
034-421-022	AMWC	58.16 acres	0.543 acres	Lot 158 (A Maps 1), need slope and road easement at inside of existing roadway curve and along ditch. Will replace portions of R/W fence and provide new driveway approach (Sta. 65+40+/-). Also need 1.353 acres of temporary construction easement (TCE) for staging.
034-421-023	Mora	47.1 +/- acres	0.074 acres	Remainder of Lot 159 (A Maps 1), need to acquire severed portion of property on easterly side and additional slope easement on westerly side. Will replace a portion of R/W fence on westerly side of road and redo driveway approach.

Parcels on Easterly Side

APN:	Owner	Parent Parcel Size	Proposed Take Area	Comments
034-521-023	Duff	6.69 acres	0.133 acres	Parcel A, CO 83-063 (37 PM 48), 5 foot offer, accepted by the Board but still need additional slope easement for road cut. Will replace a portion of R/W fence (chain link).
034-521-012	Barnett	9.74 +/- acres	0.032 acres	Parcel 3, CO 76-507 (24 PM 45), 10 foot offer, accepted by the Board but still need additional slope and road easement. Fence stays put.
034-521-011	Seward	9.74 +/- acres	0.057 acres	Parcel 2, CO 76-507 (24 PM 45), 10 foot offer, accepted by the Board but still need additional slope and road easement. Fence stays put. Will replace culvert under driveway.
034-521-010	Baxter	9.71 +/- acres	0.125 acres	Parcel 1, CO 76-507 (24 PM 45), 10 foot offer, accepted by the Board but still need additional slope and road easement. Might need to replace a portion of R/W fence and construct 2 retaining walls.
034-071-033	Xena LLC	11.01 acres	0.058 acres	Parcel 2, CO 72-158 (10 PM 49), need additional slope easement. Will replace a portion of R/W fence.

Dec. 1, '11