

AGREEMENT FOR PROFESSIONAL ENVIRONMENTAL CONSULTING SERVICES

This Agreement is entered into by and between the San Luis Obispo County Flood Control and Water Conservation District, a political subdivision of the State of California, herein called "DISTRICT," 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 department responsible for administering this Agreement is the San Luis Obispo County Department of Public Works ("Public Works"), and all written communications hereunder with the DISTRICT shall be addressed to the Director of Public Works ("Director").

WHEREAS, the DISTRICT has need for special services and advice with respect to the work described herein for the Arroyo Grande Creek Habitat Conservation Plan Project (hereafter, the "Project"); and

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

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

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

ARTICLE 2. TIME FOR COMPLETION OF WORK. No Work shall be commenced prior to the CONSULTANT's receipt of the DISTRICT's Notice to Proceed. All Work shall be completed no later than January 1, 2013, provided, however, that extensions of time may be granted in writing by the Director of Public Works of San Luis Obispo County, which said extensions of time, if any, shall be granted only for reasons attributable to inclement weather, acts of God, or for other cause determined in the sole discretion of the Director of Public Works of San Luis Obispo County to be good and sufficient cause for such extensions.

ARTICLE 3. PAYMENT FOR SERVICES.

A. **COMPENSATION.** The DISTRICT shall pay to the CONSULTANT as compensation in full for all Work required by this Agreement a sum not to exceed the \$260,877. The CONSULTANT's compensation shall be based on actual services performed and costs incurred at the rates set forth for each task in the CONSULTANT's Cost Proposal attached hereto as Exhibit B. Progress payments will be made as set forth below based on compensable services provided and allowable costs incurred pursuant to this Agreement.

B. **REPORTS.** The CONSULTANT shall submit to the DISTRICT, 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 DISTRICT 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 DISTRICT 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 pre-approved in writing by the DISTRICT'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 DISTRICT. 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 DISTRICT and its designated auditor for inspection and audit. Disallowed costs shall be repaid to the DISTRICT. The DISTRICT 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. CHANGES IN SCOPE OF SERVICE. No change in the character or extent of the Work to be performed by the CONSULTANT shall be made except through a signed written amendment to this Agreement. The amendment shall set forth the proposed changes in Work, adjustment of time, and adjustment of the sum to be paid by the DISTRICT to the CONSULTANT, if any.

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

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

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

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

\$1,000,000 for personal injury liability;

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

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

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

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

- a. Workers' Compensation insurance as required by the laws of the State of California; and
- b. Employer's Liability Insurance Coverage B with coverage amount not less than one-million (\$1,000,000) dollars each accident / Bodily Injury (herein "BI"); one-million (\$1,000,000) dollars policy limit BI by disease; and, one-million (\$1,000,000) dollars each employee BI by disease.

4. **PROFESSIONAL LIABILITY INSURANCE POLICY ("PL")**. This policy shall cover damages, liabilities, and costs incurred as a result of the CONSULTANT's professional errors and omissions or malpractice. This policy shall include a coverage limit of at least One-Million Dollars (\$1,000,000) per claim, including the annual aggregate for all claims (such coverage shall apply during the performance of the services under this Agreement and for two (2) years thereafter with respect to incidents which occur during the performance of this Agreement). The CONSULTANT shall notify the DISTRICT 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 DISTRICT before Work is begun pursuant to this Agreement. At the option of the DISTRICT, the CONSULTANT shall either reduce or eliminate such deductibles or self-insured retentions as respect the DISTRICT, its officers, employees, volunteers, and agents, or shall provide a financial guarantee satisfactory to the DISTRICT 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 San Luis Obispo Flood Control and Water Conservation District, its officers, employees, volunteers, and agents are hereby added as additional insureds with respect to all liabilities arising out of the CONSULTANT's performance of Work under this Agreement (CGL & BAL);
3. If the insurance policy covers an "accident" basis, it must be changed to "occurrence" (CGL & BAL);
4. This policy shall be considered primary insurance with respect to any other valid and collectible insurance DISTRICT may possess, including any self-insured retention DISTRICT may have, and any other insurance DISTRICT does possess shall be considered excess insurance only and shall not be called upon to contribute to this insurance (CGL, BAL, & PL);
5. No cancellation or non-renewal of this policy, or reduction of coverage afforded under the policy, shall be effective until written notice has been given at least thirty (30) calendar days prior to the effective date of such reduction or cancellation to County at the address set forth below (All Policies);
6. The CONSULTANT and its insurers shall agree to waive all rights of subrogation against the DISTRICT, its officers, employees, volunteers, and agents for any loss arising under this Agreement (CGL); and
7. Deductibles and self-insured retentions must be declared (All Policies).

D. **ABSENCE OF INSURANCE COVERAGE.** The DISTRICT 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 DISTRICT's discretion, under conditions of lapse, the DISTRICT 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 DISTRICT 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:

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

ARTICLE 8. INDEMNIFICATION.

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

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

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

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

ARTICLE 9. CONSULTANT'S RESPONSIBILITY FOR ITS WORK.

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

B. All information which the CONSULTANT receives from the DISTRICT 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 DISTRICT 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 DISTRICT whenever the CONSULTANT becomes aware of any information that is inconsistent with any information which the DISTRICT has stated may be relied upon by the CONSULTANT.

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

ARTICLE 10. INSURANCE AND INDEMNIFICATION AS MATERIAL PROVISIONS.

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

ARTICLE 14. TERMINATION OF AGREEMENT FOR CAUSE. If the CONSULTANT fails to perform the CONSULTANT's duties to the satisfaction of the DISTRICT; 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 DISTRICT, then the DISTRICT shall have the right to terminate this Agreement effective immediately upon the DISTRICT 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 DISTRICT's termination of the Agreement for cause is defective for any reason, including but not limited to the DISTRICT'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 DISTRICT's written notice of termination for cause to the CONSULTANT, and the DISTRICT's maximum liability shall not exceed the amount payable to the CONSULTANT under Article 13 above.

ARTICLE 15. COMPLIANCE WITH LAWS. The CONSULTANT shall comply with all Federal, State, and local laws and ordinances that are applicable to the performance of

the Work of this Agreement. This includes compliance with applicable prevailing wage rates and their payment in accordance with the California Labor Code. The CONSULTANT will comply, or cause its subconsultant(s) to comply, with the applicable provisions of Labor Code Section 1774.

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

ARTICLE 17. DISPUTES & CLAIMS.

A. **NOTICE OF POTENTIAL CLAIM.** The CONSULTANT shall not be entitled to the payment of any additional compensation for any act, or failure to act, by the DISTRICT, or for the happening of any event, thing, occurrence, or other cause, unless the CONSULTANT has provided the DISTRICT with timely written Notice of Potential Claim as hereinafter specified. The written Notice of Potential Claim shall set forth the reasons for which the CONSULTANT believes additional compensation will or may be due, the nature of the cost involved, and, insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the DISTRICT prior to the time that the CONSULTANT shall have performed the work giving rise to the potential claim for additional compensation, if based on an act or failure to act by the DISTRICT, or in all other cases within fifteen (15) calendar days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim. It is the intention of this paragraph that differences between the parties relating to this Agreement be brought to the attention of the DISTRICT at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The

CONSULTANT hereby agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written Notice of Potential Claim as herein required was filed with the DISTRICT Director of Public Works.

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

C. **CLAIM IS NO EXCUSE.** Neither the filing of a Notice of Potential Claim or of a Notice of Actual Claim, nor the pendency of a dispute or claim, nor its consideration by the DISTRICT, shall excuse the CONSULTANT from full and timely performance in accordance with the terms of this Agreement.

ARTICLE 18. CONSULTANT IS AN INDEPENDENT CONTRACTOR. It is expressly understood that in the performance of the services herein provided, the CONSULTANT shall be, and is, an independent contractor, and is not an agent or employee of the DISTRICT. 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 DISTRICT's Board of Supervisors; any other changes may be signed by the County Director of Public Works on behalf of the DISTRICT. The CONSULTANT specifically acknowledges that in entering into and executing this Agreement, the CONSULTANT relies solely upon the provisions contained in this Agreement and no others. To the extent there is any inconsistency between the text in the body of this Contract and anything in any of the Exhibits attached hereto, the text in the body of this Contract shall prevail.

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

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

ARTICLE 22. SUBCONTRACTORS.

A. Other than Work designated in Exhibits A and B to be performed by other persons or entities, the 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 DISTRICT. In the event the DISTRICT 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 DISTRICT 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 DISTRICT 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 DISTRICT'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 DISTRICT's Project Manager in advance of assigning work to a substitute subcontractor.

ARTICLE 23. EQUIPMENT PURCHASE.

A. Prior authorization in writing, by the DISTRICT'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 DISTRICT 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 DISTRICT 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 DISTRICT procedures; and credit the DISTRICT 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 DISTRICT 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 DISTRICT."

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

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

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

and to the CONSULTANT:

Mr. Scott Terrill, Ph.D. – Principal in Charge
983 University Avenue, Building D
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 DISTRICT's operations, which are designated confidential by the DISTRICT 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 DISTRICT.
- B. Permission to disclose information on one occasion, or public hearing held by the DISTRICT 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 DISTRICT.

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 DISTRICT, unless and until the DISTRICT waives this restriction.

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

- A. If claims are filed against the DISTRICT by any third party that relate in any way to any Work product within the CONSULTANT's Scope of Work under this Agreement, and additional information or assistance from the CONSULTANT's personnel is requested by the DISTRICT 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 DISTRICT relating to such claims. To the extent the information requested by the DISTRICT only seeks copies of documents or other factual information relating to Work performed by the CONSULTANT, the CONSULTANT will only be compensated for any clerical costs associated with providing the DISTRICT the requested factual information.
- B. The CONSULTANT's personnel that the DISTRICT considers essential to assist in defending against such claims will be made available for consultation with

the DISTRICT upon reasonable notice from the DISTRICT. In the event the expert opinions of the CONSULTANT's personnel is sought by the DISTRICT 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 DISTRICT'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. CONFLICT OF INTEREST.

A. The CONSULTANT shall disclose any financial, business, or other relationship with the DISTRICT that may be affected by the outcome of this Agreement, or any ensuing DISTRICT project. The CONSULTANT shall also list current clients who may have a financial interest in the outcome of this Agreement, or any ensuing DISTRICT 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 DISTRICT and the CONSULTANT have executed this Agreement, and this Agreement shall become effective on the date shown signed by the County of San Luis Obispo.

SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By: _____ Date: _____
Chairperson of the Board
San Luis Obispo County Flood Control and
Water Conservation District
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

**TRIPLE HS, INC., a California corporation
d.b.a. HT Harvey and Associates**

By: Ron Duke. Date: 2/14/12

Name: Ronald R. Duke

Title: President

By: SB Terrill

Date: 2-9-12

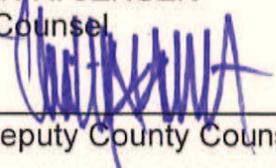
Name: Scott Terrill, Ph.D.

Title: Principal in Charge

APPROVED AS TO FORM AND LEGAL EFFECT:

WARREN R. JENSEN

County Counsel

By: 

Deputy County Counsel

Date: 2.23.2012

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EXHIBIT A

Task 1: Scoping meeting. Sharon Kramer would travel to San Luis Obispo to assist the County in conducting a public scoping meeting. Christine Hamilton would assist in preparation for the public scoping meeting, including preparing handouts and/or presentation materials. Travel costs were not budgeted for this task, in anticipation that it could be coordinated with travel for other meetings (for Task 2, or “additional tasks” 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). The cost of travel between Arcata and San Luis Obispo is significant and is included in the Task 2 budget. Costs can be saved by participating by conference call.

Task 3: Draft HCP. Based on our section-by-section review of the 2009 draft HCP provided in a 3 March 2011 memorandum to the County, we estimated the number of hours it would take to complete each section. We concluded that the Project Description, Environmental Setting, Conservation Plan, and Take Assessment sections in particular would require significant effort and time to complete; we estimated these sections as being 5%, 50%, 10%, and 25% complete, respectively. Sharon would play a significant role in drafting the Conservation Plan and the Take Assessment sections based on negotiations and discussions with the County and the agencies. Christine Hamilton would play a lead role in gathering and incorporating this information into all sections of the HCP. We included time for our GIS staff to create high-quality maps to help convey the covered area and environmental setting. Reviews (based on expertise) would be conducted by Jeff Wilkinson (amphibian expert) and Adam Wagschal (fisheries expert), and Sheri Woo (technical editor) would provide technical editing. Dr. Scott Terrill (Principal-in-charge) 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 Hamilton would play a lead role in editing the HCP based on the County and agency comments, with reviews (based on expertise) by Jeff Wilkinson, Adam Wagschal, and Sharon Kramer. Sheri Woo would provide technical editing and would insure regulatory compliance. 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.

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.

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.

Additional Tasks: We included additional Tasks not included in the numbered list of tasks from the 12 October 2010 Scope of Work.

NEPA/CEQA Coordination. Sharon and Christine would provide minor assistance to the County or consultant to aid with NEPA and CEQA documentation.

Site Visit and Meetings. Sharon Kramer and Christine Hamilton would conduct an initial 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 initial 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 the project description, mitigation and minimization measures covered lands, species, and activities, and funding. We would anticipate scheduling 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 initial site visit; we believe the other meetings can be conducted via conference call.

Project Management. Sharon would conduct all project management aspects of the project, including budget, schedule management, and coordination and phone conversations with the County. Time for quality control and document preparation has been budgeted for in Tasks 4-8.



H. T. HARVEY & ASSOCIATES
ECOLOGICAL CONSULTANTS

Project Name: Arroyo Grande Creek HCP

Proposal Number:

Project Number: 3239-01

Date: 6 December 2011

Task	Cost
Task 1. Scoping meeting	\$ 6,664
Task 2. Updates for Zone 3 and TAC	\$ 15,202
Task 3. Draft HCP	\$ 109,792
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
NEPA/CEQA coordination	\$ 5,424
Site Visits and Meetings	\$ 35,752
Project management	\$ 8,835
TOTAL BUDGET	\$ 260,877



Professional Fees

Fees Effective July 1, 2011

Personnel Classification	Hourly Billing Rate
Principal	\$ 215 – 247
Senior Associate Ecologist	\$ 194
Associate Ecologist	\$ 179
Senior Ecologist 2	\$ 163
Senior Ecologist 1	\$ 147
Ecologist 2	\$ 131
Ecologist 1	\$ 116
Field Biologist 2	\$ 100
Field Biologist 1	\$ 84
GIS Specialist	\$ 105
Technical Editor	\$ 100
Administrative Support	\$ 80
Clerical Support	\$ 65
Deposition and Testimony	Two times standard
Subcontractual Consultants	Cost plus 10%
Direct Expenses	Cost plus 10%
Transportation	Current IRS Federal Standard Mileage Rate (55.5¢ / mile as of July 2011)
Travel per diem (at cost)	~ \$172/day
Computer Services	Variable
Field Equipment Operation	Variable

EXHIBIT C

